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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 19, 20, 26, 30, 31, 33, 39, 50, 51, 52, 54, 55, 71, 75, 100 and 110

RIN 3150–AH01

NRC Public Document Room Address Change and Corrections to Information Collection Provisions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a document appearing in the **Federal Register** on November 4, 2002 (67 FR 67096) (FR Doc. 02–27865). This action is necessary to correct an erroneous amendatory instruction and typographical errors.

DATES: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, Washington, DC 20555–0001, telephone 301–415–7163, e-mail *mtl@nrc.gov.*

SUPPLEMENTARY INFORMATION:

§ 1.5 [Corrected]

1. On page 67097, right column, paragraph (3), second line, ''Il.'' is corrected to read ''IL''.

§ 7.2 [Corrected]

2. On page 67098, in the center column, amendatory instruction 11 is corrected to read as follows:

''11. Section 7.2 is amended as follows:

a. In § 7.2, the paragraph designations are removed.

In the definition of ''Advisory committee'', paragraph (1), last sentence, the phrase ''(c)(3) of this section'' is revised to read ''(3) of this definition.''; in paragraph (2), first sentence, the phrase ''(c)(1) of this section'' is revised to read ''(1) of this definition''; in paragraph (3), last sentence, the phrase ''(c)(1) of this section:'' is revised to read ''(1) of this definition:''.

b. The definition for NRC Public Document Room is revised to read as follows:

§ 110.2 [Corrected]

3. On page 67101, right column, second paragraph, fourth line, insert a comma between ''Rockville'' and ''Maryland''.

4. On page 67101, right column, second paragraph, 29th line, the telephone number ''301–315–4737'' is corrected to read ''301–415–4737''.

Dated at Rockville, Maryland, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

Alzonia W. Shepard,

Acting Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–29874 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') announces amendments to Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'') to establish a new generic fiber subclass name and definition for a subclass of polyester fibers manufactured by E. I. du Pont de Nemours and Company (''DuPont''), of Wilmington, Delaware. The amendments to Rule 7(c) establish the subclass name ''elasterell-p'' as an alternative to the generic name ''polyester'' for a specific subclass of inherently elastic, multicomponent textile fibers defined in the amendments, and previously referred to by DuPont as ''T400.''

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Section 4(b)(1) of the Textile Fiber Products Identification Act (''Act'') declares that a textile product will be misbranded unless it is labeled to show, among other elements, the percentages, by weight, of the constituent fibers in the product, designated by their generic names and in order of predominance by weight. 15 U.S.C. 70b(b)(1). Section 4(c) of the Act provides that the same information required by section 4(b)(1) (except the percentages) must appear in written advertisements if any disclosure or implication of fiber content is made regarding a covered textile product. 15 U.S.C. 70b(c). Section 7(c) directs the Commission to promulgate such rules, including the establishment of generic names of manufactured fibers, as are necessary to enforce the Act's directives. 15 U.S.C. 70e(c).

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile products in making required fiber content disclosures on labels. Rule 7 of the Textile Rules (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

B. Procedural History

DuPont applied to the Commission on February 5, 2001, for a new polyester fiber subclass name and definition, and supplemented its application with additional information and test data on March 18, 2001, and August 23, 2001.[1]

[1] DuPont's petition and supplements thereto are on the rulemaking record of this proceeding. This material, as well as the comments that were filed in this proceeding, are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules of practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. The comments that were filed are found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR part 303, Matter No. P948404, ''DuPont Generic Fiber Petition

Continued

stated that the T400 fiber is an inherently elastic, manufactured textile fiber consisting of two substantially different forms of polyester fibers. DuPont maintained further that T400 is distinguished from commercially available fibers by a significant and long-lived stretch and recovery characteristic fitting between conventional textured polyesters and spandex.

Contending that the unique structure and characteristics of fibers made from T400 are inadequately described under existing generic names listed in the Textile Rules, DuPont petitioned the Commission to establish a new generic subclass name and definition. After an initial analysis with the assistance of a textile expert, the Commission determined that DuPont's proposed new fiber technically falls within Rule 7(c)'s definition of ''polyester.''[2] The Commission further determined, however, that DuPont's application for a new subclass name and definition merited further consideration. Accordingly, on May 21, 2001, the Commission announced that it had issued DuPont the designation ''DP 0002'' for temporary use in identifying T400 fiber pending a final determination on the merits of the application for a new generic fiber subclass name and definition. The Commission staff further analyzed the application, and on February 15, 2002 (67 FR 7104), the Commission published a Notice of Proposed Rulemaking (''NPR'') detailing the technical aspects of DuPont's fiber, and requesting public comment on DuPont's application. On April 19, 2002, the comment period closed.

II. Description of the Fiber and Solicitation of Comments in the NPR

A. The Commission's Criteria for Granting a New Generic Fiber Subclass Name and Definition, and Related Issues

In the NPR, the Commission solicited comment on whether DuPont's application meets the Commission's criteria for granting applications for new generic fiber subclass names.

The Commission articulated standards for establishing a new generic fiber ''subclass'' in the proceeding to allow use of the name ''lyocell'' as an alternative generic description for a specifically defined subcategory of ''rayon'' fiber, pursuant to 16 CFR 303.7(d). There, the Commission noted that:

> Where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, the Commission may allow such fiber to be designated in required information disclosures by either its generic name or, alternatively, by its ''subclass'' name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.[3]

Thus, a new generic fiber subclass may be appropriate in cases where the proposed subclass fiber: (1) Has the same general chemical composition as an established generic fiber category; (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.[4]

Within the established 24 generic names for manufactured fibers, there are three cases where such generic name alternatives may be used: (1) Pursuant to Rule 7(d), 16 CFR 303.7(d), within the generic category ''rayon,'' the term ''lyocell'' may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (2) pursuant to Rule 7(e), 16 CFR 303.7(e), within the generic category ''acetate,'' the term ''triacetate'' may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (3) pursuant to Rule 7(j), 16 CFR 303.7(j), within the generic category ''rubber,'' the term ''lastrile'' may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

Although the Commission's NPR announced that DuPont's fiber technically falls within Rule 7(c)'s definition of polyester, it noted that DuPont's application may meet the Commission's standard for a subclass name. Alternatively, the Commission stated that T400 may fit within the current definition of polyester in Rule 7(c), with or without need for clarification. Therefore, the Commission requested public comment on whether to: (1) Broaden Rule 7(c)'s definition of polyester to better describe the allegedly unique molecular structure and physical characteristics of T400 and any similar fibers (without creating a new subclass for T400); (2) amend Rule 7(c)'s definition of polyester by creating a separate subclass name and definition for T400 and other similar qualifying fibers within the polyester category; or (3) deny DuPont's application because T400 fiber fits within Rule 7(c)'s definition of polyester without need for any change.

B. The NPR

1. Fiber Description and Proposed Subclass Name and Definition

The NPR provided a detailed description, taken from DuPont's application, of T400's chemical composition and physical and chemical properties.[5] As a result of T400's fiber structure, DuPont maintained that T400 has the following distinctive properties that would be significant to consumers: (1) Stretch and recovery power that is far superior to that of any textured fiber, including textured polyesters; (2) the superior stretch and recovery property does not degrade or ''sag'' over time with normal use and washings,

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Rulemaking.'' The comments also may be viewed on the Commission's Web site at *http://www.ftc.gov.*

[2] Rule 7(c) defines ''polyester'' as ''[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units, [formula omitted] and para substituted hydroxy-benzoate units, [formula omitted].'' 16 CFR 303.7(c).

[3] 60 FR 62352, 62353 (Dec. 6, 1995).

[4] The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, and on Nov. 17, 2000, 65 FR 69486, on Feb. 15, 2002, 67 FR 7104, and on May 24, 2002, 67 FR 36551.

[5] 67 FR 7104, at 7105–7109 (Feb. 15, 2002). For brevity's sake, the Commission is providing a simplified description of the fiber in this notice, and refers those who wish to see detailed technical information about the fiber to the earlier description in the NPR.

compared to textured fibers, including polyesters; and (3) a softer ''silkier'' feel or ''hand'' than textured polyester fibers. DuPont asserted that T400 will fill a growing and unmet consumer demand for stretch garments with fibers that can yield quality stretch and recovery without degrading over time like textured polyester fibers. DuPont further contended that it would be confusing to consumers if T400 is called simply ''polyester.''

DuPont, therefore, petitioned the Commission to establish the generic name ''elasterell-p'' as an alternative to, and a subclass of, ''polyester.'' In addition, DuPont proposed that the Commission add the following sentence to the current definition of polyester in Rule 7(c) to define T400 and similar fibers as a subclass of polyester:

> Where the fiber is a multicomponent and exhibits inherent (not mechanically induced) recoverable stretch of at least 35% upon loading with 185 mg/dtex and unloading to 5.4 mg/dtex when tested in accordance with ASTM test D6720, the term ''elasterell-p'' may be used as a generic description of the fiber.

The effect of DuPont's proposed amendment would be to allow use of the name ''elasterell-p'' as an alternative to the generic name ''polyester'' for the subcategory of polyester fibers meeting the further criteria contained in the sentence added by the proposed amendment.

2. The Parallel European Proceeding

During this proceeding, but after the comment period closed, the Commission staff was informed that in May 2002, the International Bureau for the Standardization of Man-Made Fibres (''BISFA'')[6] determined that as a result of T400's distinguishing attributes, and the technology utilized to manufacture it, DuPont's fiber merited a new generic name and definition. Accordingly, BISFA has established the following generic name and definition for DuPont's T400 fiber:

> ''multelastester:'' fibre formed by interaction of 2 or more chemically distinct macromolecules (of which none exceeds 85% by mass) which contains ester groups as dominant functional unit (at least 66%) and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed.

In accordance with BISFA's policies and procedures, the BISFA-approved name, ''multelastester,'' and its definition have been communicated to the International Organization for Standardization (''ISO'') for introduction into ISO Standard 2076, which includes man-made textile fiber generic names and definitions. BISFA representatives expect the ISO proceeding to conclude in 2003.

The Commission has taken notice of this proceeding because the Textile Rules incorporated by reference the generic fiber names and definitions for manufactured fibers that existed in ISO Standard 2076 in 1989. The Commission also amended the Rules once to incorporate a revised version of that Standard.[7]

3. Discussion of the Public Comments

The Commission received comments from the American Fiber Manufacturers Association, Inc. (''AFMA''), and Nan Ya Plastics Corporation, America (''Nan Ya''), a U.S. manufacturer of polyester for the packaging and textile industries. AFMA does not object to amending Rule 7(c) of the Textile Rules by creating a separate subclass name and definition for T400 and other similar qualifying fibers within the polyester category. AFMA, however, recommended that the Commission take account of the parallel European proceeding, and suggested that the Commission use compatible nomenclature in establishing the new generic subclass to avoid confusion in the marketplace.

Nan Ya, although a member of AFMA, opposed creating a separate subclass name and definition for T400. Specifically, Nan Ya commented that DuPont's fiber is not sufficiently unique to merit a separate generic subclass. Nan Ya stated that what may be unique about DuPont's fiber is the composition of the particular polyester polymers selected for the components, perhaps coupled with specific spinning and heat treatment conditions, to produce a polyester bicomponent fiber that exhibits properties especially suitable for use in stretch garments. Nan Ya stated, however, that these conditions, which may be patentable, result in a polyester bicomponent fiber with some properties that differ only in degree from the properties of other polyester bicomponent fibers, and not in a fiber worthy of being designated by a new generic subclass. Nan Ya stated that bicomponent yarns in which both components are polyester currently are manufactured by several companies.

Nan Ya commented further that creating a subclass for T400 could result in giving DuPont an unfair competitive advantage in the marketplace. For example, Nan Ya suggested that DuPont's patent protection for its T400 fiber and manufacturing process could prevent other manufacturers from making or selling any fiber falling within the new subclass. Further, Nan Ya stated that creating a new subclass would cause consumer confusion because manufacturers producing polyester bicomponent fibers with characteristics only slightly outside the parameters proposed by DuPont, whether to achieve other desired properties or to avoid patent infringement, would be required to call their product polyester, and would not be permitted to use the new subclass name. The result would be that polyester bicomponent fibers with similar characteristics, but different generic names, would be sold to consumers.[8]

4. Discussion of the Three Criteria for Granting New Generic Subclass Names

a. T400 Fiber's Chemical Composition

The materials DuPont submitted show that while T400 has the same general chemical composition as other polyester fibers, it also has a molecular and fiber structure that differs from chemically homogeneous polyesters. Although each of the two components of T400 is from the same polymer class, DuPont has combined the two chemically different polyesters in a side-by-side arrangement. A helical crimp resulting from the differential shrinkage of the two different polyesters in T400 results in a level of increased inherent stretch and recovery uncharacteristic of chemically homogeneous polyesters. The stretch and recovery is not physically induced like texturizing, but is inherent in the helical fiber structure, and the stretch recovery power is sustained and superior over time. Thus, DuPont's application meets the first criterion for granting a new generic fiber subclass name.

[6] BISFA, founded in 1928, and located in Brussels, Belgium is the international association of man-made fiber producers. BISFA establishes generic names and definitions for man-made fibers and procedures and test methods for different categories of man-made fibers. It also sets general rules for the settling of disputes between sellers and buyers of man-made fibers. BISFA provides an international voice for the man-made fiber industry in these matters and promotes the adoption of its methods and terminology by other standard-setting organizations.

[7] *See* 65 FR 75154 (Dec. 1, 2000), as well as the first paragraph of 16 CFR 303.7, incorporating by reference ISO generic names and definitions.

[8] Nan Ya also proposed expansion of 16 CFR 303.10(c) to include bicomponent fibers in which the two components are of the same fiber. Such a proposal, however, does not adequately address DuPont's petition, would require an additional public comment period and, therefore, is beyond the scope of this proceeding.

b. T400's Distinctive Properties as a Result of a New Method of Manufacture or Substantially Differentiated Physical Characteristics, Such as Fiber Structure

The materials submitted by DuPont also show that the most notable characteristic (and of greatest importance to consumers) of T400 is its stretch and recovery power, which is superior to that of chemically homogeneous polyesters. This property is a direct result of the fiber structure of T400. DuPont compared the stretch and recovery of several false twist textured fibers to T400. The range of recoverable stretch values for T400, which is well above 35%, reflects the fact that DuPont can vary the stretch and recovery of the fiber by adjusting the spinner conditions. The recoverable stretch values for the polyester fibers DuPont described as 2GT, 3GT, and 4GT are below 35%. An additional distinctive property of T400 is that its superior stretch and recovery does not degrade over time as compared to some textured fibers, including polyesters. The uniqueness of T400 is derived from the natural helical coil imparted by the differential shrinkage of the two polymer components. T400's differentiated physical characteristics, therefore, satisfy this second criterion.

c. T400's Distinctive Features Make the Fiber Suitable for Uses for Which Other Polyester Fibers Would Not Be Suited, or Would Be Significantly Less Well Suited

The evidence submitted by DuPont supports the Commission's conclusion that textured polyesters are not suitable, or not as suitable, for imparting the significant stretch to certain garments, such as sports apparel, that consumers may expect or desire, and that T400 is a suitable stretch component. Thus, DuPont's application has satisfied the Commission that T400 is suitable for uses for which other polyester fibers are not suited, or not as well suited. Accordingly, the Commission agrees with DuPont that the granting of a generic subclass name to describe T400 is of importance to the general public, and not just a few knowledgeable professionals. A new generic subclass name will enable consumers to identify textile fiber products, such as sports apparel, containing T400 (and other inherently elastic multicomponent polyester fibers) that exhibit significant inherent stretch and recovery power that does not degrade over time.

5. Conclusion

Based on its review of the comments and the BISFA proceeding, and in consultation with its expert, the Commission has concluded that T400: (1) Has the same general chemical composition as an established generic fiber category (polyester); (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure (*e.g.*, inherent elasticity); and (3) that its distinctive feature(s) make the fiber suitable for uses for which other fibers under the established polyester generic name would not be suited, or would be significantly less well suited. Specifically, the side-by-side molecular structure of the multicomponent polyester fiber, T400, differs distinctly from chemically homogenous polyester fibers by possessing intrinsic elastic properties. The dissimilarities are due to the physical interaction of the two chemically distinct polyesters present, which result not only in inherent elasticity/recovery properties, but also in a changed structure. As a multicomponent polyester fiber, T400 has a uniform helical crimp that is not present in a chemically homogeneous polyester, even after texturing.

Accordingly, although T400 arguably is comparable to other multicomponent polyester fibers (as Nan Ya pointed out) there are sufficient differences to merit a new subclass designation. Therefore, the Commission is amending Rule 7(c) to adopt and define the generic subclass name ''elasterell-p,'' and to allow use of the name ''elasterell-p'' as an alternative to the generic name ''polyester'' for that subclass of fiber. However, because T400 also is arguably comparable to other multicomponent polyester fibers, other companies that manufacture fibers satisfying the definition may use the subclass name in making required fiber content disclosures on labels.

Although BISFA has adopted and reported a different name to ISO for inclusion in ISO Standard 2076 to define T400 and a broad class of multicomponent fibers, BISFA's definition does not work under the Commission's regulatory scheme. BISFA's definition includes fibers that may not in all cases satisfy the definition of ''polyester'' in Rule 7(c).[9] Thus, BISFA's precise definition is somewhat too broad to be permissible as a ''polyester'' generic fiber subclass definition within Rule 7(c).[10]

To minimize conflict with BISFA's proposal, however, the Commission is revising the definition proposed in the NPR. The new definition of elasterell-p defines it generically in terms of its chemical composition and focuses less on its physical recoverable stretch characteristic.[11] This definition is consistent with the definition of ''polyester'' in Rule 7(c) and it is consistent with, but a bit narrower than, the definition of multelastester adopted by BISFA.[12] Further, because it is written in terms of the chemical structure of the fiber, it is consistent with the other generic fiber definitions in Rule 7. It also does not unnecessarily exclude any multicomponent polyester fiber from the subclass, which should address Nan Ya's primary concern.

Accordingly, for the reasons discussed above, the Commission amends Rule 7(c) of the Textile Rules by adding the following sentence at the end:

Where the fiber is formed by the interaction of two or more chemically distinct polymers (of which none exceeds 85% by weight), and contains ester groups as the dominant functional unit (at least 85% by weight of the total polymer content of the fiber), and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed, the term *elasterell-p* may be used as a generic description of the fiber.

III. Effective Date

The Commission is making the amendments effective today, November 27, 2002, as permitted by 5 U.S.C. 553(d), because the amendments do not create new obligations under the Rule; rather, they merely create a fiber name and definition that the public may use to comply with the Rule.

IV. Regulatory Flexibility Act

In the NPR, the Commission tentatively concluded that the

[9] The BISFA definition requires that the fiber-forming polymer be composed of at least 66% by weight of an ester, while Rule 7(c)'s definition of polyester requires at least 85% by weight of an ester.

[10] At the same time, when approved by ISO, the term ''multelastester,'' and its somewhat broader definition, could be recognized by the Commission by amending Rule 7 to incorporate a newly recognized ISO name, as we have done previously. That process does not create the problems that are inherent in amending the Commission's Rules to use the BISFA definition, which conflicts with the FTC's long-established definition of polyester.

[11] Accordingly, the revised definition no longer includes an American Society for Testing and Materials (''ASTM'') test procedure, as proposed in the NPR. This test procedure related to the fiber's physical characteristics and is not needed under the revised, chemical-based definition.

[12] The proposed definition varies from the BISFA definition slightly so that a fiber satisfying the elasterell-p subclass definition can be designated in required information disclosures by either its generic name, ''polyester,'' or, alternatively, by its subclass name. In addition, the Commission uses the terms ''polymers'' and ''weight'' in Rule 7's generic fiber name definitions, rather than the synonymous ISO terms ''macromolecules'' and ''mass.''

provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603–604, did not apply to the proposal because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendments would impose no additional obligations, penalties, or costs. The amendments simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined subclass of fiber, and would impose no additional labeling requirements. To ensure, however, that no substantial economic impact was overlooked, the Commission solicited public comment in the NPR on the effects of the proposed amendments on costs, profits, competitiveness of, and employment in small entities. 67 FR 7104, at 7109 (Feb. 15, 2002).

No comments were received on this issue. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendments promulgated today will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

These amendments do not constitute ''collection[s] of information'' under the Paperwork Reduction Act of 1995, Pub. L. 104–13, 109 Stat. 163, 44 U.S.C. chapter 35 (as amended), and its implementing regulations, 5 CFR 1320 *et seq.* Those procedures for establishing generic names that do constitute collections of information, 16 CFR 303.8, have been submitted to OMB, which has approved them and assigned them control number 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

VI. Text of Amendments

For reasons set forth in the preamble, 16 CFR part 303 is amended as follows:

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

2. In § 303.7, paragraph (c) is amended by adding a sentence at the end, to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(c) * * *

Where the fiber is formed by the interaction of two or more chemically distinct polymers (of which none exceeds 85% by weight), and contains ester groups as the dominant functional unit (at least 85% by weight of the total polymer content of the fiber), and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed, the term *elasterell-p* may be used as a generic description of the fiber.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–30085 Filed 11–26–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4185]

Documentation of Immigrants—Visa Classification Symbols; Correction

AGENCY: Department of State.

ACTION: Correction of final rule.

SUMMARY: This document makes corrections to the final rule published on August 29, 2002 (67 FR 55319). The regulation made changes to the Department's table of immigrant visa classification symbols.

EFFECTIVE DATE: This rule is effective November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, 202–663–1206.

SUPPLEMENTARY INFORMATION: The Department of State published a final rule (Public Notice 4092) in the **Federal Register** of August 9, 2002, (67 FR 55319) amending § 42.11 by inadvertently substituting the word ''child'' for ''orphan.'' in the definition of the IR4 category on the visa classification table. This correction removes that amendment published on August 9, 2002, and revises the AM1 category under the heading ''Section of law'' to read ''584(b)(1)(C),'' not ''584(b)(2)(C).''

In rule FR Doc. 02–20090 published on August 29, 2002 (67 FR 55319), make the following correction. On page 55320, in the table to § 42.11:

a. In the entry for IR4, remove ''Child'' and add ''Orphan'' in its place; and

b. In the entry for AM1, remove ''584(b)(2)(C)'' and add ''584(b)(1)(C)'' in its place.

Dated: November 19, 2002.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–29763 Filed 11–26–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 4209]

RIN AB–60

Amendment to the International Traffic in Arms Regulations, United States Munitions List

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is revising Category V—Explosives, Propellants, Incendiary Agents, and Their Constituents and Category XIV—Toxicological Agents and Equipment and Radiological Equipment, of the U.S. Munitions List (USML). Amendments are made to the titles of both categories to better reflect the items included in the category and to move the texts of the definitional and interpretive provisions to the appropriate category. Also, to assist exporters, Category V and XIV are reformatted to identify the items by their predominant use. Exporters are also being provided Chemical Abstract Service (CAS) numbers and Chemical Weapons Convention (CWC) references. In addition to reformatting and changes in the language for clarification, Category XIV and Category V are revised to move from the USML to the jurisdiction of the Department of Commerce several items that have been identified as having predominantly commercial application and no significant military applicability. The items so transferred in Category XIV are fluorine, liquid pepper and chloropicrin. The items so transferred in Category V are nitroguanidine (NG), guanidine nitrate, compounds composed of fluorine and one or more of the following: Other halogens, oxygen, nitrogen, and propyleneimide 2-methylaziridine, unless the articles are compounded or mixed with any item controlled by the USML.

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen J. Tomchik, Office of Defense Trade Controls, Department of State, Telephone (202) 663–2799 or FAX (202)

261–8199. ATTN: Regulatory Change, USML Part 121, Category V and XIV.

SUPPLEMENTARY INFORMATION: This notice of rulemaking provides the results of a review, by the Department of State in consultation with the Departments of Defense and Commerce, of Category V and XIV of the U.S. Munitions List. To better reflect the items included in each category, the titles are amended. To assist the exporter, the definitional and interpretive provisions from § 121.12 and § 121.13 are moved to Category V, those from § 121.7 to Category XIV, and the numbered sections are captioned ''Reserved''. Also to assist the exporter, Chemical Abstract Service (CAS) numbers and Chemical Weapons Convention (CWC) references are being provided. Exporters are advised that the CAS numbers do not cover all the substances and mixtures controlled by the categories and CWC numbers are provided only when deemed appropriate.

In addition to amending the title and adding CAS numbers, the coverage of Category V, paragraph (c) is amended to add (c)(4) to cover, in addition to fuels for category VIII, fuels for the items in Category IV and VI. The fuels for category IV and VI articles are currently controlled by the components, parts and accessories paragraph in each of the categories. A new paragraph (c)(7) has been added to category V to clarify control of pyrotechnics that currently are covered by Category (V), paragraph (d). The language in section 121.13 is removed and the section ''reserved'', and the language in section 121.13 is now in Category V, paragraphs (c)(4) and (c)(9). The fuel thickeners currently in Category V, paragraph (b) are moved to paragraph (c) resulting in propellants in paragraph (c) being moved to paragraph (b). The compounds currently in Category V, paragraph (e) are moved to the relevant paragraph in the category in which the article is covered (*e.g.*, binders, additives, etc.) and the technical data and services currently in paragraph (f) are moved to a new paragraph (h).

The amendments in Category XIV, in addition to changing the title and adding CAS numbers and CWC references, include the transfer to Category XVI of nuclear radiation detection and measuring devices currently in paragraph (d) of Category XIV. The inclusion of this coverage in Category XVI will be published in the results of the review of the entire category XVI. Paragraph (d) now controls tear gases and riot control agents. The equipment in paragraph (c) for the dissemination, detection, identification and defense of the articles in this category is moved to paragraph (f) and paragraph (k). Paragraph (c) now covers chemical agent binary precursors and key precursors. Paragraph (f), currently covering technical data, is revised re-designate paragraph (f) as Significant Military Equipment (SME) and to cover items currently in Category X(c) of the USML. Category XIV, paragraph (f) now includes equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment (*e.g.*, the dissemination, dispersion, testing, detection, identification, warning, monitoring, sample collection and processing; and individual protection of the chemical and biological agents listed in paragraphs (a) and (b) of the category). This includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense), collective protection, and decontamination or remediation. These movements resulted in the technical data currently in paragraph (f) being moved to a new paragraph (l). The components, parts, accessories, attachments and associated equipment for the items in category XIV, currently in paragraph (e), are moved to a new paragraph (k), and paragraph (e) now covers defoliants. The coverage of defoliants is expanded to include Agent Orange.

The remaining new paragraphs (*e.g.* (d), (g), (h), (i), (j), (k), and (m)) added to Category XIV are for clarification, specific identification and movement of the articles currently covered in the category, and for transfer of the language in section 121.7.

In addition to the above amendments, four explosives and three chemicals were identified as having predominant civil use warranting their removal from the USML and transfer to the Commerce Control List. In Category V, the items and examples of their commercial use are: Nitroguanidine (NG) (*e.g.*, used in pet insecticides), guanidine nitrate (*e.g.*, used in disinfectants and photographic chemicals), propyleneimide 2-methulaziridine (*e.g.*, used by paint and pharmaceutical manufacturers), and compounds composed of fluorine and one or more of the following: Other halogens, oxygen, nitrogen (*e.g.*, used in freon). In Category XIV, the items and examples of their commercial use are: Fluorine (*e.g.*, used in production of metallic and other fluoride and fluorocarbons, and as an active constituent of fluoridating compounds used in water and toothpaste), liquid pepper (*e.g.*, derived from cayenne pepper and used by both for law enforcement and in commercially available sprays for personal protection), and chloropicrin (*e.g.*, used in commercial fumigants and soil insecticides, and as a disinfectant for cereals and grains). In accordance with the requirements of Section 38(f) of the Arms Export Control Act (AECA), this removal has been notified to the Congress, and the Commerce Control List (CCL) controls identified are: (1) For propyleneimide 2-methulaziridine and compounds composed of fluorine and one or more of the following: Other halogens, oxygen, and nitrogen—ECCN 1C018; (2) nitroguanidine (NG) and guanidine nitrate—ECCN 1C011, (3) for chloropicrin—ECCN 1C355, (4) for liquid pepper—ECCN 1A984, and for fluorine—ECCN EAR99.

Finally, Category X, Protective Personnel Equipment, is amended to delete the current paragraph (c) and renumber the paragraphs since protective apparel and equipment specifically designed or modified for use with toxicological agents and equipment is now covered by paragraph (f) of Category XIV.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders Nos. 12372 and 13123. However, affected U.S. persons are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Stephen Tomchik, Regulatory Change, USML Categories V and XIV, 12th Floor, SA–1, Washington, DC 20522–0112.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for Part 121 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2278, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. In § 121.1, Category V—Explosives, Propellants, Incendiary Agents, and Their Constituents, paragraphs (c) and (d) of Category X—Protective Personnel Equipment, and Category XIV—Toxicological Agents and Equipment and Radiological Equipment are revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

*(a) Explosives, and mixtures thereof:
(1) ADNBF (aminodinitrobenzofuroxan or 7-Amino 4,6-dinitrobenzofurazanr-1-oxide) (CAS 97096–78–1);
(2) BNCP (cis-bis (5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate);
(3) CL–14 (diamino dinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907–74–1);
(4) CL–20 (HNIW or Hexanitrohexaazaisowurtzitane); (CAS 135285–90-4); chlathrates of CL–20 (see paragraphs (g)(3) and (4) of this category);
(5) CP (2-(5-cyanotetrozolato) penta aminecobalt (III) perchlorate); (CAS 70247–32–4);
(6) DADE (1,1-diamino-2,2-dinitroethylene, FOX7);
(7) DDFP (1,4-dinitrodifurazanopiperazine);
(8) DDPO (2,6-diamino-3,5-dinitropyrazine-1-oxide, PZO); (CAS 194486–77–6);
(9) DIPAM (3,3′-Diamino-2,2′,4,4′,6,6′-hexanitrobiphenyl or dipicrimide) (CAS 17215–44–0);
(10) DNGU (DINGU or dinitroglycoluril) (CAS 55510–04–8);
(11) Furazans, as follows:
(i) DAAOF (diaminoazoxyfurazan);
(ii) DAAzF (diaminoazofurazan) (CAS 78644–90–3);
(12) HMX and derivatives (see paragraph (g)(5) of this category):
(i) HMX (Cyclotetramethylenetetranitramine; octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; octogen, octogene) (CAS 2691–41–0);
(ii) Diflouroaminated analogs of HMX;
(iii) K–55 (2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo [3,3,0]-octanone-3, tetranitrosemiglycouril, or keto-bicyclic HMX) (CAS 130256-72–3);
(13) HNAD (hexanitroadamantane) (CAS 143850–71–9);
(14) HNS (hexanitrostilbene) (CAS 20062–22–0);
(15) Imidazoles, as follows:
(i) BNNI (Octohydro-2,5-bis(nitroimino) imidazo [4,5-d]Imidazole);
(ii) DNI (2,4-dinitroimidazole) (CAS 5213–49–0);
(iii) FDIA (1-fluoro-2,4-dinitroimidazole);
(iv) NTDNIA (N-(2-nitrotriazolo)-2,4-dinitro-imidazole);
(v) PTIA (1-picryl-2,4,5-trinitroimidazole);
(16) NTNMH (1-(2-nitrotriazolo)-2-dinitromethylene hydrazine);
(17) NTO (ONTA or 3-nitro-1,2,4-triazol-5-one) (CAS 932–64–9);
(18) Polynitrocubanes with more than four nitro groups;
(19) PYX (2,6-Bis(picrylamino)-3,5-dinitropyridine) (CAS 38082–89–2);
(20) RDX and derivatives:
(i) RDX (cyclotrimethylentrinitramine), cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triaza-cyclohexane, hexogen, or hexogene) (CAS 121–84–4);
(ii) Keto-RDX (K–6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone (CAS 115029–35–1);
(21) TAGN (Triaminoguanidinenitrate) (CAS 4000–16–2);
(22) TATB (Triaminotrinitrobenzene) (CAS 3058–38–6) (see paragraph (g)(7) of this category);
(23) TEDDZ (3,3,7,7-tetrabis(difluoroamine) octahydro-1,5-dinitro-1,5-diazocine;
(24) Tetrazoles, as follows:
(i) NTAT (nitrotriazol aminotetrazole);
(ii) NTNT (1-N-(2-nitrotriazolo)-4-nitrotrazole);
(25) Tetryl (trinitrophenylmethylnitramine) (CAS 479–45–8);
(26) TNAD (1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin) (CAS 135877-16–6)(see paragraph (g)(6) of this category);
(27) TNAZ (1,1,3-trinitroazetidine) (CAS 97645–24–4) (see paragraph (g)(2) of this category);
(28) TNGU (SORGUYL or tetranitroglycoluril) (CAS 55510–03–7);
(29) TNP (1,4,5,8-tetranitropyridazine (CAS 229176–04–9);
(30) Triazines, as follows:
(i) DNAM (2-oxy-4,6-dinitroamino-s-triazine) (CAS 19899–80–0);
(ii) NNHT (2-nitroimino-5-nitro-hexahydro-1,3,5 triazine) (CAS 130400–13–4);
(31) Triazoles, as follows:
(i) 5-azido-2-nitratriazole;
(ii) ADHTDN (4-amino-3,5-hihydrazino-1,2,4-triazole dinitramide) (CAS 1614–08–0);
(iii) ADNT (1-amino-3,5-dinitro-1,2,4-triazole);
(iv) BDTNTA ([Bis-dinitrotriazole]amine);
(v) DBT (3,3'-dinitro-5,5-bi-1,2,4-triazole) (CAS 30003–46–4);
(vi) DNBT (dinitrobistriazole) (CAS 70890–46–9);
(vii) NTDNA (2-nitrotriazole 5-dinitramide);
(viii) NTDNT (1-N-(2-nitrotriazolo) 3,5-dinitro-triazole);
(ix) PDNT (1-picryl-3,5-dinitrotriazole);
(x) TACOT (tetranitrobenzotriazolobenzotriazole) (CAS 25243–36–1);
(32) Any explosive not listed elsewhere in paragraph (a) of this category with a detonation velocity exceeding 8,700m/s at maximum density or a detonation pressure exceeding 34 Gpa (340 kbar).
(33) Other organic explosives not listed elsewhere in paragraph (a) of this category yielding detonation pressures of 25 Gpa (250 kbar) or more that will remain stable at temperatures of 523K (250oC) or higher for periods of 5 minutes or longer;
(34) Diaminotrinitrobenzene (DATB);
(35) Any other explosive not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.* formulated) for military application.

* (b) Propellants:
(1) Any United Nations (UN) Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) of more than 250 seconds for non-metallized, or 270 seconds for metallized compositions;
(2) Any UN Class 1.3 solid propellant with a theoretical specific impulse (under standard conditions) of more than 230 seconds for non-halogenized, or 250 seconds for non-metallized compositions;
(3) Propellants having a force constant of more than 1,200 kJ/Kg;
(4) Propellants that can sustain a steady-state burning rate more than 38mm/s under standard conditions (as measured in the form of an inhibited single strand) of 6.89 Mpa (68.9 bar) pressure and 294K (210 C);
(5) Elastomer modified cast double based propellants with extensibility at

maximum stress greater than 5% at 233 K (−40C);

(6) Any propellant containing substances listed in Category V;

(7) Any other propellant not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

(c) Pyrotechnics, fuels and related substances, and mixtures thereof:

(1) Alane (aluminum hydride)(CAS 7784–21–6);

(2) Carboranes; decaborane (CAS 17702–41–9); pentaborane and derivatives thereof;

(3) Hydrazine and derivatives:

(i) Hydrazine (CAS 302–01–2) in concentrations of 70% or more (not hydrazine mixtures specially formulated for corrosion control);

(ii) Monomethyl hydrazine (CAS 60–34–4);

(iii) Symmetrical dimethyl hydrazine (CAS 540–73–8);

(iv) Unsymmetrical dimethyl hydrazine (CAS 57–14–7);

(4) Liquid fuels specifically formulated for use by articles covered by Categories IV, VI, and VIII;

(5) Spherical aluminum powder (CAS 7429–90–5) in particle sizes of 60 micrometers or less manufactured from material with an aluminum content of 99% or more;

(6) Metal fuels in particle form whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of any of the following:

(i) Metals and mixtures thereof:

(A) Beryllium (CAS 7440–41–7) in particle sizes of less than 60 micrometers;

(B) Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;

(ii) Mixtures, which contain any of the following:

(A) Boron (CAS 7440–42–8) or boron carbide (CAS 12069–32–8) fuels of 85% purity or higher and particle sizes of less than 60 micrometers;

(B) Zirconium (CAS 7440–67–7), magnesium (CAS 7439–95–4) or alloys of these in particle sizes of less than 60 micrometers;

(iii) Explosives and fuels containing the metals or alloys listed in paragraphs (c)(6)(i) and (c)(6)(ii) of this category whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium, or beryllium;

(7) Pyrotechnics and pyrophoric materials specifically formulated for military purposes to enhance or control the production of radiated energy in any part of the IR spectrum.

(8) Titanium subhydride (TiH_n) of stoichiometry equivalent to n = 0.65–1.68;

(9) Military materials containing thickeners for hydrocarbon fuels specially formulated for use in flame throwers or incendiary munitions; metal stearates or palmates (also known s octol); and M1, M2 and M3 thickeners;

(10) Any other pyrotechnic, fuel and related substance and mixture thereof not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.,* formulated) for military application.

(d) Oxidizers, to include:

(1) ADN (ammonium dinitramide or SR–12) (CAS 140456–78–6);

(2) AP (ammonium perchlorate) (CAS 7790–98–9);

(3) BDNPN (bis,2,2-dinitropropylnitrate) (CAS 28464–24–6);

(4) DNAD (1,3-dinitro-1,3-diazetidine) (CAS 78246–06–7);

(5) HAN (Hydroxylammonium nitrate) (CAS 13465–08–2);

(6) HAP (hydroxylammonium perchlorate) (CAS 15588–62–2);

(7) HNF (Hydrazinium nitroformate) (CAS 20773–28–8);

(8) Hydrazine nitrate (CAS 37836–27–4);

(9) Hydrazine perchlorate (CAS 27978–54–7);

(10) Liquid oxidizers comprised of or containing inhibited red fuming nitric acid (IRFNA) (CAS 8007–58–7) or oxygen diflouride;

(11) Perchlorates, chlorates, and chromates composited with powdered metal or other high energy fuel components controlled by this category;

(12) Any other oxidizer not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.,* formulated) for military application.

* (e) Binders, and mixtures thereof:

(1) AMMO (azidomethylmethyloxetane and its polymers) (CAS 90683–29–7) (see paragraph (g)(1) of this category);

(2) BAMO (bisazidomethyloxetane and its polymers) (CAS 17607–204) (see paragraph (g)(1) of this category);

(3) BTTN (butanetrioltrinitrate) (CAS 6659–60–5) (see paragraph (g)(8) of this category);

(4) FAMAO (3-difluoroaminomethyl-3-azidomethyl oxetane) and its polymers;

(5) FEFO (bis-(2-fluoro-2,2-dinitroethyl)formal) (CAS 17003–79–1);

(6) GAP (glycidylazide polymer) (CAS 143178–24–9) and its derivatives;

(7) HTPB (hydroxyl terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2.2 and less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30° C of less than 47 poise (CAS 69102–90–5);

(8) NENAS (nitratoethylnitramine compounds) (CAS 17096–47–8, 85068-73–1 and 82486–82–6);

(9) Poly-NIMMO (nitratomethylmethyloxetane (poly [3-nitratomethyl, 3-methyl oxetane] or (NMMO)) (CAS 84051–81–0);

(10) Energetic monomers, plasticizers and polymers containing nitro, azido nitrate, nitraza or difluoromaino groups specially formulated for military use;

(11) TVOPA 1,2,3-Tris [1,2-bis(difluoroamino) ethoxy]propane; tris vinoxy propane adduct;

(12) Polynitrorthocarbonates;

(13) FPF–1 poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal;

(14) FPF–3 poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-dioformal;

(15) PGN (Polyglycidylnitrate or poly(nitratomethyl oxirane); poly-GLYN);

(16) N-methyl-p-nitroaniline;

(17) Low (less than 10,000) molecular weight, alcohol-functionalized, poly(epichlorohydrin); poly(epichlorohydrindiol); and triol;

(18) Bis(2,2-dinitropropyl) formal and acetal;

(19) Any other binder and mixture thereof not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.* formulated) for military application.

(f) Additives:

(1) Basic copper salicylate (CAS 62320–94–9);

(2) BHEGA (Bis-(2-hydroxyethyl)glycolamide) (CAS 17409–41–5);

(3) Ferrocene Derivatives:

(i) Butacene (CAS 125856–62–4);

(ii) Catocene (2,2-Bis-ethylferrocenyl propane) (CAS 37206–42–1);

(iii) Ferrocene carboxylic acids;

(iv) n-butyl-ferrocene (CAS 319904–29–7);

(4) Lead beta-resorcylate (CAS 20936–32–7);

(5) Lead citrate (CAS 14450–60–3);

(6) Lead-copper chelates of beta-resorcylate or salicylates (CAS 68411–07–4);

(7) Lead maleate (CAS 19136–34–6);

(8) Lead salicylate (CAS 15748–73–9);

(9) Lead stannate (CAS 12036–31–6);

(10) MAPO (tris-1-(2-methyl)aziridinyl phosphine oxide) (CAS 57–39–6); BOBBA–8 (bis(2-methyl aziridinyl) 2-(2-hydroxypropanoxy) propylamino phosphine oxide); and other MAPO derivatives;

(11) Methyl BAPO (Bis(2-methyl aziridinyl) methylamino phosphine oxide) (CAS 85068–72–0);

(12) 3-Nitraza-1,5 pentane diisocyanate (CAS 7406–61–9);

(13) Organo-metallic coupling agents, specifically:

(i) Neopentyl[diallyl]oxy, tri [dioctyl] phosphatotitanate (CAS 103850–22–2); also known as titanium IV, 2,2[bis 2-propenolato-methyl, butanolato, tris (dioctyl) phosphato] (CAS 110438–25–0), or LICA 12 (CAS 103850–22–2);

(ii) Titanium IV, [(2-propenolato-1) methyl, n-propanolatomethyl] butanolato-1, tris(dioctyl)pyrophosphate, or KR3538;

(iii) Titanium IV, [2-propenolato-1)methyl, propanolatomethyl] butanolato-1, tris(dioctyl) phosphate;

(14) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide), isoyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring and its polymers;

(15) Superfine iron oxide (Fe_2O_3 hematite) with a specific surface area more than 250 m 2/g and an average particle size of 0.003 μm or less (CAS 1309–37–1);

(16) TEPAN (tetraethylenepentaamineacrylonitrile) (CAS 68412–45–3); cyanoethylated polyamines and their salts;

(17) TEPANOL (Tetraethylene pentamineacrylonitrileglycidol) (CAS 110445–33–5); cyanoethylated polyamines adducted with glycidol and their salts;

(18) TPB (triphenyl bismuth) (CAS 603–33–8);

(19) PCDE (Polycyanodifluoro aminoethyleneoxide);

(20) BNO (Butadienenitrileoxide);

(21) Any other additive not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.,* formulated) for military application.

(g) Precursors, as follows:

(1) BCMO (bischloromethyloxetane) (CAS 142173–26–0) (see paragraphs (e)(1) and (2) of this category);

(2) Dinitroazetidine-t-butyl salt (CAS 125735–38–8) (see paragraph (a)(28) of this category);

(3) HBIW (hexabenzylhexaazaisowurtzitane) (CAS 124782–15–6) (see paragraph (a)(4) of this category);

(4) TAIW (tetraacetyldibenzylhexa-azaisowurtzitane) (see paragraph (a)(4) of this category);

(5) TAT (1,3,5,7-tetraacetyl-1,3,5,7-tetraaza-cyclooctane) (CAS 41378–98–7) (see paragraph (a)(13) of this category);

(6) Tetraazadecalin (CAS 5409–42–7) (see paragraph (a)(27) of this category);

(7) 1,3,5-trichorobenzene (CAS 108–70–3) (see paragraph (a)(23) of this category);

(8) 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068–00–6) (see paragraph (e)(5) of this category);

(h) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles numerated in paragraphs (a) through (g) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(i) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter.

(1) Category V contains explosives, energetic materials, propellants and pyrotechnics and specially formulated fuels for aircraft, missile and naval applications. Explosives are solid, liquid or gaseous substances or mixtures of substances, which, in their primary, booster or main charges in warheads, demolition or other military applications, are required to detonate.

(2) Paragraph (c)(6)(ii)(A) of this category does not control boron and boron carbide enriched with boron-10 (20% or more of total boron-10 content.

(3) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

Note 1: To assist the exporter, an item has been categorized by the most common use. Also, a reference has been provided to the related controlled precursors (*e.g.,* see paragraph (a)(12) of this category). Regardless of where the item has been placed in the category, all exports are subject to the controls of this subchapter.

Note 2: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist the government agencies in the license review process and the exporter when completing their license application and export documentation.

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Category X—Protective Personnel Equipment

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(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a) and (b) of this category.

(d) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category.

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* (a) Chemical agents, to include:

(1) Nerve agents:

(i) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) alkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphonofluoridates, such as: Sarin (GB): O-Isopropyl methylphosphonofluoridate (CAS 107–44–8) (CWC Schedule 1A); and Soman (GD): O-Pinacolyl methylphosphonofluoridate (CAS 96–64–0) (CWC Schedule 1A);

(ii) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77–81–6) (CWC Schedule 1A);

(iii) O-Alkyl (H or equal to or less than C_{10}, including cycloalkyl) S–2-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl)aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphonothiolates and corresponding alkylated and protonated salts, such as: VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate (CAS 50782–69–9) (CWC Schedule 1A);

(2) Amiton: O,O-Diethyl S-[2(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (CAS 78–53–5) (CWC Schedule 2A);

(3) Vesicant agents:

(i) Sulfur mustards, such as: 2-Chloroethylchloromethylsulfide (CAS 2625–76–5) (CWC Schedule 1A); Bis(2-chloroethyl)sulfide (CAS 505–60–2) (CWC Schedule 1A); Bis(2-ch1oroethylthio)methane (CAS 63839–13–6) (CWC Schedule 1A); 1,2-bis (2-chloroethylthio)ethane (CAS 3563–36–8) (CWC Schedule 1A); 1,3-bis (2-ch1oroethylthio)-n-propane (CAS 63905–10–2) (CWC Schedule 1A); 1,4-bis (2-chloroethylthio)-n-butane (CWC Schedule 1A); 1,5-bis (2-chloroethylthio)-n-pentane (CWC Schedule 1A); Bis (2-chloroethylthiomethyl)ether (CWC Schedule 1A); Bis (2-chloroethylthioethyl)ether (CAS 63918–89–8) (CWC Schedule 1A);

(ii) Lewisites, such as: 2-chlorovinyldichloroarsine (CAS 541–25–3) (CWC Schedule 1A); Tris (2-chlorovinyl) arsine (CAS 40334–70–1) (CWC Schedule 1A); Bis (2-chlorovinyl) chloroarsine (CAS 40334–69–8) (CWC Schedule 1A);

(iii) Nitrogen mustards, such as: HN1: bis (2-chloroethyl) ethylamine (CAS 538–07–8) (CWC Schedule 1A); HN2: bis (2-chloroethyl) methylamine (CAS 51–75–2) (CWC Schedule 1A); HN3: tris (2-chloroethyl)amine (CAS 555–77–1) (CWC Schedule 1A);

(iv) Ethyldichloroarsine (ED);

(v) Methyldichloroarsine (MD);

(4) Incapacitating agents, such as:

(i) 3-Quinuclindinyl benzilate (BZ) (CAS 6581–06–2) (CWC Schedule 2A);

(ii) Diphenylchloroarsine (DA) (CAS 712–48–1);

(iii) Diphenylcyanoarsine (DC);

* (b) Biological agents and biologically derived substances specifically developed, configured, adapted, or modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment or damage crops.

* (c) Chemical agent binary precursors and key precursors, as follows:

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl diflourides, such as: DF: Methyl Phosphonyldifluoride (CAS 676–99–3) (CWC Schedule 1B); Methylphosphinyldiflouride;

(2) O-Alkyl (H or equal to or less than C_{10}, including cycloalkyl) O–2-dialkyl (methyl, ethyl, n-Propyl or isopropyl)aminoethyl alkyl (methyl, ethyl, N-propyl or isopropyl)phosphonite and corresponding alkylated and protonated salts, such as: QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856–11–8) (CWC Schedule 1B);

(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445–76–7) (CWC Schedule 1B);

(4) Chlorosoman: O-Pinakolyl methylphosphonochloridate (CAS 7040–57–5) (CWC Schedule 1B);

(5) DC: Methlyphosphonyl dichloride (CAS 676–97–1) (CWC Schedule 2B); Methylphosphinyldichloride;

(d) Tear gases and riot control agents including:

(1) Adamsite (Diphenylamine chloroarsine or DM) (CAS 578–94–9);

(2) CA (Bromobenzyl cyanide) (CAS 5798–79–8);

(3) CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532–27-4);

(4) CR (Dibenz-(b,f)-1,4-oxazephine) (CAS 257–07–8);

(5) CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698–41–1);

(6) Dibromodimethyl ether (CAS 4497–29–4) ;

(7) Dichlorodimethyl ether (ClCi) (CAS 542–88–1);

(8) Ethyldibromoarsine (CAS 683–43–2);

(9) Bromo acetone;

(10) Bromo methylethylketone;

(11) Iodo acetone;

(12) Phenylcarbylamine chloride;

(13) Ethyl iodoacetate;

(e) Defoliants, as follows:

(1) Agent Orange (2,4,5–Trichlorophenoxyacetic acid mixed with 2,4-dichlorophenoxyacetic acid);

(2) LNF (Butyl 2-chloro-4-fluorophenoxyacetate)

*(f) Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows:

(1) The dissemination, dispersion or testing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(2) The detection, identification, warning or monitoring of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(3) Sample collection and processing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(4) Individual protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

This includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense);

(5) Collective protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(6) Decontamination or remediation of the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(g) Antibodies, polynucleoides, biopolymers or biocatalysts specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(h) Medical countermeasures, to include pre- and post-treatments, vaccines, antidotes and medical diagnostics, specifically designed or modified for use with the chemical agents listed in paragraph (a) of this category and vaccines with the sole purpose of protecting against biological agents identified in paragraph (b) of this category. Examples include: barrier creams specifically designed to be applied to skin and personal equipment to protect against vesicant agents controlled in paragraph (a) of this category; atropine auto injectors specifically designed to counter nerve agent poisoning.

(i) Modeling or simulation tools specifically designed or modified for chemical or biological weapons design, development or employment. The concept of modeling and simulation includes software covered by paragraph (m) of this category specifically designed to reveal susceptibility or vulnerability to biological agents or materials listed in paragraph (b) of this category.

(j) Test facilities specifically designed or modified for the certification and qualification of articles controlled in paragraph (f) of this category.

(k) Equipment, components, parts, accessories, and attachments, exclusive of incinerators (including those which have specially designed waste supply systems and special handling facilities), specifically designed or modified for destruction of the chemical agents in paragraph (a) or the biological agents in paragraph (b) of this category. This destruction equipment includes facilities specifically designed or modified for destruction operations.

(l) Tooling and equipment specifically designed or modified for the production of articles controlled by paragraph (f) of this category.

(m) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) related to the defense artic1es enumerated in paragraphs (a) through (l) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this Category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(n) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter.

(1) A chemical agent in category XIV(a) is a substance having military application, which by its ordinary and direct chemical action, produces a powerful physiological effect.

(2) The biological agents or biologically derived substances in paragraph (b) of this category are those agents and substances capable of producing casualties in humans or livestock, degrading equipment or damaging crops and which have been modified for the specific purpose of increasing such effects. Examples of such modifications include increasing resistance to UV radiation or improving dissemination characteristics. This does not include modifications made only for

civil applications (*e.g.* medical or environmental use).

(3) The destruction equipment controlled by this category related to biological agents in paragraph (b) is that equipment specifically designed to destroy only the agents identified in paragraph (b) of this category.

(4) Technical data and defense services in paragraph (l) include libraries, databases and algorithms specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(5) The tooling and equipment covered by paragraph (l) of this category includes molds used to produce protective masks, over-boots, and gloves controlled by paragraph (f) and leak detection equipment specifically designed to test filters controlled by paragraph (f) of this category.

(6) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

Note 1: This Category does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes.

Note 2: Categories XIV(a) and (d) do not include the following:

(1) Cyanogen chloride;
(2) Hydrocyanic acid;
(3) Chlorine;
(4) Carbonyl chloride (Phosgene);
(5) Ethyl bromoacetate;
(6) Xylyl bromide;
(7) Benzyl bromide;
(8) Benzyl iodide;
(9) Chloro acetone;
(10) Chloropicrin (trichloronitromethane);
(11) Fluorine;
(12) Liquid pepper.

Note 3: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist the government agencies in the license review process and the exporter when completing their license application and export documentation.

Note 4: With respect to U.S. obligations under the Chemical Weapons Convention (CWC), refer to Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710 through 722). As appropriate, the CWC schedule is provided to assist the exporter.

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§§ 121.7, 121.12 and 121.13 [Removed and Reserved]

3. Sections 121.7, 121.12 and 121.13 are removed and reserved.

Dated: August 22, 2002.

John R. Bolton,

Under Secretary Arms Control and International Security, Department of State.

[FR Doc. 02–29595 Filed 11–26–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9016]

RIN 1545–AY71

Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Monday, September 23, 2002 (67 FR 59756) relating to the definition of private activity bonds applicable to tax-exempt bonds issued by state and local governments for output facilities.

DATES: This correction is effective November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections is under section 141 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9016), that were the subject of FR Doc. 02–24137, is corrected as follows:

1. On page 59758, column 2, in the preamble under the paragraph heading ''Explanation of Provisions'', first line, the language ''through 821(c) (or by a state authority'' is corrected to read ''through 825r (or by a state authority''.

§ 1.141–7 [Corrected]

2. On page 59761, column 2, § 1.141–7(g)(1)(ii)(B), line 5, the language ''Act (16 U.S.C. 791a through 821c) (or by'' is corrected to read ''Act (16 U.S.C. 791a through 825r) (or by''.

3. On page 59761, column 3, § 1.141–7(g)(3), fifth line from the top of the column, the language ''U.S.C. 791a through 821(c) (does not'' is corrected to read ''U.S.C. 791a through 825r) (or by a state regulatory authority under comparable provisions of state law) does not''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–30140 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 46

[TD 9024]

RIN 1545–AY93

Liability For Insurance Premium Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 4374 relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer.

DATES: *Effective Date:* These regulations are effective November 27, 2002.

Applicability Date: These regulations are applicable to premiums paid on or after November 27, 2002.

FOR FURTHER INFORMATION CONTACT: David Lundy at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2002, the IRS and Treasury published a notice of proposed rulemaking (REG–125450–01), 2002–5 IRB 457) in the **Federal Register** (67 FR 707) under section 4374 relating to the insurance premium excise tax imposed by section 4371 on certain policies issued by foreign insurance and reinsurance companies. One comment letter responding to the notice of proposed rulemaking was received. After consideration of these comments, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

Explanation of Provisions

These final section 4374 regulations clarify the persons who are liable for payment of the insurance premium excise tax and conform the regulations to the amendments made to section 4374 by the Tax Reform Act of 1976 (90 Stat. 1525). In particular, these regulations clarify that liability for the excise tax is incurred by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold.

One commentator suggested that the final regulation restrict application of the section 7270 penalty to a failure to pay the excise tax by the person who remitted the tax to the foreign insurer or reinsurer. Section 46.4374–1(d) of the regulation only is a cross-reference to section 7270, which section imposes a penalty of double the amount of tax when an underpayment results from an intention to evade the tax. Substantive guidance on the application of section 7270 is beyond the scope of this regulation, and accordingly, no change to the regulation was made as a result of this suggestion.

The same commentator suggested that the final regulation clarify whether the insured person under an insurance policy may be liable for the excise tax if all or a portion of the risks from such policy are reinsured with a foreign reinsurer on the basis that the insured may be treated as a person for whose benefit the reinsurance policy was made, signed, issued or sold. In response to the commentator's suggestion, § 46.4374–1(a) of these regulations has been revised to provide that in the case of a reinsurance policy other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy was made, signed, issued or sold. In these cases, when an insurer or reinsurer reinsures a risk with a foreign reinsurer, the insurer or reinsurer generally is the person for whose use or benefit the reinsurance policy is issued or sold for purposes of section 4374.

Effective Date

The final regulations are effective for premiums paid on or after November 27, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 46 is amended as follows:

PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

Paragraph 1. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 46.4374–1 is revised to read as follows:

§ 46.4374–1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371. For purposes of this section, in the case of a reinsurance policy that is subject to the tax imposed by section 4371(3), other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy is made, signed, issued, or sold.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (*See* section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after November 27, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 13, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–30139 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–133]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. Under this deviation the bridge may remain closed

to vessel traffic for four hours a day from 12 midnight to 4 a.m., from November 18, 2002 through November 21, 2002. In addition, the bridge may remain closed to vessel traffic for two weekends from 9 p.m. on Saturday through 9 a.m. on Sunday, from December 7, 2002 through December 8, 2002, and from December 14, 2002 through December 15, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from November 18, 2002 through December 15, 2002.

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

SUPPLEMENTARY INFORMATION: The Amtrak Portal Bridge has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing drawbridge operation regulations are at 33 CFR 117.723.

The bridge owner, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of the cable lift system, at the bridge. The bridge must remain in the closed position to navigation to perform these repairs. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the Amtrak Portal Bridge may remain closed to vessel traffic for four days from 12 midnight to 4 a.m., November 18, 2002 through November 21, 2002. In addition, the bridge may remain closed to vessel traffic for two weekends from 9 p.m. on Saturday through 9 a.m. on Sunday, from December 7, 2002 through December 8, 2002 and from December 14, 2002 through December 15, 2002.

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

Dated: November 18, 2002.

V.S. Crea,

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

[FR Doc. 02–30104 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2003–C–004]

RIN 0651–AB51

Revision of Patent and Trademark Fees for Fiscal Year 2003

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (referred to as ''we'', ''us'', or ''our'' in this notice) is adjusting certain patent fee amounts and a trademark fee amount to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business. In addition, we are amending several patent and trademark document supply fees to streamline operations and to benefit our customers.

Legislation has also been introduced in the Congress that would alter our fees. If enacted, this legislation would supersede many of the fees identified in this final rule.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at *matthew.lee@uspto.gov,* by telephone at (703) 305–8051, or by fax at (703) 305–8007.

SUPPLEMENTARY INFORMATION: This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Public Law 106–113), and section 1113 of title 15, United States Code. This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

In addition, this final rule amends several patent and trademark document supply fees. The wider availability of patent and trademark image stores to retrieve and make copies has allowed us to process and fill customer orders for issued patents, registered trademarks, and both patent and trademark applications-as-filed more predictably and in shorter total turnaround times, regardless of whether a copy was ordered for regular or expedited delivery service. Therefore, we are eliminating the previous 37 CFR 1.19(a)(1)(ii), (a)(1)(iii), (b)(1)(i), 2.6(b)(1)(ii), (b)(1)(iii), and (b)(2)(i) fees and reducing the previous 37 CFR 1.19(b)(1)(ii) and 2.6(b)(2)(ii) fees. The cost benefit from streamlining our operations will be passed on to our customers. ''At cost'' services are still available for urgent (*e.g.*, same day) service.

Legislation has been introduced in the Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this final rule. When such changes occur, we will make corresponding rule changes by publication in the **Federal Register**. Customers may wish to refer to the official USPTO Web site *(www.uspto.gov)* for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

Section 1113 of title 15, United States Code, authorizes the Director to establish fees for the filing and processing of an application for the registration of a trademark or other

mark, and for all other services and materials relating to trademarks and other marks.

Section 1113(a) of title 15, United States Code, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the CPI.

Section 1113(a) allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be adjusted on January 1, 2003, to reflect fluctuations occurring during the twelve-month period from October 1, 2001, through September 30, 2002, in the Consumer Price Index for All Urban Consumers (CPI–U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's actual CPI–U for the twelve-month period ending September 30, 2002, which is 1.5 percent. Based on this actual CPI–U, patent statutory fees will be adjusted by 1.5 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

A trademark processing fee established under 15 U.S.C. 1113 will be adjusted to reflect fluctuations in the CPI.

Several patent and trademark document supply fees established under 35 U.S.C. 41(d) and 15 U.S.C. 1113(a) will be amended to streamline operations and benefit our customers.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of $100 or more were rounded to the nearest $10. Fees of less than $100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the fee adjustment will be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation. Certain trademark documents sent by the ''Express Mail Post Office to Addressee'' service are deemed filed on the date of receipt in our office. See 37 CFR 1.10(a)(1)(ii).

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

Section 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (g), and (h), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.19 Document Supply Fees

Section 1.19, paragraphs (a)(1) and (b)(1), are amended to streamline operations and to benefit our customers.

Section 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), and (a)(5), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 2.6 Trademark Service Fees

Section 2.6, paragraph (a)(1), is revised to adjust the fee established therein to reflect fluctuations in the CPI.

Section 2.6, paragraphs (b)(1) and (b)(2), are amended to streamline operations and to benefit our customers.

Response to Comments

We received several comments in response to the notice of proposed rulemaking published at 67 FR 30634 on May 7, 2002. The comments and our responses to the comments follow:

Comment: One comment stated that we should not increase the trademark application fee for fiscal year 2003, since millions of dollars are being diverted to fund other Federal Government operations and are not being used to improve our performance or services.

Response: Our budget for fiscal year 2003 is comprised of the expected fiscal year 2003 fee revenue (less a designated carryover amount) added to carryover amounts from prior fiscal years. If fees are not adjusted by CPI, the anticipated fee revenue for fiscal year 2003 would be lower; this in turn would reduce the available funding and have a negative impact on our operations. Therefore, adjusting our fees by CPI is critical to ensure adequate funding is available.

Comment: One comment stated that the publication fee under 37 CFR 1.18(d) should be reduced by fifty-percent for independent inventors, small business concerns, and nonprofit organizations.

Response: The Director does not have the authority to provide for a fifty-percent reduction.

Comment: One comment stated that the Director does not have the authority to adjust patent fees by a projected CPI.

Response: Due to the timing of this year's fee adjustment, we have used the actual CPI.

Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final

rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The final rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. We received roughly 98,000 patent applications (approximately 30 percent of total patent applications) last year from small entities. Since the average small entity fee will increase by less than $7.00, with a minimum increase of $5.00 and a maximum increase of $25.00, there will not be a significant economic impact on a substantial number of small entities due to this final rule change.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons set forth in the preamble, we are amending title 37 of the Code of Federal Regulations, parts 1 and 2, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a), (g), and (h) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

* * * * *

(g) Basic fee for filing each plant application, except provisional applications:
By a small entity (§ 1.27(a))—$260.00
By other than a small entity—$520.00

(h) Basic fee for filing each reissue application:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:
By a small entity (§ 1.27(a))—$205.00
By other than a small entity—$410.00

(3) For reply within third month:
By a small entity (§ 1.27(a))—$465.00
By other than a small entity—$930.00

(4) For reply within fourth month:
By a small entity (§ 1.27(a))—$725.00
By other than a small entity—$1,450.00

(5) For reply within fifth month:
By a small entity (§ 1.27(a))—$985.00
By other than a small entity—$1,970.00

* * * * *

(e) To request continued examination pursuant to § 1.114:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

* * * * *

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):
By a small entity (§ 1.27(a))—$650.00
By other than a small entity—$1,300.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

(s) For each additional invention requested to be examined under § 1.129(b):
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78)—$1,300.00

4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.27(a))—$650.00
By other than a small entity—$1,300.00

(b) Issue fee for issuing a design patent:
By a small entity (§ 1.27(a))—$235.00
By other than a small entity—$470.00

(c) Issue fee for issuing a plant patent:
By a small entity (§ 1.27(a))—$315.00
By other than a small entity—$630.00

* * * * *

5. Section 1.19 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) * * *

(1) Printed copy of the paper portion of a patent application publication or patent, including a design patent, statutory invention registration, or defensive publication document. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (*e.g.*, facsimile, electronic mail)—$3.00

* * * * *

(b) * * *

(1) Certified or uncertified copy of the paper portion of patent application as filed processed within seven calendar days—$20.00

* * * * *

6. Section 1.20 is amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:
By a small entity (§ 1.27(a))—$445.00
By other than a small entity—$890.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:
By a small entity (§ 1.27(a))—$1,025.00
By other than a small entity—$2,050.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:
By a small entity (§ 1.27(a))—$1,575.00
By other than a small entity—$3,150.00

* * * * *

7. Section 1.492 is amended by revising paragraphs (a)(1) through (a)(3), and (a)(5) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—$360.00

By other than a small entity—$720.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))—$375.00

By other than a small entity—$750.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—$530.00

By other than a small entity—$1,060.00

(4) * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:

By a small entity (§ 1.27(a))—$450.00

By other than a small entity—$900.00

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Section 2.6 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(1) For filing an application, per class—$335.00

* * * * *

(b) * * *

(1) For printed copy of registered mark, copy only. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (*e.g.*, facsimile, electronic mail)—$3.00

(2) Certified or uncertified copy of trademark application as filed processed within seven calendar days—$15.00

* * * * *

Dated: November 21, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–30086 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN144–2; FRL7414–2]

Approval and Promulgation of Implementation Plans; Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing the direct final rule revising particulate matter (PM) control requirements for certain natural gas combustion sources in Indiana. In the direct final rule published on October 11, 2002 (67 FR 63268), we stated that if we receive adverse comment by November 12, 2002, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comments received in a subsequent final action based upon the proposed action also published on October 11, 2002 (67 FR 63353). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The direct final rule is withdrawn as of November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: November 19, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Accordingly, the addition of 40 CFR 52.770(c)(152) is withdrawn as of November 27, 2002.

[FR Doc. 02–30118 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–7413–9]

RIN 2040–AD06

National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing changes to the health effects language for di(2-ethylhexyl) adipate (DEHA) and di(2-ethylhexyl) phthalate (DEHP) in the Public Notification (PN) Rule and the Consumer Confidence Report (CCR) Rule under the Safe Drinking Water Act (SDWA). Today's rule also makes minor corrections to Appendix A of the CCR Rule. These changes include: correcting drinking water source information listed for copper, changing the placement of regulatory and health effects information for disinfection by-products (*i.e.*, bromate, chloramines, chlorite, chlorine, and chlorine dioxide), and correcting the reference ''chloride dioxide'' to ''chlorine dioxide.'' The Agency is also amending the listing for three contaminants (*i.e.*, bromate, chlorite, and total trihalomethanes) to correct source information given in Appendix A. The appendix listed ''by-product of chlorination,'' a specific method of disinfection, as the major source for these contaminants in drinking water. The source information in Appendix A is being amended to include the more general term ''by-product of drinking water disinfection'' for these contaminants. In addition, the Agency is revising the Primacy Rule to remove regulations pertaining to the Administrator's authority to waive national primary drinking water

regulations (NPDWRs) for Federally owned or operated public water systems. This authority was removed by Congress in the 1996 amendments to the Safe Drinking Water Act.

DATES: This regulation is effective December 27, 2002. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Time on November 27, 2002.

ADDRESSES: Applicable **Federal Register** notices, public comments received, the response to comments document, and other major supporting documents for this rulemaking are available for review at EPA's Water Docket, in the EPA Docket Center (EPA/DC), EPA West, Rm B102, 1301 Constitution Avenue, NW, Washington, DC. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets, at *http://www.epa.gov/edocket/.*

FOR FURTHER INFORMATION CONTACT: Khanna Johnston at 1200 Pennsylvania Avenue, NW, (MC–4606M), Washington, DC 20460; by phone, 202–564–3842; or by e-mail: *johnston.khanna@epa.gov.* For general information, you may contact the Safe Drinking Water Hotline at 1–800–425–4791. The Safe Drinking Water Hotline is open from 9:00 a.m. to 5:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
State/Local/Tribal governments	Publicly-owned Public Water Systems (PWSs), such as municipalities; county governments, water districts, water and sewer authorities, state governments, and other publicly-owned entities that deliver drinking water as an adjunct to their primary business (*e.g.*, schools, State parks, roadside rest stops).
Industry	Privately-owned PWSs, such as private utilities, homeowner associations, and other privately-owned entities that deliver drinking water as an adjunct to their primary business (*e.g.*, trailer parks, factories, retirement homes, day-care centers).
Federal government	Federally-owned PWSs, such as water systems on military bases.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.151 and 141.201 of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to your particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. W–01–07. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Water Docket, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the previous paragraph or under the **ADDRESSES** section.

Acronyms Used in This Rule

CCR Consumer Confidence Report
CFR Code of Federal Regulations
CWS Community Water System
DBP Disinfection Byproduct
DEHA Di(2-ethylhexyl)adipate
DEHP Di(2-ethylhexyl)phthalate
EPA Environmental Protection Agency
FR Federal Register
MCL Maximum Contaminant Level
MCLG Maximum Contaminant Level Goal
NPDWR National Primary Drinking Water Regulation
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PN Public Notification
PPM Parts Per Million
PWS Public Water System
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SDWA Safe Drinking Water Act
TTHM Total Trihalomethanes
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

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I. Statutory Authority

The purpose of this rulemaking is to finalize the EPA's proposed modifications to Minor Revisions of the

Public Notification Rule and Consumer Confidence Report Rule and to revise the Primacy Rule to remove an outdated authority. The Safe Drinking Water Act (SDWA) (section 1414(c)), as amended in 1996, mandated that EPA revise its existing regulations governing public notification. When a violation occurs, public water systems must provide information to their consumers on the potential health effects from exposure to the contaminant in question.

This public notification is an integral part of public health protection and consumer right-to-know provisions of the SDWA (section 1414), as amended in 1996. EPA issued revised public notification regulations in May 2000, that set requirements for public water systems to follow with respect to the form, manner, frequency, and content of a public notice. The revised Public Notification (PN) Rule (40 CFR part 141, subpart Q) provides specific health effects statements for each regulated contaminant that a public water system must provide its consumers in the event of a public notice.

SDWA (section 1414) requires community water systems to issue an annual water quality report to their customers. The report provides a snapshot of local drinking water quality, a list of contaminants found in the water, potential health effects of any contaminants found above Federal health standards, and measures being undertaken by the water system to protect the drinking water supply. As part of the Consumer Confidence Report (CCR) Rule (40 CFR part 141, subpart O), CWSs must provide a statement concerning the health effects of contaminants found at levels that violate the Federal health standard. SDWA also requires States to meet set regulations for implementation and enforcement authority of national primary drinking water regulations as specified in section 1413 and the Primacy Rule (40 CFR part 142).

II. Background

On May 14, 1999, EPA published proposed revisions to the PN Rule for public comment. In this rulemaking EPA proposed to use the same brief health effects language for the PN Rule as EPA had recently adopted in the Consumer Confidence Report (CCR) Rule (63 FR 44511, August 19, 1998). This language is now codified at 40 CFR part 141, subpart O, appendix A. As a result, the PN proposal contained the CCR health effects language for di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP). During the public comment period on the proposed PN Rule, the Chemical Manufacturers Association (now known as the American Chemistry Council) submitted comments questioning several aspects of the health effects language for DEHA and DEHP. This included references to ''general toxic effects'' for DEHA and the basis for characterizing DEHP as a human carcinogen.

EPA published the final PN Rule (65 FR 25981, May 4, 2000) in May 2000. The American Chemistry Council (ACC) filed a petition in the DC Court of Appeals for review of the PN Rule, based on the DEHA and DEHP health effects language. In reexamining the ACC comments on the PN rule, EPA determined that changes to the health effects language for these contaminants in both the PN and CCR Rules would be appropriate. In a settlement agreement with ACC, EPA agreed to propose, and subsequently did propose, changes to the health effects language for these two contaminants. EPA accepted comment on the health effects language specific only to DEHA and DEHP. EPA also used the proposed modifications as an opportunity to make and seek comment on other minor corrections to appendix A of the CCR Rule (66 FR 46930, September 7, 2001). The comments received were generally favorable, supporting the proposed changes. A copy of these comments and the response to comments document are available for review in the public docket. In view of the comments received and for the reasons set forth in the preamble to the September 7, 2001 proposal, today's rule amends 40 CFR part 141 to reflect the health effects language changes for DEHA and DEHP proposed on September 7, 2001.

EPA is also making several corrections to language in appendix A of the CCR Rule. These are as follows: ''Leaching from wood preservatives'' was incorrectly listed as a major source of copper in drinking water. This rule deletes ''leaching from wood preservatives'' from drinking water source information for copper. Regulatory and health effects information for the disinfection byproducts bromate, chloramines, chlorite, chlorine, and chlorine dioxide was incorrectly placed in the volatile organic contaminants section of appendix A. Today's action moves entries for these disinfection byproducts from their existing locations and places them in the inorganic contaminants section of appendix A. In addition, the entry for chlorine dioxide was inadvertently listed as ''chloride dioxide.'' This rule corrects this reference to read ''chlorine dioxide.''

This rule also amends information listed for three contaminants (*i.e.*, bromate, chlorite, and total trihalomethanes) to reference the more general term, ''by-product of drinking water disinfection,'' rather than ''chlorination,'' which is one specific method of disinfection. Finally, this rule deletes a provision in EPA's primacy regulations at 40 CFR 142.3(b)(3). This section pertains to the Administrator's former authority to waive national primary drinking water regulations (NPDWRs) for Federally owned or operated public water systems. This authority was removed by Congress in the 1996 amendments to the Safe Drinking Water Act (SDWA), and is no longer applicable. EPA determined for the latter two corrections in today's final rule that there is ''good cause'' for making these minor changes final without prior proposal and opportunity for comment, because these changes have no substantive impact and merely correct CFR text.

III. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that:

(1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This Rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This rule makes minor changes to the Public Notification Rule, Consumer Confidence Report Rule, and Primacy Rule that do not change the regulatory burden.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating 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. This 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This rule does not change the costs to State, local, or Tribal governments as estimated in the final Public Notification Rule (65 FR 25981, May 4, 2000) and the final Consumer Confidence Report Rule (63 FR 44511, August 19, 1998), and does not change either the frequency of reports or the regulatory burden of public notification. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. This rule makes minor changes to the Public Notification Rule, the Consumer Confidence Report Rule, and the Primacy Rule and does not change the frequency of reporting or the regulatory burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement 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 government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities for the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. secs. 601(3)—(5)). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the Safe Drinking Water Act Amendments of 1996 for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration, finalized this definition for the final CCR regulation, and expressed its intention to use the alternative definition for all future drinking water regulations (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition is applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule makes minor changes to the Public Notification Rule, the Consumer Confidence Report Rule, and the Primacy Rule and imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. It does not change either the frequency

of reports or the regulatory burden of public notification.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898—Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating Environmental Justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's rule makes minor changes to the Consumer Confidence Report Regulation, the Public Notification Regulation, and the Primacy Rule and does not alter the basic regulatory standards in those regulations. The Agency considered Environmental Justice related issues concerning the potential impacts of Public Notification (PN) during development of the Public Notification Rule and Consumer Confidence Report (CCR) Rule. In the May 4, 2000, PN Rule (65 FR 25981), EPA concluded that the PN requirements would be beneficial to low-income and minority communities. In the CCR Rule (63 FR 44511, August 19, 1998), EPA determined that provisions in that regulation would be beneficial to low-income and minority communities, particularly the provision requiring a good faith effort to reach non-bill-paying customers.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule makes minor changes to the Consumer Confidence Report Rule, the Public Notification Rule, and the Primacy Rule. Thus, Executive Order 13132 does not apply to this rule.

Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. We did not receive any comments on Executive Order 13132.

I. 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule makes minor changes to the Consumer Confidence Report Rule, the Public Notification Rule, and the Primacy Rule. Thus, Executive Order 13175 does not apply to this rule.

Nevertheless, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials. We did not receive any comments on Executive Order 13175.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 27, 2002.

L. Plain Language Directive

Executive Order 12866 encourages agencies to write their rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble and both the PN and CCR Rules in a clear and concise manner.

M. Administrative Procedure Act

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule

without providing prior notice and an opportunity for public comment. EPA is publishing a number of minor corrections to appendix A of the CCR Rule, 40 CFR part 141, subpart O, two of which were not originally included in the September 7, 2001 proposal. Appendix A lists ''major sources in drinking water'' of regulated contaminants. EPA incorrectly listed ''by-product of drinking water chlorination,'' a specific method of disinfection (63 FR 69410, December 16, 1998), for two of these contaminants, rather than using the more general term ''by-product of drinking water disinfection.'' As a result, today's rule amends the table (Appendix A) to correct the ''major sources'' information for bromate, chlorite, and total trihalomethanes (TTHMs). This will make the listed ''major sources'' of these contaminants the same as haloacetic acids (HAA) in the table. Today's rule also deletes § 142.3(b)(3). This section pertains to the Administrator's former authority to waive national primary drinking water regulations (NPDWRs) for Federally owned or operated public water systems. This authority was removed in the 1996 amendments to the Safe Drinking Water Act (SDWA), and is no longer applicable. EPA has determined that for these corrections there is ''good cause'' for making these rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct informational CFR text or remove outdated text. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes ''good cause'' under 5 U.S.C. 553(b)(B).

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: November 20, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 141 and 142 are amended as follows:

PART 141—[AMENDED]

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart O—[Amended]

2. Appendix A to Subpart O is amended

a. Under the heading ''Inorganic contaminants'' by adding in alphabetical order entries for: ''Bromate (ppb)'', ''Chloramines (ppm)'', ''Chlorine (ppm)'', ''Chlorine dioxide (ppb)'', and ''Chlorite (ppm)''.

b. Under the heading ''Inorganic contaminants'' by revising the entry for ''Copper (ppm)''.

c. Under the heading ''Synthetic organic contaminants including pesticides and herbicides'' by revising entries for ''Di(2-ethylhexyl) adipate (ppb)' and ''Di(2-ethylhexyl) phthalate (ppb)''.

d. Under the heading ''Volatile organic contaminants'' by removing entries for: ''Bromate (ppb)'', ''Chloramines (ppm)'', ''Chlorine (ppm)'', ''Chlorite (ppm)'', and ''Chloride dioxide (ppb)''.

e. Under the heading ''Volatile organic contaminants'' by revising the entry for ''TTHMs [Total trihalomethanes] (ppb)''.

The revisions and additions read as follows:

Appendix A to Subpart O of Part 141—Regulated Contaminants

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*	*	*	*	*
Inorganic contaminants:						
*	*	*	*	*	*	*
Bromate (ppb)	.010	1000	10	0	By-product of drinkig water disinfection.	Some people who drink water of containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
*	*	*	*	*	*	*
Chloramines (ppm).	MRDL=4		MRDL=4	MRDLG=4	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Chlorine (ppm)	MRDL=4	.....	MRDL=4	MRDLG=4	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide (ppb).	MRDL=.8	1000	MRDL=800	MRDLG=800 ...	Water additive used to control micorbes.	Some infants and young children who drink water chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorite (ppm)	1	.....	1	0.8	By-product of drinking water disinfection.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
*	*	*	*	*	*	*
Copper (ppm)	AL=1.3	.....	AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's disease should consult their personal doctor.

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*	*	*	*	*
Synthetic organic contaminants including pesticides and herbicides:						
*	*	*	*	*	*	*
Di(2-ethylhexyl) andipate (ppb).	.4	1000	400	400	Discharge from chemical factories.	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb).	.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
*	*	*	*	*	*	*
Volatile organic contaminants:						
*	*	*	*	*	*	*
TTHMs [Total trihalomethanes] (ppb).	0.10/.080	1000	100/80	N/A	By-product of drinking water disinfection.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

Subpart Q—[Amended]

3. Appendix B to Subpart Q of Part 141 is amended under E. by revising entries 33 for ''Di(2-ethylhexyl) adipate'' and 34 for ''Di(2-ethylhexyl) phthalate'' to read as follows:

Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification

Contaminant (units)	MCLG [1] (mg/l)	MCL [2] (mg/l)	Standard health effects language for public notification
*	*	*	*
E. Synthetic Organic Chemicals (SOCs)			

Contaminant (units)	MCLG [1] (mg/l)	MCL [2] (mg/l)	Standard health effects language for public notification
* * * * * * *			
33. Di(2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
34. Di(2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

* * * * *

Appendix B—Endnotes

1. MCLG—Maximum contaminant level goal.

2. MCL—Maximum contaminant level.

* * * * *

PART 142—[AMENDED]

4. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j9, and 300j–11.

§ 142.3 [Amended]

5. Section 142.3 is amended by removing paragraph (b)(3).

[FR Doc. 02–30117 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 112202C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 23, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *Mary.Furuness@noaa.gov*.

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

The 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 15,164 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 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,564 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds 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: November 22, 2002.

Richard W. Surdi,

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

[FR Doc. 02–30130 Filed 11–22–02; 2:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0205222128–2267–02; 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: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area (FMP). This amendment prohibits 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), and is intended to further the goals and objectives of the FMP.

DATES: Effective December 27, 2002.

ADDRESSES: Copies of Amendment 60, the Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Analysis, and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228 or email at *glenn.merrill@noaa.gov.*

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 authority of the Magnuson-Stevens Act. Regulations implementing the FMP and governing the groundfish fisheries of the GOA appear at 50 CFR, parts 600 and 679.

Background and Need for Action

This final rule complies 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 (section 301(a)(9)).

More specific authority for this action 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.''

This final rule implements Amendment 60 to the FMP which prohibits the use of non-pelagic trawl gear in the exclusive economic zone (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.). Amendment 60 was adopted by the Council in September 2000 with the specific goal of reducing potential bycatch of crab in the EEZ of Cook Inlet in the GOA groundfish fishery.

A notice of availability of Amendment 60 was published May 14, 2002 (67 FR 34424), which invited public comment on the amendment until July 15, 2002. No comments were received on this document. NMFS approved Amendment 60 on August 13, 2002. Meanwhile, NMFS published a proposed rule that would implement Amendment 60 if it were approved. The proposed rule was published June 13, 2002 (67 FR 40680), and invited public comments until July 29, 2002. No public comments were received.

A detailed discussion of the status of crab and groundfish resources in Cook Inlet and the effect of this final rule may be found in the preamble to the proposed rule, published June 13, 2002 (67 FR 40680).

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. In 1982, the State closed the red king crab fishery and it has remained closed. The commercial Tanner crab fishery of Lower Cook Inlet peaked in the early 1970s then declined gradually until the fishery closed in 1995. These harvest patterns are similar to other Tanner and red king crab fisheries in the GOA.

In response to concerns by fishermen and Alaska Department of Fish and Game (ADF&G) biologists about the potential impacts of non-pelagic trawl gear on crab bycatch and habitat, the Alaska Board of Fisheries prohibited the use of non-pelagic trawl gear in State waters encompassing primary crab habitat in 1990, and extended this prohibition to all of the State waters of Cook Inlet in 1996. Recent surveys in Cook Inlet in 1999 and 2001 indicate that Tanner crab stocks may be improving. However, these indications are highly uncertain at this time.

The State manages crab fisheries in the GOA EEZ in the absence of Federal regulations. However, the Secretary retains management authority for groundfish fisheries in this area. In June 1998, the ADF&G submitted a proposal to the Council to prohibit the use of non-pelagic gear in the EEZ of Cook Inlet. The Council adopted this proposal as Amendment 60 to the FMP in September 2000.

Effects of Non-Pelagic Trawl Gear on Crab Resources

Non-pelagic trawl gear may catch crab incidental to its target groundfish species. The amount of crab caught and discarded 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 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.

Additionally, non-pelagic trawl gear may alter the benthic substrate so that it is less favorable to crab survival. Generally, studies on the potential impact of trawl gear on benthic habitats indicate that non-pelagic trawl 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. No study has specifically assessed the impacts of non-pelagic trawl gear on crab habitat and crab populations in Alaska. The potential impact of mortality due to gear interactions or habitat modification on Tanner and red king crab populations in Cook Inlet is unknown. Amendment 60 will eliminate the potential adverse effects of non-pelagic trawl gear on the benthic habitat of Cook Inlet.

Groundfish Fisheries in Cook Inlet

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.

Effect of This Action

This final rule prevents potential adverse effects of non-pelagic trawl crab bycatch on the population 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 action will prevent the development of a non-pelagic trawl fishery in an area that historically has supported a productive crab fishery.

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 habitat and populations in Alaska are unknown.

This action is a proactive measure to limit potential crab bycatch from non-pelagic fisheries that may develop in the future. This final rule reduces the potential bycatch of crab resources, which currently are at relatively low abundance, mirrors existing regulations in State waters of Cook Inlet, and minimizes potential adverse effects of non-pelagic trawl gear on the benthic habitat for crab and other groundfish stocks. This final rule implements these benefits without adversely affecting any existing non-pelagic trawl fisheries.

Changes from the Proposed Rule

This final rule makes no changes from the proposed rule. NMFS invited public comment on the proposed rule implementing Amendment 60 from June 13, 2002, through July 29, 2002 (67 FR 40680). No public comments were received.

Classification

The Administrator, Alaska Region, NMFS, determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an FRFA that describes the impact that this final rule would have on small entities. The overall impact of this amendment on small entities is minimal. Based on historic trends in participation, few if any small entities, would be adversely affected by this action. One vessel used non-pelagic trawl gear in the EEZ of Cook Inlet in 1990, and another vessel in 1995, both of which presumably qualify as small entities. This action would not have any adverse impact on existing fishing vessels, given the negligible use of non-pelagic gear in Cook Inlet currently, 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 using other legal types of fishing gear 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 this non-pelagic trawl ban.

Likewise, this action is not expected to have any economic benefit for small entities. This action may improve the prospects for rebuilding crab stocks. However, no Tanner or red king crab fishery exists currently in Cook Inlet. Therefore, potential economic benefits of this possibility are not now foreseeable.

At present NMFS does not have the full data necessary to determine the extent to which this action may impact small entities.

No new reporting or recordkeeping requirements are imposed by this final rule. This final 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: November 21, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is 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. 02–30133 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 229
Wednesday, November 27, 2002

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

RIN 0584–AC75

Food Stamp Program: Civil Rights Data Collection

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to revise Food Stamp Program (FSP) regulations that cover the collection and reporting of racial/ethnic data by State agencies on persons receiving benefits from the FSP. The proposed changes are to comply with new racial/ethnic data collection standards issued by the Office of Management and Budget (OMB) while also providing regulatory flexibility and reform for this area of the program regulations.

DATES: Comments on this proposed rulemaking must be received by January 27, 2003, to be assured of consideration.

ADDRESSES: Comments should be submitted to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Only written comments will be accepted. All written comments will be open for public inspection during regular business hours (8:30 am to 5 pm, Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 820.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ms. Hallman at the above address or by telephone at (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

The FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), the FSP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule may have minimal impact on some small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

(1) Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because the FSP is a State-administered, Federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other Food Stamp rules. Further, we first requested comments on the proposed data collection for the revised standards in our November 30, 1999 **Federal Register** notice. Since then, State agency comments have helped us make the rule responsive to concerns presented by State agencies.

(2) Nature of Concerns and the Need To Issue This Rule

State agencies generally were concerned that the classification by caseworkers of an applicant's multiple race heritage via visual observation of people who chose not to self-identify may not always be accurate. They were also concerned about the cost involved and time that will be allowed for States to make system changes to collect and compile the data, to train workers, and

to convert the current caseload. The standardization of the data collection addresses another major State concern, the need to have the data collected in the same way across other means-tested Federal programs. Specific comments and policy questions submitted by State agencies helped us identify issues that needed to be clarified in the proposed rule. Implementing the revised racial classification standards will allow data standardization across the Federal Government.

(3) Extent to Which We Meet Those Concerns

FNS has considered the impact of the proposed rule on State and local agencies. This rule makes changes that conform to the revised OMB standards for the collection and reporting of racial ethnic data. Although the rule implementing the revised data collection standards will require eligibility workers to collect both race and ethnicity on participating households, the information will standardize racial ethnic data collection by States for the Federal Government and will permit more accurate data collection on individuals who classify themselves as being of more than one race. It will show the increasing diversity of our Nation over time. FNS intends to allow States to obtain one race per person when visual observation is used because the applicant chooses not to self-identify. While State agencies will have to change their application form and information system to collect, compile, and report data, train workers, and convert the caseload, this is a one-time change. The 50 percent Federal reimbursement by FNS helps defray half the State's cost to make the change for the FSP and to collect, compile and report the data. The proposed rule provides States ample time to implement the revised data collection standards and convert the existing caseload to the revised data requirements. In the proposed rule, we have addressed every concern submitted by State agencies regarding this provision. States will have the opportunity to comment on the implementation timeframe in the proposed rule. FNS is not aware of any case where the provisions of the rule would preempt State law.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the proposed information collection requirements contained in this rule are being made available for public comment in a Notice published elsewhere in this issue of the **Federal Register**. Readers who would like more information on the information collection aspects of the rule, or would like to comment on the revised information collection burden, should refer to that notice for more information.

It is important to note that, as discussed in the following preamble, OMB has received public comment on the revised data collection standards addressed in the Notice published in today's **Federal Register**. Thus, in the Notice, FNS is offering the public to comment only on its proposal for implementing the new OMB standards, not on the standards themselves. The Notice addresses implementation of the revised OMB standards for the FSP, the Commodity Supplemental Food Program (CSFP), and the Food Distribution Program on Indian Reservations (FDPIR). These three programs have historically been approved under the same OMB approval package.

The revised data collection requirements will be submitted to OMB for approval after comments are received during the 60-day comment period. Until the OMB approves FNS' revised data collection requirements, State agencies would continue to use current forms (FNS 101 and FNS 191) approved under OMB Approval No. 0584–0025.

FNS is proposing this regulation separate from the Notice because the regulations governing the FSP contain provisions that must be amended to implement the revised standards, since they specifically identify the old racial/ethnic classifications. The CSFP and FDPIR do not require similar regulatory changes.

Background

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. The Department of Justice (DOJ) regulations, at Title 28 of the Code of Federal Regulations (CFR), Section 42.406(a), require all Federal agencies to provide for the collection of racial and ethnic information from applicants for and beneficiaries of Federal assistance sufficient to permit effective enforcement of Title VI. Section 272.6(g) and (h) of the current program rules require States to collect data on households by racial/ethnic data and to report the summary data to FNS.

FNS collects this data in order to comply with the statutory mandates of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination. The data are provided to the Department's Office of Minority Affairs to satisfy the regulatory requirement for annual participation data. The Department includes this data in an annual USDA Equal Opportunity Report. FNS compares the data to Census data and uses the data to identify any minority participation trends or disparities that need follow-up. FNS also reviews the data prior to conducting State or local agency compliance reviews as well as in selecting areas for review.

Section 272.6(g) of the FSP rules specifies the racial/ethnic categories as American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), Hispanic, and white (not of Hispanic origin). These current racial and ethnic categories, which have been in place for more than 20 years, conformed to classification standards set by OMB in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

On October 30, 1997, OMB issued revised standards for the classification of Federal data on race and ethnicity in a notice in the **Federal Register** (62 FR 58782 *et al.*). They replace and supersede Statistical Policy Directive No. 15. All Federal agencies are required to comply with the revised OMB standards. The OMB standards revise the racial and ethnic categories and require that respondents be offered the option of selecting one or more racial designations. Only the FSP regulations specify the old racial ethnic data classifications that are being replaced. We are now proposing to amend the FSP regulations to comply with OMB policy.

Data Collection by State Agencies

Under the revised standards, there are new categories for race and ethnicity. There are now five categories for race and two categories for ethnicity. The new racial categories are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White. Under the revised standards, the former ''Asian or Pacific Islander'' category has been separated into two categories, ''Asian'' and ''Native Hawaiian or Other Pacific Islander.'' The revised standards allow individuals to choose more than one race to describe themselves. The revised categories on ethnicity are: ''Hispanic or Latino'', and ''Not Hispanic or Latino.'' The State agency must include these racial and ethnic categories on the State agency's application or data input screen.

To ensure data quality, the State agency's application or data input screen must use separate questions for

collecting ethnicity and race, with ethnicity requested first. Applicants must be allowed to identify themselves as being of more than one race by choosing multiple racial categories. Instructions on the application should instruct applicants to ''Mark one or more * * *'' or ''Select one or more * * *.'' The State agency must develop alternative means of collecting racial and ethnic data on households, such as by observation during the interview when the information is not provided voluntarily by the household on the application form.

The changes in the standards deal with the way in which State agencies collect racial/ethnic data and the racial/ethnic classifications. However, we wish to point out that some things have not changed. The current policy that the racial categories are not to be used for determining the eligibility of population groups for participation in the program would continue. The application form would continue to indicate that (1) the racial and ethnic information is voluntary, (2) that it will not affect eligibility or the level of benefits, and (3) that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin.

Currently, § 272.6(g) lists the old racial/ethnic categories, specifies the method of data collection, and specifies related requirements for application forms. We do not believe it is appropriate to continue to list in the regulations the specific individual racial and ethnic categories. Instead the proposed regulations specify that State agencies shall collect the data ''as specified by FNS''. Racial designations and the manner of racial/ethnic data collection are based on Federal policy which is issued by OMB and which all Federal agencies must follow. Since the Federal policy was based on public comment, it would involve a duplication of effort for Federal agencies, in turn, to codify and implement the revised standards by further rulemaking with more public comment on the same issue. The intent is to pass along revisions to the State agencies on a more timely basis. As part of this streamlining, FNS will collect comments in the future through comments to proposed notices on the data collection and reporting. FNS guidance will be issued to provide clarification as necessary appropriate to the program in order to comply with the Federal policy.

By being less detailed in program regulations, we are streamlining the Federal policy process, while maintaining flexibility for any future changes in the Federal policy and FNS data collection and reporting procedures. Further, since the Paperwork Reduction Act requires the publication of a **Federal Register** notice for comment if a Federal reporting form change is proposed, comments on any future changes in racial designations for data reporting would be obtained and considered in conjunction with any proposed form changes. Accordingly, the Department proposes to revise § 272.6(g) to drop the specific racial category references and to replace that text with a more general requirement in the regulations that will be automatically linked to the Federal policy. However, the gist of the policy has been briefly explained in this preamble. FNS will issue supplementary guidance in the form of an implementing memorandum to State agencies once the final rule is published that will conform to the revised standards. To capture data under the new standards, State information systems will need to be changed.

Reporting to FNS

The current regulations at § 272.6(h) specify that the State agency shall report the racial/ethnic data on participating households on forms provided by FNS. The above changes will necessitate a form revision. Although the Department is not specifically describing the form changes in the regulatory text of § 272.6(h), the revision of the FNS reporting form will impact the way State agencies must compile data in order to report it to us. FNS has discussed the changes in a **Federal Register** notice dated November 30, 1999, in October 2000 and 2001 supplementary guidance issued to State agencies, and again in this proposed rule.

To comply with the new standards, State information systems will need to be changed. We are proposing to require State agencies to report the number of household contacts who selected (or were observed to be under) only one racial category, separately for each of the five racial categories, and to provide a count of household contacts who selected more than one race for various multiple-race categories. The State agencies must report the number of household contacts who identified themselves as being Hispanic or Latino by racial category. Confidential or identifying information, such as names of participants, are not being reported to us under this reporting mechanism.

We would continue to use the summary data to evaluate conformance with the Civil Rights Act and to provide the data to other Federal agencies upon request for their missions related to the Civil Rights Act. The data on the number of household contacts of more than one race will help us track changes in our Nation's diversity over time in the program. The more detailed data on the Hispanic data by race would allow us to monitor changes in racial/ethnic response patterns over time. We are very interested in State agency comment on the proposed data collection and reporting and on the reporting burden estimate per State agency. We are also interested in any cost estimates from State agencies for making the change to their information systems to comply with the new proposed reporting.

We are proposing to revise § 272.6(h) to provide that State agencies must report the racial/ethnic data on forms *or formats* provided by FNS. This change is intended to speed the movement from paper reporting forms to electronic reporting format. It also complies with the intent to move to electronic reporting of this information as soon as our system modifications will allow.

Implementation

As explained previously in this preamble, until comment is received on these proposed regulations and approval for the revised forms are approved by OMB, State agencies would continue with the current data collection requirements for the fiscal year 2003 reporting period. FNS anticipates the publication of the final rule early in 2003. In the interim, FNS would accept comments on this rule and on the new reporting requirements through the Notice published elsewhere in this issue of the **Federal Register**. FNS recognizes that State and local agencies will need time to modify their application forms, data input screens, and information systems in order to begin capturing and tabulating data. It is crucial for FNS' information system that all State agencies implement the revised reporting format at the same time.

The Forms FNS 101 and 191 currently in use would remain in effect for the fiscal year 2003 reporting period. State agencies would be required to implement the revised FNS 191 for the report month of April 2004. For the FNS 101, State agencies would be required to implement for the report month of July 2004.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, reporting and recordkeeping requirements.

Accordingly, 7 CFR part 272 is proposed to be amended as follows:

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.6, paragraphs (g) and (h) are revised to read as follows:

§ 272.6 Nondiscrimination compliance.

* * * * *

(g) *Data collection.* The State agency must obtain racial and ethnic data on participating households in the manner specified by FNS. The application form must clearly indicate that the information is voluntary, that it will not affect the eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency must develop alternative means of collecting the ethnic and racial data on households, such as by observation during the interview, when the information is not provided voluntarily by the household on the application form.

(h) *Reports.* As required by FNS, the State agency must report the racial and ethnic data on participating household contacts on forms or formats provided by FNS.

Dated: November 22, 2002.

Roberto Salazar,

Administrator.

[FR Doc. 02–30112 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 99–017–1]

RIN 0579–AB13

Blood and Tissue Collection at Slaughtering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. We also propose that any person who moves or causes the movement of livestock or poultry interstate for slaughter may only move the animals to a slaughtering establishment that has been listed by the Administrator. The Administrator would list a slaughtering establishment after determining that the establishment provides the type of space and facilities specified by the regulations to safely collect blood and tissue samples for disease testing. The actual testing of samples could occur either at the establishment or at another location, as determined by the Administrator. Alternatively, the Administrator could list a slaughtering establishment that does not supply such space and facilities if the Administrator determines that it is not necessary to conduct testing of animals slaughtered at the establishment because the data collected through such testing would not significantly assist APHIS disease surveillance programs.

This collection of blood and tissue samples would enable us to identify animals at slaughter that are affected by various communicable diseases of concern. This change would affect persons moving livestock or poultry interstate for slaughter, slaughtering plants that receive animals in interstate commerce, and, in cases where test-positive animals are successfully traced back to their herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change would be to improve surveillance programs for animal diseases and to contribute to the eventual control or eradication of such diseases.

DATES: We will consider all comments that we receive on or before January 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1231. Please state that your comment refers to Docket No. 99–017–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 99–017–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4363.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), has many programs to protect the health of livestock and poultry in the United States. These include programs to prevent endemic diseases and pests from spreading within the United States and programs to prevent the introduction of foreign animal diseases, as well as programs to control or eradicate certain animal diseases from the United States.

Regulations governing the interstate movement of animals for the purpose of preventing the dissemination of animal diseases within the United States are contained in 9 CFR, subchapter C—''Interstate Transportation of Animals (Including Poultry) and Animal Products.''

The legal authority for USDA to conduct testing was recently restated in the Animal Health Protection Act of 2002 (Subtitle E of the Farm Security and Rural Investment Act of 2002, Public Law 107–171). Section 10409 states that the Secretary of Agriculture ''may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals), including animals at a slaughterhouse, stockyard, or other point of concentration.''

Proposed Changes to the Regulations

We are proposing to amend the regulations in subchapter C, part 71, ''General Provisions,'' to provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals) and poultry at slaughter. We propose to require that persons moving livestock and poultry interstate for slaughter may only move the animals to slaughtering establishments that have been listed by the Administrator of APHIS. We do not

propose to collect samples from all livestock or poultry at slaughter, but to collect samples whenever we believe it is necessary for effective surveillance. Some establishments slaughter relatively few animals, or process animals that are not susceptible to testing (*e.g.*, sheep and goats that are too young to test for scrapie), or receive animals from sources for which we already have sufficient epidemiological data, and it would not substantially aid our surveillance to require testing at these establishments. Therefore, the Administrator would list some establishments to receive livestock or poultry without conducting testing at those establishments. For establishments where it is necessary to conduct testing, the Administrator would list the establishment only if it allows APHIS, FSIS, or APHIS contractors to collect blood and tissue samples from animals at the establishment. To be listed, a slaughtering establishment where testing is required would have to grant access to the personnel conducting the tests and provide certain space and equipment necessary to collect and process test samples. Slaughtering establishments that are not listed could not receive livestock moving in interstate commerce.

In conjunction with this rulemaking, APHIS will develop a list of slaughtering establishments. Establishments will not have to actively contact APHIS in order to be placed on the list; APHIS will contact the plants where we intend to collect samples, and work with them to meet the requirements for listing. APHIS will list all plants that meet the qualifications, and will also list those plants at which APHIS has determined sample collection is not needed. There are 1,341 meat packing firms included in the North American Industry Classification System (NAICS) code of 311611, of which 1,260 are small businesses. Many of these small businesses are local operations that do not receive animals moving interstate, and thus do not need to be listed. We expect to conduct sampling at roughly 50 to 100 of the 1341 meat packing firms included in NAICS 311611. Since some of these firms have multiple plants, testing could occur at several hundred plants. In almost all cases, some testing already occurs at these plants; this rule would allow us to increase the level of testing as needed. While we will focus primarily on testing at the plants of large business firms, we will also test at some small plants, as necessary to ensure a valid representative sample for disease surveillance.

We are particularly seeking comments on the standards APHIS should apply in identifying the plants where APHIS should conduct sampling. Our goal is to collect samples at a representative number of plants in each region, so that sample testing will provide a statistically valid nationwide profile of diseased animals sent to slaughter plants. Because sample collection imposes some financial and operational burden on plants, we wish to keep the number of plants sampled down to the minimum number required to provide the data we need. Therefore, we urge commenters to address how APHIS should select plants for sampling; *e.g.*, their size, fraction of the regional market, proximity to other sampled plants, source of animals, and other characteristics.

The provisions regarding the collection of blood and tissue samples would be set out in a new § 71.21, ''Tissue and blood testing at slaughter.''

In § 71.1, we would amend the definition of livestock so that it includes horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals. (We would not include non-captive cervids in the definition because most such animals that go to slaughter plants are brought there by hunters, to a local slaughter plant, and do not thereafter move interstate in commerce. Also, the hunters generally gut and clean the animals in the field, reducing the opportunity to collect useful samples.)

We would also define *recognized slaughtering establishment* to be ''Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act. A list of recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative.'' This definition is consistent with other APHIS and FSIS regulations addressing slaughtering plants. We need this defined term as part of the explanation in § 71.21 of what types of establishments must be listed by the Administrator for interstate movement. Listing applies to both recognized slaughtering establishments, which are under mandatory inspection under the Federal Meat Inspection Act, and other specialty plants (*e.g.*, for cervids and bison) that undergo voluntary inspection under the provisions of the Agricultural Marketing Act (12 U.S.C. 1141 *et seq.*)).

We would also add a definition of *move (moved)* to § 71.1, to make it clear that the requirements of the rule would apply to both persons transporting livestock and poultry and persons who cause the livestock or poultry to be moved. This definition, which is identical to one used in part 78 of our regulations, would read ''Shipped, transported, delivered, or otherwise aided, induced, or caused to be moved.''

We propose that the Administrator may list slaughtering establishments either when sample collection and testing is not needed at them to meet APHIS epidemiological surveillance needs, or when testing is needed and the establishment meets the following standards with regard to sample collection activities. The slaughtering plant would have to allow APHIS, FSIS, or APHIS contractors to collect and record any individual animal identification on animals, retain any identification devices on or in the animals (backtags, electronic implants, etc.), and take tissue and blood samples from animals at the facility. Slaughtering plants must allow samples to be collected at no cost to the United States; that is, they would not be able to charge the government for access to collect samples, or for the value of the samples collected. These are the basic tasks that need to be performed to test the animals for disease and collect the information that may be needed to trace back the animals.

In terms of the specific space for sample collection activities, the slaughtering plant would have to space where samples could be safely and efficiently collected. The plant would have to provide office and sample collection space, including necessary furnishings, light, heat, and janitor service, rent free, for use by APHIS, FSIS, or APHIS contractors collecting samples for blood and tissue testing. At the discretion of the Administrator, small plants would not have to furnish facilities if adequate facilities exist in a nearby convenient location. The space provided by the slaughtering establishment would be subject to the approval of the Administrator. In many cases the facilities that establishments already provide for use by FSIS will also suffice for additional sample collection conducted under this proposed rule.

When approving the space provided by a slaughtering plant in which testing is required, the Administrator would consider whether the space:

1. Is conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of supplies;

2. Has sufficient light to be adequate for proper conduct of sample collection and processing;

3. Includes racks, receptacles, or other suitable devices for retaining such parts as the head, glands, and viscera, and all parts and blood to be collected, until after the post-mortem examination is completed;

4. Includes tables, benches, and other equipment on which sample collection and processing are to be performed, of such design, material, and construction as to enable sample collection and processing in a ready, efficient, and clean manner;

5. Has adequate arrangements, including liquid soap and cleansers, for cleansing and disinfecting hands, dissection tools, floors, and other articles and places that may be contaminated by diseased carcasses or otherwise; and

6. Has adequate facilities, including denaturing materials, for the proper disposal of tissue, blood, and other waste generated during test sample collection.

We believe the space provided by the slaughtering plant should have these characteristics in order to allow APHIS, FSIS, or APHIS contractor personnel to collect and process test samples in an accurate, efficient, and safe manner.

We also propose that the Administrator or his or her designee would give the owner of a slaughtering establishment notice as to when we would be collecting test samples at the plant. The Administrator would give the operator of the slaughtering establishment as much advance notice as possible. However, the actual amount of notice would depend on the specific situation.

We also propose to include language allowing the Administrator to deny or withdraw listing of a slaughtering establishment if the establishment does not comply with the requirements of the regulations. This language is essentially the same as existing language in § 71.20 concerning denial and withdrawal of approval of livestock facilities.

Effects on Slaughter Plants Where APHIS Conducts Sampling

Under our proposal, sample collection would be done on the premises of the slaughtering plant. Full testing of samples might sometimes occur on the premises, although APHIS often will elect to send the samples offsite for testing. APHIS employees, FSIS employees, or a contractor hired by APHIS would collect the samples. There would be no personnel cost to slaughtering plants, although they would incur some expenses in providing the space and equipment used by APHIS, FSIS, or contractors. In some cases, the slaughtering plant itself may be the contractor employed by APHIS to collect samples.

The difficulty and expense of collecting the samples would depend on the type of testing. The most difficult sampling involves the collection of tissue from sheep to test for scrapie. We may wish to test any slaughtered sheep or goat after we determine that it has sufficient animal identification to trace it back to its flock of origin. Collecting the sample involves removing the brainstem from an animal through the spinal opening and sending it to a laboratory for histopathological procedures, and may involve collecting other tissue or blood samples as well, depending on the tests in use at the time.

Collecting samples to test for tuberculosis is also difficult, involving necropsy to collect multiple tissue samples. Collecting samples to test for brucellosis and pseudorabies is a relatively simple matter of collecting blood samples.

We realize that collection of tissue and blood samples at slaughter may affect slaughtering plant operations by disrupting or slowing down the work. While many samples can be collected without slowing down production lines, there would be occasional slowdowns. We also realize that plants would have to set aside, or make available, adequate and suitable space for us to work. This could be inconvenient and involve additional expense. APHIS intends to be as flexible as possible in adapting the proposed requirements to the needs of individual slaughtering plants. When it is possible, we would share space and facilities at the plant that are already devoted to other Federal or State inspection activities, and when this is not possible, we would work with slaughtering plant management to minimize their expenses. The proposed rule would also allow sample processing to occur outside the slaughtering plant in some cases; *e.g.*, at some small sheep plants, it may be possible for APHIS to simply collect the heads of animals to be tested and take them to a nearby laboratory or other facility for processing.

Also, we are not proposing to test all slaughtered livestock all the time. We believe our more limited proposal—to test when we believe it is necessary and to test only those animals we believe are necessary, based on epidemiological information—is justified because it would substantially enhance the control of livestock diseases, particularly brucellosis, tuberculosis, scrapie, and pseudorabies, in the United States. We anticipate that the sampling of sheep would occur only at plants that kill sheep old enough to test for scrapie, so operations at plants that slaughter only lambs would not be significantly affected. Also, APHIS would be able to modify its sampling to some degree to accommodate special needs at individual plants, *e.g.*, to avoid damaging the heads of sheep when there is a contract to sell the heads as meat, or to suspend sampling when plant renovations are underway.

Background on the Scope and Purpose of Sample Collection in APHIS Programs

As described in the preceding section, the essential changes proposed by this rule are a requirement that persons moving livestock and poultry interstate for slaughter may only move the animals to slaughtering establishments that have been listed by the Administrator of APHIS, and a requirement that slaughtering establishments where we choose to collect samples must grant access to the personnel conducting the tests and provide certain space and equipment necessary to collect and process test samples. This rule would therefore chiefly affect slaughtering establishments that must allow us to collect samples.

This section provides additional background to help interested persons understand the role of sampling and testing in various APHIS animal disease programs, and the difficulties and costs involved in different types of sample collection and testing.

Testing animals' blood or tissue for diseases is an important component of APHIS regulations. Although the regulations in subchapter C do not require testing for most animals moving interstate, testing with negative results is often one of several options for qualifying an animal for interstate movement. In some programs (*e.g.*, brucellosis), APHIS regulations also require that certain animals and herds be tested, including at slaughter, in order for a State or area to achieve or maintain a particular disease status. At other times, voluntary testing allows the owners of animals to achieve a market advantage by certifying their animals free of particular diseases.

In support of both mandatory and voluntary testing programs, APHIS cooperates with State and local governments, as well as individuals and businesses. In some situations, APHIS personnel collect blood or tissue samples to be tested immediately or sent to laboratories for testing. In other situations, accredited veterinarians, State or local veterinary officials, or

other individuals may collect the samples.

APHIS uses epidemiological data from many mandatory and voluntary tests to assess the prevalence of disease and to identify sources of diseases. When testing is coupled with animal identification, we can trace a positive animal's movements and identify other animals it may have been in contact with that were exposed to the disease. We call this process ''traceback.'' We can then test source herds or flocks and exposed animals and take other measures to ensure that the disease does not spread.

Testing at slaughter is extremely important. Not only is it the last point in normal channels for animal movement when we can test an animal, but for some diseases for which there is no validated live-animal test, like bovine spongiform encephalopathy or chronic wasting disease, it is the only time we can conduct routine diagnostic testing. For other diseases, such as tuberculosis in cattle and bison, brucellosis in cattle, bison, and swine, and exotic Newcastle disease in poultry, testing at slaughter provides a cost-effective means of monitoring the extent of the diseases and detecting areas where the diseases are highly prevalent. APHIS has not been able to use voluntary cooperation by slaughter plants to obtain all the samples it needs for optimal disease surveillance. For instance, APHIS has been allowed to collect some samples in 45 of the 50 major swine processing plants, but we need samples from all 50 plants to construct a valid model of swine disease incidence. Also, when APHIS collectors have gone into plants to replace voluntary collection by the slaughtering plants, the number of samples collected has increased two fold, indicating that voluntary collection has not been effective.

APHIS has held substantial discussions with animal industry groups to explore options for collecting all the samples we need for optimal disease surveillance. Most recently, we participated in a National Dialogue on Animal Disease Surveillance on March 12, 2002, that was sponsored by the National Institute for Animal Agriculture in Arlington, VA. We also participated in a follow-up conference call for interested industry members on April 9, 2002. The approach of this proposed rule has taken those discussions and the concerns of industry members into account.

The reasons why slaughter testing is important in the control of various diseases are discussed below. This discussion does not attempt to identify every disease for which APHIS may want to test animals at slaughter, but is intended to identify the benefits of such testing with regard to certain diseases of major concern, and to identify where testing might help us determine whether other diseases have a greater effect than is currently understood.

There is no simple answer to the question ''How much slaughter testing is needed for proper surveillance of a disease?'' If the animals continually passing through slaughter plants constituted a true random sample of animal populations in the United States, it would be possible to identify a statistically valid number of animals to test, in order to detect animal diseases in U.S. animal populations at whatever prevalence we choose, with whatever confidence we choose. However, the animals passing through a slaughter plant at any given time do not constitute a random sample of the national population. The desirable level of testing at slaughter is also affected by the amount of data already available from non-slaughter testing (*e.g.*, federal and State herd and flock testing, and voluntary testing by animal owners). Finally, the amount of slaughter testing required for proper surveillance will vary with increasing or decreasing national animal inventories each year.

For informational purposes, this document projects certain levels of sample collection at slaughter that we currently believe are required for optimal surveillance of various animal diseases. These estimates of the number of samples required take into account the factors mentioned above—biases in the composition of animals at slaughter plants that make them non-random samples; availability of test data from non-slaughter testing for various diseases; and varying animal populations.

To illustrate the requirements of APHIS sample collection programs, the following discussion examines programs for several major animal diseases: tuberculosis, brucellosis, pseudorabies, and scrapie.

Tuberculosis

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of this century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined.

While cooperation with USDA's Food Safety and Inspection Service (FSIS) and slaughtering plants already allows us to perform a large amount of tuberculosis testing, this proposal would allow us to perform additional testing of animals at slaughtering plants if and when we determine such testing is necessary to improve our knowledge of the distribution of tuberculosis. The data gained through additional testing would improve our ability to administer national tuberculosis programs and to design effective program improvements. Because the activities of FSIS inspectors address primarily human food safety risks rather than animal disease risks, APHIS has never been able to rely completely on sample collection by FSIS inspectors to provide all the samples needed for a statistically valid evaluation of the animal disease profile of animals passing through a slaughter plant. Testing by APHIS rather than FSIS will become increasingly important as FSIS continues to implement its Hazard Analysis Critical Control Point (HACCP) approach to food safety at slaughter plants. The critical control points implemented by slaughter plants to ensure food safety and verified by FSIS do not necessarily provide the sample collection and testing APHIS needs for animal disease surveillance purposes. Therefore, APHIS needs the proposed authority to design and perform its own testing at slaughter plants.

Brucellosis

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus Brucella. In its principal animal hosts, brucellosis is characterized by abortion and impaired fertility. The brucellosis regulations, contained in 9 CFR part 78, prescribe conditions for the interstate movement of cattle, bison, and swine, and provide a system for classifying States or portions of States (areas) according to the rate of *Brucella abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area.

This proposal would allow us to perform additional testing of animals for brucellosis at slaughtering plants if and when we determine such testing is necessary to improve our knowledge of the distribution of brucellosis. The data gained through additional testing would improve our ability to properly classify herds and States, to administer national brucellosis programs, and to design effective program improvements.

Under existing programs to detect brucellosis, two primary surveillance procedures are used to locate infection without having to test each animal in every herd. Milk from dairy herds is checked two to four times a year by testing a small sample obtained from creameries or farm milk tanks for evidence of brucellosis, and some animals from bison herds and cattle herds that do not produce milk for sale are tested for brucellosis at livestock markets or at slaughter. While these surveillance programs are valuable in monitoring brucellosis, the availability of slaughter testing under this proposal is critical to provide complete coverage in the data provided by current surveillance efforts.

Pseudorabies

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease is caused by a herpes virus. Our regulations in 9 CFR part 85 govern the interstate movement of swine and other livestock in order to help prevent the spread of pseudorabies.

A great many feeder pigs and butcher hogs move to slaughter each year, and such swine are not currently required to be tested for pseudorabies. This proposal would allow APHIS to test such swine at slaughter if we find it necessary to do so to improve our knowledge of the prevalence and distribution of pseudorabies. Such testing could also help us assess the success of the recent indemnification program to reduce the incidence of pseudorabies by destroying affected animals.

Scrapie

Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. Currently, to definitively test for scrapie, the brainstem of an animal must be removed through the spinal opening and sent to a laboratory for histopathological procedures. In the near future, testing may involve collecting other tissue or blood samples as well, depending on the tests in use at the time.

APHIS is attempting to improve the effectiveness of its scrapie control program. On August 21, 2001, we published a final rule (Docket No. 97–093–5, 66 FR 43963) in the **Federal Register** that encourages improvement of State quarantine programs for scrapie, reinstituted a Federal indemnity program for scrapie, and made other changes to strengthen scrapie control. Slaughter testing for scrapie would dramatically improve surveillance for scrapie and is an important and necessary part of the broader efforts to improve scrapie control.

Currently, slaughter testing is not required for sheep and goats. There is a small amount of voluntary testing of sheep and goats at slaughter, where we have made special arrangements with slaughtering establishments. However, this is not sufficient because so few sheep are tested at slaughter. Although we do not believe it is necessary to test all sheep and goats at slaughter, we believe that additional animals must be tested at slaughter if we are to have an effective surveillance program and, in turn, control and eventually eradicate the disease.

Other Diseases

There are many other animal diseases that APHIS may test for at slaughter to gain better data about their extent and their effects on productivity. For example, The National Poultry Improvement Plan (NPIP), described in 9 CFR parts 145 and 147, is a cooperative Federal-State-industry mechanism that includes slaughter testing to control certain poultry diseases, particularly those caused by various species of *Salmonella, Mycoplasma gallisepticum, M. synoviae, M. meleagridis,* and avian influenza viruses.

Equine infectious anemia (EIA), also known as swamp fever, is a viral disease of equines that is characterized by sudden fever, swelling of the legs and lower parts of the body, severe weight loss, and anemia. Approximately 1 million live horses are tested for EIA each year, and approximately 0.2 percent of these test positive. However, no comprehensive testing for EIA is currently done at slaughter.

Johne's disease, also known as paratuberculosis, is a disease caused by *Mycobacterium paratuberculosis*. This disease primarily affects cattle, sheep, goats, elk, and other domestic, exotic, and wild ruminants. Improved testing at slaughter for Johne's disease would improve our baseline knowledge of the distribution and extent of Johne's disease and would allow us to better calculate the true cost of this disease to animal industries.

Slaughter testing can also yield valuable information about reservoirs of bluetongue, can help distinguish the prevalence of different strains of this virus, and can also distinguish bluetongue from epizootic hemorrhagic disease. Slaughter testing could also help us better understand the significance of diseases such as porcine reproductive and respiratory syndrome, chronic wasting disease, and other diseases of emerging importance. In addition, if bovine spongiform encephalopathy (BSE) or other transmissible spongiform encephalopathies (TSE's) ever become established in the United States, slaughter testing would be essential for their control. It should be noted that extensive testing for TSE's, should it ever be needed, would raise the overall cost of our testing program considerably, since these tests require necropsy and tissue collection rather than a simple blood sample.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The economic analysis prepared for this proposed rule is set out below. It includes both a cost-benefit analysis as required by Executive Order 12866 and an analysis of the economic effects on small entities as required by the Regulatory Flexibility Act.

APHIS is proposing to require persons moving horses, cattle, bison, sheep, swine, cervids, or poultry interstate to slaughter to move them only to slaughtering establishments that have been listed by the Administrator. The Administrator would list an establishment after determining that it is not necessary to conduct testing there, or determining that testing is necessary and that the establishment provides access and facilities for the collection of tissue and blood samples from the animals slaughtered. We are proposing this action to increase the effectiveness of our surveillance for livestock diseases. Collection of samples currently occurs on a small, voluntary scale, but it needs to be expanded and to include both large and small slaughtering plants. Samples are currently collected by personnel employed by APHIS, FSIS, or the slaughtering plants themselves.

According to NASS and FSIS statistics for slaughtering establishments that may receive animals in interstate movement, there are approximately 795 plants slaughtering cattle, 757 plants slaughtering swine, and 350 plants slaughtering poultry. Fourteen of the cattle plants and 11 of the swine plants are very large operations that account for 50 percent of the cattle and swine slaughtered each year. Several dozen of the plants are of moderate size; the rest are small businesses. Some of these plants slaughter both cattle and swine, and some slaughter other animals as

well (sheep, horses, cervids, etc.). Some degree of sample collection already occurs at virtually all of the cattle plants, *e.g.*, to collect the 12 million blood samples required each year under Part 78 for States to maintain their brucellosis classifications. Sample collection also occurs at virtually all of the poultry plants in accordance with the National Poultry Improvement Plan. Some sample collection already occurs at about 20–25 of the largest swine plants to collect blood samples for pseudorabies testing.

This proposed rule would allow us to collect samples at plants where sampling does not now occur, but where sampling is needed to fill information gaps in our animal disease programs. We expect to initiate testing at several large plants, primarily swine plants, where testing has not occurred before, and at approximately 20 small businesses.

As noted above, many slaughtering plants already voluntarily cooperate with APHIS to allow us to collect samples for testing. Because of the relatively small number of additional animals that would be tested and the relatively small number of cases of disease expected to be identified, we do not expect that this rule would have a significant economic effect on any affected entities. Based on discussions with livestock industry groups and slaughter industry groups, and the fact that most slaughtering plants accepting animals in interstate commerce already cooperate with voluntary testing programs, we expect there will be minimal effects on most slaughtering plants in complying with the proposed standards. While this proposal may increase costs slightly for some slaughtering plants, prices for agricultural products vary for many reasons, and it is unlikely that additional testing for this disease would have any measurable effect on costs for producers or consumers.

The primary economic effects of this proposal would be direct costs to those slaughter plants that would have to provide us with access, workspace, and equipment to collect samples. We do not have reliable data to document these costs, but we estimate that they would average no more than a few thousand dollars a year per plant, for 20 to 30 plants that have not already been providing access under voluntary sampling programs. We particularly invite small businesses that may be affected by this proposed rule to comment on its economic impacts. We are seeking additional data on whether small businesses that must provide space and access for sample collection will incur additional expenses for rents, facility costs, or salaries. We are also seeking data on costs that slaughter plants might incur if it is necessary to slow the production line to collect some types of samples (*e.g.*, tissue samples).

In the following sections we discuss potential economic effects on the various categories of slaughtering plants, based on the types of animals each processes. First, we present two tables summarizing the per-unit costs and the total industry costs estimated to result from the blood and tissue sampling requirements in this proposed rule for cattle, swine, and sheep. Bear in mind that the major costs of sample collection are borne by the Federal government, and that the costs to slaughter plants are limited to costs associated with providing access for sample collection.

TABLE 1.—PER-UNIT COST OF BLOOD AND TISSUE SAMPLING—ANNUAL BASIS

Animal	Number slaughtered (millions)	Disease	Samples currently collected	Samples needed	Cost of collection (per unit)	Cost of testing (per unit)
Cattle	35.5	Brucellosis	12 million	12 million	[1] $0.50–1	$0.10–0.50
Cattle	35.5	Tuberculosis	1,200	4,000	[2] 11–14	20
Swine	101.1	Pseudorabies	750,000	1.2 million	0.45–0.90	1–1.50
Swine	101.1	Brucellosis	750,000	1.2 million	([3])	1–1.50
Sheep	4.0	Scrapie	12,000	75,000	[4] 5–10	30

[1] Contracts for collecting brucellosis samples are negotiated individually, prices vary widely.

[2] To collect a sample for tuberculosis testing takes a veterinarian about a half-hour. An approximate hourly wage rate for a veterinarian employed in a slaughtering facility would range from $22 to $28 per hour. (Veterinarians in this type of job would typically be at a GS–12 level). Additionally, the plant incurs a cost because the speed at which the processing line moves is slowed or stopped for a sample to be taken. Also, the carcass must be held by the plant while the testing is done, which typically takes 3 days. If the test is negative, the carcass is released. If the test is positive, the carcass cannot be sold and steps are taken to trace the disease back to its source.

[3] No cost because the same blood sample is used to test for pseudorabies and brucellosis.

[4] Animal health technicians normally collect scrapie test samples. An animal health technician can collect approximately 10 samples for scrapie testing per hour. Adjusting for time spent bagging samples for shipment, collecting identification devices, other administrative duties, and varying levels of efficiency at different facilities based on their layout and slaughter volume, the actual average collection rate would probably be 2 to 3 samples per hour. An approximate hourly wage rate for a technician employed in a slaughtering facility would range from $16 per hour to $21 per hour, based on the GS–7 pay scale plus benefits. Additionally, the plant would incur a cost because the processing line may be slowed or stopped for a sample to be taken.

TABLE 2.—TOTAL COST OF BLOOD AND TISSUE SAMPLING—ANNUAL BASIS

Animal disease	Samples needed	Per-unit cost of collection	Per-unit cost of testing	Estimated total cost (millions)–lower bound	Estimated total cost (millions)–upper bound
Cattle brucellosis	12 million	$0.50–1	$0.10–0.50	$7.2	$18
Cattle tuberculosis	4,000	11–14	20	0.124	0.136
Swine pseudorabies	1.2 million	0.45–0.90	1–1.50	1.74	2.88
Swine brucellosis	1.2 million		1–1.50	1.2	1.8
Sheep scrapie	75,000	5–10	30	2.625	3
Totals				12.889	25.816

Note: Only approximately 25% of these costs come from increases in sampling resulting from the proposed rule; the remainder represent sampling already occurring under previous authorizations.

Profile of Cattle and Swine Slaughtering Plants

APHIS is trying to increase surveillance for brucellosis, pseudorabies, and tuberculosis at these plants. Collection of samples needs to be expanded to include both large and small slaughtering plants. Under this proposed rule, samples would be collected by APHIS or FSIS personnel, contractors, or the slaughtering plants themselves.

The meat packing industry is included in the North American Industry Classification System code of 311611. The Small Business Administration (SBA) definition of small business for NAICS 311611 is a firm with less than 500 employees.

In 1996, 91 percent (1,260) of the total number of firms (1,341) in the meat packing business qualified as small businesses. Only firms with more than $100 million in sales average more than 500 employees. Eighty-one firms had sales of more than $100 million in 1996. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

There are 795 federally inspected plants that slaughtered at least one head of cattle in 1998. Fourteen plants account for over 50 percent of the total cattle killed. (Agricultural Statistics Board, National Agricultural Statistics Service (NASS), Livestock Slaughter 1998 Summary, March 1999.) There are 757 plants that slaughter hogs. Eleven plants account for 48 percent of the total hogs killed.

Cost of Testing Additional Tissue Samples for Tuberculosis

Currently, FSIS collects about 1,200 tissue samples from slaughter cattle each year to be tested for tuberculosis. There are approximately 100 positive test results per year. It is estimated that .0002 percent of all U.S. cattle may be infected with tuberculosis. There were 98.5 million head of cattle in the United States as of January 1, 1999. Therefore, it is estimated that fewer than 200 head of cattle are infected with tuberculosis at any one time.

Under this proposed rule, the direct costs of collecting a tissue sample and testing it for tuberculosis would be borne by APHIS, in either salary or contractor costs. It takes a veterinarian about a half-hour to collect a sample for tuberculosis testing. An approximate hourly wage rate for a Federal or contractor veterinarian to do these duties would be $22 to $28 per hour. The cost of laboratory analysis to test for tuberculosis is about $20.00.

A slaughtering plant may incur a cost if the speed at which the processing line moves is slowed or stopped for a sample to be taken. Usually, samples can be collected without slowing the line. Also, the carcass must be held by the plant while the testing is done, which typically takes 3 days. Currently about 0.003 percent (1,200) of cattle slaughtered are tested for tuberculosis, and this rule proposes to initially increase testing to 4,000 head annually. Because of the small number of additional tests for tuberculosis, this aspect of the proposed rule would not have a material effect on small business entities.

If a tuberculosis test is negative, the carcass is released. If the test is positive, the carcass cannot be sold and steps are taken to trace the disease back to its source. If this traceback is successful, the herd has to be quarantined while it is tested and may be depopulated if found positive. However, economic effects related to herd quarantine and depopulation are not reasonably linked to this proposal, since herds are already quarantined and depopulated under other APHIS regulations.

Cost of Testing Additional Blood Samples for Cattle Brucellosis

This proposed rule would not change the number of brucellosis test samples collected from cattle or the way in which they are processed. This proposed rule would have no significant economic effect with regard to cattle tested for brucellosis.

Currently there are approximately 12 million blood samples collected each year to test for brucellosis. Under part 78, States must collect these samples in order to maintain their brucellosis status.

There are 795 federally inspected plants that slaughtered at least one head of cattle in 1998. Fourteen plants account for over 50 percent of the total cattle killed. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) All slaughtering plants that ship product across State lines are subject to Federal inspection.

In 1998, there were 35.5 million head of cattle slaughtered; 98.1 percent were subject to Federal inspection. Only cattle that are 2 years old or older are tested for brucellosis.

Most of the blood sample collection is done by plant personnel or by FSIS. APHIS personnel collect only a small percentage of the total samples, approximately 50,000 samples per year, or 0.4 percent of the total.

Testing of the samples for brucellosis costs between $0.10 and $0.50 per sample. The high range of costs would cover follow-up tests from a positive result.

Cost of Testing Additional Blood Samples for Swine Pseudorabies

Currently there are about 750,000 samples collected per year. An estimated 1.2 million samples are needed for more complete testing. We estimate that less than 1 percent of swine herds are infected with pseudorabies.

At a large plant, two people would be needed to do the collection of blood samples on a full-time basis, at a cost to the government of $25,000 to $30,000 per year.

At smaller plants, where not enough swine are slaughtered to warrant having an employee collect blood samples full time, APHIS pays for each sample collected. Rates range from $.45 to $.90 cents per sample.

The sample is sent to a lab for testing. It costs approximately $1.00 per sample for testing. APHIS has some contracts and cooperative agreements with universities to do some testing. The cost is negotiated with each lab separately. The rate can be up to $1.50 per sample.

One reason for some firms' reluctance to participate in collecting blood samples is concern about liability. Collection is often done in potentially hazardous conditions; for example, the floors may be wet, the quarters may be cramped, and there are sharp knives and equipment present.

It is difficult to estimate the average cost incurred because of liability issues. The relevant issue here is the marginal increase in liability costs due to this regulation. Slaughtering plants are already involved in a potentially hazardous activity. Adding the requirement to collect blood and tissue samples would not add significantly to the liability incurred by a plant; but a small increase in liability costs may be expected.

There are 757 plants that slaughter swine. Eleven plants account for 48 percent of the total swine killed. In 1998, 101.1 million swine were slaughtered; 98.3 percent of all swine slaughtered are slaughtered under federal inspection. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) All slaughtering plants that ship products across State lines are subject to Federal inspection. Some 96 percent of the Federally inspected swine at slaughter was barrows and gilts (younger pigs, with less fat, that are used for higher quality cuts of pork). There were about 4 million sows and boars slaughtered in 1998. For testing for pseudorabies, these are the swine

that we are concerned about. There is about a 40 percent turnover in sows per year.

If a herd tests positive, it is then quarantined. The swine can be sold for slaughter but cannot be sold for breeding stock. Swine sold for breeding stock are typically twice as expensive as swine sold for slaughter.

Costs of Testing for Scrapie at Sheep Slaughtering Plants

The slaughtering plant industry is included in NAICS code 311611. The SBA's definition of small business for NAICS 311611 is a firm with less than 500 employees. Only firms with more than $100 million in sales average more than 500 employees. Two slaughtering plants that process sheep had sales of more than $100 million in 1998. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

There are 556 federally inspected plants that slaughtered at least one sheep in 1998. Two plants account for over 40 percent of the total sheep slaughtered (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999). In 1998, 4.429 million sheep were slaughtered, of which 94.8 percent were subject to Federal inspection. Only about 212,000 of these were mature sheep suitable for scrapie testing.

It is estimated that roughly 1.2 percent of all U.S. sheep flocks are infected with scrapie. In 1998, there were only 63 cases of scrapie reported. Given this incidence, approximately 15,000 animals should be sampled at slaughter each year for optimal monitoring for scrapie. Five distinct tissue samples are collected from each animal's head, resulting in about 75,000 samples to be collected. This level of sampling will detect the incidence and distribution of scrapie with a confidence of over 95 percent.

This proposed rule would not have a significant adverse economic effect on small businesses. Blood and tissue samples would be collected either by APHIS, FSIS, or a contractor paid for by USDA. Firms could incur secondary costs for collecting tissue samples for testing as a result of production lines that may have to be slowed down or stopped temporarily. Firms would also incur costs for providing the space, furnishings, and equipment required for the personnel collecting samples, although we believe many firms will be able to minimize these costs by utilizing some of the space and equipment already provided for Federal and State inspectors and firms' quality assurance personnel.

The primary direct costs would be the cost of collecting samples and the cost of testing samples, both of which would be borne by USDA. Over the long term, samples will cost about $5 to $10 each to collect and $30 each to test. Additionally, the plant could incur a cost because the speed at which the processing line moves may be slowed or stopped for a sample to be taken, similar to the effects already caused by FSIS inspections. The sheep or goat carcass would not have to be held by the plant while the testing is done, so it would continue along on the processing line, and the processor would not incur the cost of having to hold the carcass.

Additional testing for scrapie would provide a better record of diseases and enhance our ability to limit the infection of additional flocks with scrapie. While the costs of additional testing are visible, the benefits often are not. The true economic benefit of additional testing is that it will contribute to control and eventual eradication of scrapie, resulting in better overall flock productivity, a reduction in flocks depopulated due to scrapie, and expanded market opportunities for animals that can be marketed as scrapie-free. Production of agricultural commodities varies for many reasons, and it would be difficult to determine the change in production due to additional testing. Because the percentage of animals currently infected with scrapie is small, we expect that slaughter testing will result in the identification and quarantine of very few additional infected flocks. Quarantining the animals in these flocks is not likely to have a statistically significant effect on current or future production.

TABLE 3.—PER-UNIT COST OF COLLECTING AND TESTING SHEEP AND GOAT SAMPLES FOR SCRAPIE

Animals slaughtered (1998)	Samples to be collected (2000)	Samples needed	Cost of collection[1] (per unit)	Cost of testing (per sample)
4.03 million	12,000	75,000	$5–10	$30

[1] See footnote 4 to table 1.

TABLE 4.—TOTAL ANNUAL COST OF COLLECTING AND TESTING SHEEP AND GOAT SAMPLES FOR SCRAPIE

Samples needed	Cost of collection (per sample)	Cost of testing (per sample)	Total cost (millions)
75,000	$5–10	$30	$2.625–3

Costs of Testing Captive Cervids at Slaughter

Captive cervids might be tested at slaughter for tuberculosis and for chronic wasting disease (CWD). The cost per animal of testing cervids for tuberculosis is similar to the cost per animal of testing cattle for this disease. The cost per animal of testing cervids for CWD is similar to the cost per animal of testing sheep for scrapie.

The number of cervids farmed is small compared to cattle, swine, or sheep. Because it is a small industry, NASS does not collect data about cervid production or slaughter. According to the North American Elk Breeders Association, there are 150,000 to 160,000 elk being raised on farms in North America. This number includes elk raised in Canada and Mexico. The number of deer raised on farms is uncertain, but it is also a very small industry compared to cattle, swine, or sheep.

As stated earlier, the meat packing industry is included in NAICS code 311611. The SBA's definition of small business for NAICS 311611 is a firm with less than 500 employees.

In 1996, 91 percent (1,260) of the total number of firms (1,341) in the meat packing business qualified as small businesses. Only firms with more than $100 million in sales average more than

500 employees. Eighty-one firms had sales of more than $100 million in 1996. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

Plants that slaughter captive cervids would qualify as small businesses. It seems that, currently, there are not enough cervids slaughtered per year to motivate large meat packing businesses to devote production lines to the slaughter of cervids.

This proposed rule would not have an adverse effect on small businesses that slaughter cervids. Blood samples would be collected either by APHIS, by FSIS, by contractors, or by the firms themselves. Firms would be compensated on a per unit basis for collecting the samples. The costs of testing captive cervids would be similar to the costs of testing cattle. Because of the small number of tests that are expected to be done, this proposed rule would not have a material effect on small business entities.

Costs of Testing Poultry at Slaughter

In 1997, there were 315 poultry processing firms (NAICS 311615) according to SBA statistics. To qualify as a small business, firms engaged in meat processing must have less than $500,000 in annual receipts. Even the smallest classification of poultry processing firms, those with less than 20 employees, averaged over $1 million in annual receipts in 1999. While this does not exclude the possibility that there may be poultry processing firms that qualify as small businesses, we have been unable to locate any such firms. This proposed rule would not have a significant adverse effect on small businesses.

It is estimated that this proposed rule, if adopted, could result in the collection of a maximum of 300 samples per quarter, collected from about 100 different poultry plants, to conduct adequate testing for exotic Newcastle disease, avian influenza, or other diseases that APHIS may wish to monitor. Blood samples would be collected either by APHIS, by FSIS, by contractors, or by the firms themselves. Firms would be compensated on a per unit basis for collecting the samples.

Additional testing that would be conducted under this proposed rule would be an insignificant amount compared to the testing and inspection already performed at poultry plants. The NASS Agricultural Statistics Board report entitled ''Poultry Slaughter,'' dated February 4, 2000, gives representative figures for the amount of poultry that is inspected or tested at processing plants, and the fraction that is condemned for failing inspection. In December 1999, the preliminary total live weight of poultry inspected was 3.95 billion pounds, up fractionally from the previous year. Ante-mortem condemnations during December 1999 totaled 15.3 million pounds. Condemnations were 0.39 percent of the live weight inspected. Post-mortem condemnations, at 62 million pounds (N.Y. dressed weight), were 1.75 percent of quantities inspected.

In contrast, even if APHIS tested poultry plants at the maximum level envisioned under this proposed rule, and if such testing always resulted in destruction of the poultry tested rather than just collection of a test sample, the total effects would be collection of under 120,000 samples per year, and the loss of under 600,000 pounds of poultry per year.

Benefits of Additional Testing

Additional testing would provide a better record of diseases and enhance our ability to prevent potential outbreaks of diseases. While the costs of additional testing are visible, the benefits often are not. The true economic benefit of additional testing would be the amount by which production is increased or the amount by which production is not lost due to herds being depopulated because of disease. The benefits of this program include better animal disease control, greater productivity in flocks and herds, fewer animals lost to disease, and greater opportunity to develop export markets for animals and products that can have their disease status backed up by an effective slaughter testing program. Increased testing of slaughter samples will allow us to more quickly identify and isolate herds or flocks affected by disease, reducing the number of animals lost to disease control. Production of agricultural commodities varies for many reasons, and it would be difficult to determine the change in production due to additional testing. Because the percentages of animals currently infected with diseases such as pseudorabies and tuberculosis are very small, additional testing for these diseases resulting in the quarantine of some additional herds may not have a statistically significant effect on current or future swine and cattle production, but effective surveillance for these diseases can dramatically increase export markets, increasing the value of herds. Another benefit of additional testing would be that it would contribute to lowering the overall costs of animal disease control programs by generating epidemiological data to make these programs more effective. APHIS alone has spent hundreds of millions of dollars in the past decade on these programs, and more hundreds of millions of dollars on indemnity programs to buy and destroy diseased animals. Over time, a more effective slaughter testing program could reduce these costs. However, in the short-term, a more effective slaughter testing program may detect a higher incidence of diseases, and so may generate greater costs. Gains would accrue in the long-term from improved herd and flock health, reduced disease costs, reduced prophylactic costs, and expanded export opportunities.

Cattle Industry Benefits

This proposed rule would not affect the amount of samples from cattle collected to test for brucellosis or the way in which the testing is conducted. There would be no economic effect due to this proposed rule with respect to collecting blood samples for cattle brucellosis. With regard to cattle tuberculosis, on average one herd per year has to be eradicated because of a positive tuberculosis test. The value of the average size herd in 1996 and 1997 ranged from $46,200 to $52,976. The value of a herd that has to be eradicated can vary widely depending on the size of the herd and market prices. If one cow is found to be tuberculosis positive, the entire herd is quarantined and may be depopulated. Eliminating the cost of depopulating a herd would represent only a small part of the benefit of additional testing. One benefit of this proposed rule would be the value of the herds that do not have to be depopulated. As discussed above, another benefit to both the cattle industry and the general public would result from improved disease control and resultant increased productivity.

Swine Industry Benefits

Elimination of pseudorabies directly impacts producer income. Producers who are able to eliminate this disease from their herds are able to earn up to $4 more per hog. In addition, pseudorabies kills numerous young piglets and causes reproductive problems in sows. Historically, each year pseudorabies has cost several billion dollars in lost producer revenues and the cost of control measures. To the extent that collecting blood samples and testing contributes to faster elimination of pseudorabies, this rule will have a positive economic impact on producer incomes. APHIS hopes to eliminate pseudorabies within the next year. Additional slaughter testing should allow pseudorabies to be eliminated from U.S. swine herds, or reduced to an

insignificant level, several months earlier than would otherwise be possible. The additional slaughter testing that would be allowed if this proposal is adopted would also help establish baseline data that could be used to develop disease control programs to reduce the impact on industry of other swine diseases such as porcine reproductive and respiratory syndrome.

Sheep Industry Benefits

Improved surveillance would aid eradication of scrapie, which would directly affect producer income. Producers who are able to eliminate this disease from their flocks lose fewer animals to disease and can, therefore, maintain more animals at a lower production cost per animal. They can also sell their animals at a higher price and with fewer regulatory costs and may be able to sell to additional foreign markets. To the extent that collecting samples and testing contributes to elimination of scrapie, this proposed rule would have a positive economic effect on producer incomes. The additional slaughter testing that would be conducted if this proposal is adopted would also help establish baseline data that could be used to develop disease control programs to reduce the economic effect on industry of other sheep diseases.

Poultry Industry Benefits

As noted above, the additional testing that would be conducted under this proposed rule would serve as a minor but valuable supplement to the poultry testing already conducted in accordance with the National Poultry Improvement Plan.

The poultry industry, like other animal industries, would benefit in the form of increased productivity and possible expansion of overseas markets. More effective disease surveillance is particularly important in the poultry industry because outbreaks of severe avian disease frequently must be controlled by destroying a number of poultry houses in a flock or the entire flock. This often means the loss of tens of thousands of poultry to control a single outbreak.

Cervid Industry Benefits

In addition to the benefits cited above for other industries, the cervid industry at present faces the possibility that its major export markets will be cut off unless there is an effective slaughter testing surveillance program for chronic wasting disease (CWD). The Republic of Korea recently banned importation of elk antlers from the United States due to concerns about this disease, and other countries may follow. The elk industry depends on foreign markets for a large part of its revenue, and these markets have indicated that they may not import U.S. elk products unless there is a reasonably effective testing program to ensure the products are not from CWD-positive elk.

Overall Summary

The total direct cost of the testing this proposed rule envisions for cattle, swine, and sheep is between $12.889 million and $25.816 million, borne by APHIS. However, as noted above, APHIS already conducts some of this testing on a voluntary basis, although we collect only a fraction of the samples we believe are needed for an effective testing program. If we subtract the cost of testing APHIS is already conducting, the new total direct costs are between about $4 million and $12 million. In addition to these direct costs for cattle, swine, and sheep, there will be direct testing costs for slaughter testing of horses, cervids and poultry. The extent of testing to be done in this area is still uncertain, but it will be much smaller than the program for cattle, sheep, and swine, and should not amount to more than a few million dollars in annual direct costs. In addition to direct testing costs borne by APHIS, slaughtering plants will bear certain direct costs related to providing space and access for sample collection, and possible losses if production lines must be slowed for sample collection. We are requesting comments providing data on costs that slaughter plants might incur if it is necessary to slow the production line to collect some types of sample.

The benefits of this program include better animal disease control, greater productivity in flocks and herds, fewer animals lost to disease, and greater opportunity to develop export markets for animals and products that can have their disease status backed up by an effective slaughter testing program.

The overall costs of this program that are borne by industry are expected to be relatively minor, though further information is needed to assess costs for those plants that need to make adjustments to their operations to comply. In most cases, small businesses will have to do little more than to allow sample collectors to have access to their production lines.

In the following table, costs are compared for the level of slaughter sampling and testing APHIS currently conducts and the increase in such activities we expect would result if this proposed rule is adopted. This table does not include the benefits achieved by current and proposed sampling activity levels, because data are not available to quantify the benefits. As discussed above, the benefits result from avoiding animal disease outbreaks, and there are too many possible outbreak scenarios to allow a meaningful calculation of a benefits range. The expected benefits result from the expectation that sampling and testing helps APHIS avoid some additional animal disease outbreaks, thereby avoiding: (1) The direct cost of dealing with an outbreak (cleaning and disinfection, compensation to producers, quarantine enforcement, etc.); (2) production losses; (3) induced price changes, and (4) the effect of the outbreak on other sectors of the economy. In view of the fact that the economic output of U.S. livestock industries exceeds $100 billion, an avoided impact of even a fraction of 1 percent on this sector would substantially exceed the total sampling costs estimated in Table 5.

TABLE 5—COSTS OF SAMPLING FOR CATTLE BRUCELLOSIS AND TUBERCULOSIS, SWINE PSEUDORABIES AND BRUCELLOSIS, AND SHEEP SCRAPIE

	Low Range	High Range
Current sampling costs	$9,494,700	$21,224,800
Additional sampling costs	3,394,300	4,591,200

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–017–1. Please send a copy of your comments to: (1) Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is responsible for preventing the dissemination of any contagious or communicable disease of animals or live poultry from one State to another. Disease surveillance plays an important role in the APHIS mission of protecting the health of the U.S. livestock and poultry populations, and testing animals for disease is an important surveillance tool. We can use epidemiological data from tests to assess the prevalence of disease and to identify sources of disease. When testing is coupled with animal identification, we can trace a positive animal's movements and identify other animals with which it may have come into contact.

To enhance our surveillance capabilities, we are publishing this proposed rule to provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals) and poultry at slaughter. We would not collect samples from all livestock and poultry at slaughter; we would collect samples whenever we believe it is necessary for effective surveillance.

Implementing a test-at-slaughter program will necessitate the use of a specimen submission form. We are asking OMB to approve, for 3 years, our use of this information collection activity in connection with our efforts to perform testing at slaughter and thus prevent the spread of animal diseases within the United States.

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

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

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

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.3333 hours per response.

Respondents: Slaughtering plant personnel assigned to collect blood and tissue samples.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 120.

Estimated annual number of responses: 12,000.

Estimated total annual burden on respondents: 4,000 hours.

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

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

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 71 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would be revised to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. In § 71.1, the definition of *livestock* would be revised and three new definitions would be added in alphabetical order to read as follows:

§ 71.1 Definitions.

* * * * *

Food Safety and Inspection Service (FSIS). The Food Safety and Inspection Service, United States Department of Agriculture.

* * * * *

Livestock. Horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals.

* * * * *

Move (moved). Shipped, transported, delivered, or otherwise aided, induced, or caused to be moved.

* * * * *

Recognized slaughtering establishment. Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act. A list of recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative.

* * * * *

3. A new § 71.21 would be added to read as follows:

§ 71.21 Tissue and blood testing at slaughter.

(a) Any person moving livestock or poultry interstate for slaughter may only move the animals to a slaughtering establishment that has been listed by the Administrator [1] for the purposes of this part. A slaughtering establishment may receive livestock or poultry in interstate commerce only if the slaughtering establishment has been listed by the Administrator. The Administrator may list a slaughtering establishment after determining that collecting samples for testing from the establishment is not necessary for the purposes of APHIS disease surveillance programs. Otherwise, the Administrator will list a slaughtering establishment after determining that it is a recognized slaughtering establishment or a

[1] A list of these slaughtering establishments may be obtained by writing to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

slaughtering establishment that undergoes voluntary inspection under the provisions of the Agricultural Marketing Act (12 U.S.C. 1141 *et seq.*), and that it:

(1) Provides space and equipment in accordance with paragraph (b) of this section within their facility for blood and tissue sample collection;

(2) Allows APHIS, FSIS, or APHIS contractors to take blood and tissue samples from all livestock or poultry at the facility without cost to the United States, and specifically allows these personnel access to the processing line to collect samples; and

(3) Allows APHIS, FSIS, or APHIS contractors to record the identification of individual animals and retain any external or internal identification devices.

(b) The slaughtering establishment must provide office and sample collection space, including necessary furnishings, light, heat, and janitor service, rent free, for the use by APHIS, FSIS, or APHIS contractors collecting samples for blood and tissue testing under this section. The Administrator will inform each slaughtering establishment of the exact amount and type of space required, taking into account whether APHIS will be conducting complete tests at the facility, or only collecting samples and sending them elsewhere for testing. At the discretion of the Administrator, small plants need not furnish facilities as prescribed in this section if adequate facilities exist in a nearby convenient location. In granting or denying listing of a slaughtering establishment, the Administrator will consider whether the space at the facility:

(1) Is conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of supplies;

(2) Has sufficient light to be adequate for proper conduct of sample collection and processing;

(3) Includes racks, receptacles, or other suitable devices for retaining such parts as the head, glands, and viscera, and all parts and blood to be collected, until after the post-mortem examination is completed;

(4) Includes tables, benches, and other equipment on which sample collection and processing are to be performed, of such design, material, and construction as to enable sample collection and processing in a safe, ready, efficient, and clean manner;

(5) Has adequate arrangements, including liquid soap and cleansers, for cleansing and disinfecting hands, dissection tools, floors, and other articles and places that may be contaminated by diseased carcasses or otherwise; and

(6) Has adequate facilities, including denaturing materials, for the proper disposal of tissue, blood, and other waste generated during test sample collection.

(c) The Administrator will give the operator of the slaughtering establishment actual notice that APHIS, FSIS, or an APHIS contractor will be taking blood and/or tissue samples at the establishment. The Administrator may give the operator of the slaughtering establishment notice in any form or by any means that the Administrator reasonably believes will reach the operator of the establishment prior to the start of sample collection.

(1) The notice will include the anticipated date and time sample collection will begin. The notice will also include the anticipated ending date and time.

(2) The Administrator will give the operator of the slaughtering establishment as much advance notice as possible. However, the actual amount of notice will depend on the specific situation.

(d) *Denial and withdrawal of listing.* The Administrator may deny or withdraw the listing of a slaughtering establishment upon a determination that the establishment is not in compliance with the requirements of this section.

(1) In the case of a denial, the operator of the slaughtering establishment will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the slaughtering establishment was wrongfully denied listing. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the slaughtering establishment will be informed of the reasons for the proposed withdrawal. The operator of the slaughtering establishment may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the listing. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the slaughtering establishment. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

Done in Washington, DC, this 21st day of November, 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–30093 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–23–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B and –200F Series Airplanes Powered by Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines. This proposal would require repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat damage (discoloration), wrinkling, and cracking; and corrective action, if necessary. This action is necessary to find and fix such damage, which could result in cracking

or fracture of the nacelle struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–23–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–23–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from three operators who found heat damage (discoloration) and cracking adjacent to and aft of the precooler exhaust vent on the nacelle struts of three Boeing Model 747 series airplanes powered by Pratt & Whitney JT9D–70 series engines. Investigation revealed that high temperature exhaust air from the precooler vent caused the heat damage. Such damage to the structure could result in cracking or fracture of the nacelle struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001, which describes procedures for repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat discoloration, wrinkling, and cracking; and corrective action, if necessary. The corrective action includes the following:

- If heat discoloration but no wrinkling is found, do a conductivity test of the damaged area(s). If the conductivity test is within specified limits, do a penetrant or high frequency eddy current (HFEC) inspection of the heat discolored areas for cracking. If no cracking is found, repeat the detailed inspection.
- If wrinkling is found, do a penetrant inspection for cracking of the wrinkled area(s). An optional HFEC inspection can also be done for such damage. The service bulletin specifies contacting the manufacturer for additional instructions if wrinkling is found.
- If cracking is found, or the conductivity readings are not within the limits specified in the service bulletin, the service bulletin specifies contacting the manufacturer for additional instructions.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, 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 FAA to make such findings.

Cost Impact

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,880, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–23–AD.

Applicability: Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines, certificated in any category; as listed in Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix heat damage of the pylon skin and internal structure of the nacelle struts, which could result in cracking or fracture of the struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane; accomplish the following:

Repetitive Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat discoloration, wrinkling, and cracking, per the Work Instructions of Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001. Repeat the inspection at least every 18 months.

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.''

(1) If any sign of heat discoloration is found, but there is no wrinkling: Before further flight, do a conductivity test of the discolored area(s) per the service bulletin. If the conductivity test is within the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of the service bulletin, and no cracking is found, before further flight, do a penetrant or high frequency eddy current (HFEC) inspection for cracking.

(2) If any sign of wrinkling is found: Before further flight, do a penetrant or HFEC inspection of the wrinkled area(s) for cracking, per the service bulletin.

(3) If any sign of cracking is found, before further flight, do the corrective action required by paragraph (b) of this AD.

(b) If, during any inspection or test done by this AD, any wrinkling or cracking is found, or the conductivity limits exceed the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of the service bulletin: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; 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.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on November 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30027 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2002–13918; Notice No. 02–19]

RIN 2120–AH43

Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FAA proposes to amend the passenger facility charge (PFC) regulation by changing the amount and unit of collection that a carrier may retain for collecting and handling (including remitting) PFC revenue. FAA proposes to allow carriers to keep $0.10 of each PFC they collect in calendar years 2002 through 2004. From 2005 forward, the amount will increase to $0.11 for each PFC collected. This action is necessary to implement the statutory requirement that the Secretary of Transportation (whose authority has been delegated to the Administrator of FAA) establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs.

DATES: Send comments by January 13, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13918 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also file comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing comments to this proposed rule in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You will find the Docket Office in Room Plaza 401 of the Nassif Building at the U.S. Department of Transportation at the address listed above. You may also review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Passenger Facility Charge Branch, APP–530, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3845; facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Comments Invited

FAA invites interested people to take part in this proposed action by presenting written data, views, or arguments. We also invite comments about the environmental, energy, federalism, or economic impact that might result from adopting the proposals. Commenters should provide cost estimates for substantive comments. Commenters should send two copies of their remarks to the DOT Docket Office address mentioned above. Comments must identify the regulatory docket or notice number.

We will file all comments, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking, in the docket. The docket is available for public inspection before and after the comment closing date.

FAA will consider all comments received by the closing date before acting on this proposed rulemaking. We will consider comments filed late if possible without incurring expense or delay. FAA may change the proposals in this document because of the comments received.

Commenters wishing to receive confirmation that FAA received their comments must include a self-addressed, stamped postcard stating: ''Comments to Docket No. FAA–2002–13918.'' We will date stamp and mail the postcard to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy of this notice using the Internet by taking the following steps:

(1) Select the search button on the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a letter to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and may send electronic inquiries to the following Internet address: *9–AW–SBREFA@faa.gov*.

Background

Statement of the Problem

The Aviation Safety and Capacity Expansion Act of 1990 (ASCE Act), codified at 49 U.S.C. 40117, authorized the passenger facility charge (PFC) program. On May 29, 1991, the Department of Transportation adopted regulations to establish the PFC program. The regulations are codified at 14 CFR part 158. The Secretary of Transportation (Secretary), by regulations codified at 49 CFR 1.48(r), delegated authority to the FAA Administrator to allow a public agency (as defined in 14 CFR 158.3) to impose a PFC of $1, $2, or $3 for each enplaned passenger at a commercial service airport the public agency controls. Public agencies may use the money from such PFC collections only to finance FAA-approved, eligible airport-related projects, as defined at 49 U.S.C. 40117(a)(3). To approve a project, FAA must determine that the project (1) preserves or enhances safety, security, or capacity of the national air transportation system; (2) reduces noise from an airport that is part of such system; or (3) provides opportunities for increased competition between or among carriers.

The ASCE Act directed the Secretary to issue regulations requiring air carriers, foreign air carriers, and their agents, collectively referred to as ''carriers,'' to collect PFCs and pay them promptly to public agencies. The regulations were also to establish a uniform amount, reflecting the average

reasonable and necessary expenses of collecting and handling the PFC, that carriers could retain from PFCs collected. This amount, referred to in 14 CFR part 158 as ''carrier compensation,'' as discussed below, is to be determined by the Secretary net of interest earned on PFC revenue between the time of collection and payment.

FAA carried out this requirement in section 158.53 of the regulations, entitled ''collection compensation.'' Section 158.53 allowed carriers initially to keep ''[a]s compensation for collecting, handling and remitting the PFC revenues'' $0.12 of each PFC remitted, in part to recover the expenses of setting up their systems to process and record charges under the PFC program. On June 28, 1994, under the terms of § 158.53, compensation dropped from $0.12 to $0.08 for each PFC collected, reflecting completion of a recoupment period from program start-up costs. Currently, carriers may keep $0.08 of each PFC remitted. For convenience, we refer to this amount as the ''handling fee'' or ''PFC handling fee,'' as well as ''carrier compensation,'' in the remainder of this discussion. Section 158.53 (b) also authorizes carriers to keep any interest or other investment return earned on PFC revenue between the time the carrier collects and remits it to the airport public agency.

On May 27, 1994, the Air Transport Association of America (ATA) petitioned FAA to amend § 158.53 by extending the handling fee of $0.12 for three more years. ATA proposed to file comments after the three-year extension, showing whether the airline industry had fully recovered the cost necessary to run the PFC collection program. Further, ATA requested that FAA amend § 158.53(a) to allow carriers to keep the handling fee for each refunded PFC, as well as each PFC remitted. FAA published in the **Federal Register** a summary of ATA's petition on June 24, 1994 (59 FR 32668). Recognizing that the standard for setting the level of the handling fee was ''average necessary and reasonable expenses,'' FAA asked carriers and public agencies to send specific data to enable the agency to determine this amount. FAA received twelve comments in response to the notice, but determined the comments did not contain enough information to enable FAA to decide on a rate of compensation that met this standard.

On April 16, 1996, FAA issued an advance notice of proposed rulemaking (ANPRM) (61 FR 16678). In that notice, FAA provided guidance on the quantity and quality of information needed to decide ATA's petition. FAA requested detailed data from carriers that, in total, represented at least 75 percent of the enplanements at PFC-collecting airport locations. FAA needed enough information on current industry costs to decide if the authorized handling fee of $0.08 continued to reflect average necessary and reasonable expenses for collecting and handling and remitting PFCs. FAA determined that a smaller sample, if it included a disproportionate representation from carriers with higher PFC handling costs, would not provide an accurate average handling cost calculation for the industry. In the ANPRM, FAA also invited comments on other issues about PFC revenues and changes in part 158 to address new legislation and industry practices. FAA withdrew this ANPRM on April 10, 2000 (65 FR 18932), because carrier responses fell below the 75 percent minimum response requested by FAA.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) (Pub. L. 106–181), signed into law on April 5, 2000, changed the PFC program. Public agencies may now collect PFCs of $4 or $4.50. On May 30, 2000, FAA issued a final rule that amended part 158. The amendment incorporated administrative and statutory changes in the procedures to set up PFCs based on AIR–21 and other recent acts by Congress and records of decision by FAA. The rule became effective on June 29, 2000.

The issue of carrier compensation arose again during the congressional deliberations leading up to the passage of AIR–21. In report language (House Report 106–513) which accompanied AIR–21, Congress noted that several carriers communicated to the conferees their views that carrier compensation at $.08 for each PFC remitted is too low. While the conferees did not evaluate the correctness of these claims, they noted that FAA should give carriers the opportunity to prove their correctness in a rulemaking action. The report, HR 106–513 encouraged FAA to make its final decision within 189 days from the time carriers present the evidence necessary for evaluation of their claims.

On April 27, 2000, the Office of the Inspector General (OIG) of the Department of Transportation issued a memorandum to FAA. In that memorandum, OIG provided recommendations on the conduct of the proposed rulemaking on PFC collection costs. To ensure that FAA receives the information necessary for evaluation, OIG suggested that cost data be—

- ''[L]imited only to those incremental costs that are directly associated with PFC collection, handling, remittance, reporting, recordkeeping, or auditing. Though incremental cost compensation does not include an allocation for indirect costs such as utilities, officer salaries, and other administrative expense, it will compensate air carriers for the additional costs of handling and remitting PFC's;'' and
- ''[A]ccompanied by an independent audit opinion stating the costs are supportable, presented in accordance with generally accepted accounting principles, and in compliance with the requirement of the proposed rulemaking.''

A copy of this memorandum is included in the docket for this proceeding.

Request for Cost Data

FAA adopted the OIG's recommendations in this rulemaking. Specifically, FAA determined that consideration of incremental costs would best implement the statutory standard that the handling fee reflect ''necessary costs.'' FAA also determined an independent audit opinion would ensure that the calculation of average expenses was based on reliable carrier cost data.

Beginning in April 2000, FAA consulted with the carrier industry through ATA to identify cost categories compatible with carrier cost accounting practices that would meet the specifications of OIG. FAA gathered this information before starting this rulemaking to avoid the data collection problems experienced in its previous rulemaking effort. In addition, FAA consulted with independent accountants familiar with the accounting methods of carriers. FAA examined the extent to which independent accountants could determine if costs reported by carriers are justifiable. Based on these contacts, FAA was able to assemble cost categories and formats, as well as recommended accounting procedures, to ensure the data evaluated in this NPRM are comparable across carriers and conforms to OIG's recommendation.

On October 19, 2000, FAA sent letters to the largest domestic ATA-member carriers. FAA asked the carriers to voluntarily send their 1999 PFC collection and handling cost data to FAA. These carriers account for most of the PFCs collected nationally. At the same time, FAA asked regional and foreign carriers through their trade associations (Regional Air Carriers Association and International Air Transport Association, respectively) if they would voluntarily send their cost data. None of the regional or foreign carriers provided data. The reporting

ATA carriers, however, included costs of their subsidiary regional carriers.

The FAA's letter to the carriers suggested the cost categories and instructions for collecting incremental costs associated with PFC collection, handling, remittance, reporting, recordkeeping, or auditing. The cost categories were: Credit card fees; audit fees; PFC disclosure; reservations; passenger services; revenue accounting, data entry, accounts payable, tax and legal; corporate property department; training reservations, ticket agents, and other departments; carrier ongoing information systems; computer reservation system ongoing; PFC absorption; Airline Tariff Publishing Corporation; and Airline Reporting Corporation. The FAA letter also suggested categories for implementation costs, including carrier one-time information systems and one-time computer reservation costs. In addition, FAA requested data on interest income on unremitted PFC funds. An example of the letter is included in the docket of this proceeding.

In its letter to the carriers, FAA emphasized that carriers will not receive compensation from PFC revenue for an item just because the item appeared on the list of cost definitions. FAA included some items because at least one carrier proposed the item as a collection or handling cost. FAA noted that not all interested parties will agree with the items included in cost definitions. FAA requested data on all cost items listed above, however, to avoid collecting more data later if FAA finds that each cost item qualifies as a ''necessary and reasonable expense of collecting, handling and remitting PFCs.''

In the letter, FAA also said that it was not seeking cost data for years before 1999. FAA stated that if a carrier found evidence of additional costs exceeding the amount authorized for retention in years before 1999, the carrier could petition FAA for a separate rulemaking to address possible under compensation in those years.

Initially, FAA considered asking carriers to have cost data audited before submission to insure its accuracy. Consultation with the independent accountants for the carrier industry, however, found the cost of getting an audit on such cost items would prohibit carriers from conducting such an audit. After consulting with OIG and the airline independent accountants, FAA decided the data could be used if carriers and their independent auditors followed certain procedures (referred to as ''agreed-upon procedures''). Therefore, the letter told each carrier to give its cost data to its independent accountant. In turn, the accountant would use the approved procedures to prepare a report similar to the agreed-upon procedures report in the docket of this proceeding.

To ensure that carriers send data in a consistent format, FAA provided a sample spreadsheet that included cost categories. FAA asked carriers to estimate what 1999 costs would have been for items such as ''credit card fees'' and ''interest revenue on float'' if the carrier had collected $4.50 PFCs at all airports that year. FAA also offered the carriers the opportunity to send out-year projections of costs. Carrier independent accountants could not, however, apply the agreed-upon procedures to out-year projections that would be cost estimates.

FAA invites comments on the categories and agreed-upon procedures. In addition, any carrier who has not already submitted data may submit their own data (that conforms to the agreed-upon procedures included in the docket of this proceeding) during the comment period. Any data submitted will be considered to the extent possible.

Receipt and Initial Processing of Cost Data

Nine carriers provided cost data to FAA by the end of January 2001 under the categories, formats, and procedures suggested by FAA. These carriers were Alaska Airlines, American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, TransWorld Airlines, United Airlines, and U.S. Airways. Each of these airlines sent its data to its independent accountant, who then provided its report using the agreed-upon procedures. The independent accountants sent these reports with the carrier data submissions to FAA.The nine responding carriers reported that in 1999 they remitted 436,659,521 PFCs to airports, representing 84 percent of the calculated total of 518,731,500 PFCs sent nationally in 1999. Thus, the cost data sent by the nine carriers significantly exceed the 75 percent threshold requested in the previous ANPRM data collection effort undertaken by FAA. FAA has no reason to believe that those collecting carriers not presenting data (including international and regional carriers) would have collection and remittance costs significantly different than those of the reporting carriers.

People interested in reviewing the individual carrier data submissions and the procedures reports may inspect them at the U.S. Department of Transportation Dockets, Docket No. FAA–2002–13918, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. In addition, individuals may access electronic copies through the Docket Management System Internet Web page located at *http//dms.got.gov.*

FAA reviewed the carrier's cost data for consistent data categories and formats. Then, FAA consolidated all the information into a single summary table (Table 1). This table summarizes the raw actual cost data for 1999, with estimated costs of imposing the new $4.50 PFC level.

TABLE 1.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS

PFC collection cost categories	1999 actual costs [1]		1999 pro-forma [2]		Implementation [3]	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Credit Card Fees	24,311,612	43.7	33,390,598	52.8	.....	.....
Audit Fees (External)	423,502	0.8	296,166	0.5	85,182	2.5
Disclosure Costs	6,218,343	11.2	6,191,343	9.8	.....	.....
Reservations	9,751,032	17.5	9,317,814	14.7	.....	.....
Passenger Services	5,226,254	9.4	5,092,650	8.1	.....	.....
Data Entry:						
Internal	43,609	0.1	29,605	0.0	.....	.....
Other	.....	0.0	.....	0.0	.....	
Revenue Accounting	857,925	1.5	728,507	1.2	6,875	0.2
Accounts Payable	109,905	0.2	71,390	0.1	.....	.....
Tax & Legal	77,359	0.1	75,859	0.1	.....	.....
Corporate Property Department	323,570	0.6	282,195	0.4	.....	.....

TABLE 1.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS—Continued

PFC collection cost categories	1999 actual costs [1]		1999 pro-forma [2]		Implementation [3]	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Training:						
Reservations	99,154	0.2	99,158	0.2	49,675	1.4
Other	413	0.0	413	0.0	.....	.....
Ticket Agents	782,336	1.4	445,625	0.7	55,424	1.6
Internal On-Going IT	552,695	1.0	488,602	0.8	.....	.....
CRS On-Going fees	5,823,761	10.5	5,732,145	9.1	.....	.....
ATPCO	5,407	0.0	4,643	0.0	135	0.0
ARC + BSP	988,694	1.8	946,262	1.5	77,712	2.2
Internal One-Time IT update	.....	0.0	.....	0.0	3,020,947	87.2
CRS One-Time update	.....	0.0	.....	0.0	168,870	4.9
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a	.....	
Total costs	55,595,572	100	63,192,975	100	3,464,820	100
Total costs less interest	48,525,473	n/a	53,223,024	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521	.....	406,526,509	.....	448,929,355	
Number of PFCs Collected	485,238,737	.....	452,173,384	.....	505,223,269	.....
Percentage of PFCs Refunded	10.0%	.....	10.1%	.....	11.1%	.....
Range of Refunded Rates	5.4% to 20.2%	.....	5.4% to 20.2%	.....	5.4% to 20.2%	.....
Cost Less Interest Per PFC Remitted	$0.1111	.....	$0.1309	.....	$0.0077	.....
Cost Less Interest Per PFC Collected	0.1000	.....	0.1177	.....	0.0069	.....
PFC Absorption	30,495,212	.....	.....	.....	.....	
Cost Per PFC Remitted	0.0698	.....	.....	.....	.....	
Cost Per PFC Collected	0.0628	.....	.....	.....	.....	

[1] Actual costs incurred. Agreed-upon procedures have been applied by the independent accountant to actual 1999 costs. Enplanement data are for 1999.
[2] Assumes the same volume as 1999, but with 100 of PFCs Collected at $4.50 for each PFC—this only impacts Credit Card Fees and Interest Revenue. One carrier did not submit data.
[3] Costs associated with the implementation of the new $4.50 PFC rate in years 2000 and 2001. This column is not year specific. One carrier did not submit data. Enplanement data are for 2000.

The same data, presented in terms of the average cost for each PFC collected and remitted, are presented in Tables 2 and 3.

TABLE 2.—AVERAGE 1999 PFC HANDLING COSTS

PFC collection cost categories	1999 actual costs—average cost per collected PFC				Average cost per remitted PFC
	Average	Standard deviation	Highest reported	Lowest reported	
Credit Card Fees	$0.0501	$0.0039	$0.0588	$0.0446	$0.0557
Audit Fees (External)	0.0009	0.0012	0.0039	0.0002	0.0010
Disclosure Costs	0.0128	0.0286	0.0874	0.0002	0.0142
Reservations	0.0201	0.0131	0.0381	0.0000	0.0223
Passenger Services	0.0108	0.0101	0.0292	0.0000	0.0120
Data Entry:					
Internal	0.0001	0.0002	0.0004	0.0000	0.0001
Other	0.0000	0.0000	0.0000	0.0000	0.0000
Revenue Accounting	0.0018	0.0015	0.0041	0.0002	0.0020
Accounts Payable	0.0002	0.0007	0.0020	0.0000	0.0003
Tax & Legal	0.0002	0.0002	0.0005	0.0000	0.0002
Corporate Property Department	0.0007	0.0005	0.0014	0.0000	0.0007
Training:					
Reservations	0.0002	0.0004	0.0012	0.0000	0.0002
Other	0.0000	0.0000	0.0000	0.0000	0.0000
Ticket Agents	0.0016	0.0033	0.0102	0.0000	0.0018
Internal On-Going IT	0.0011	0.0015	0.0042	0.0000	0.0013
CRS On-Going fees	0.0120	0.0073	0.0189	0.0000	0.0133
ATPCO	0.0000	0.0000	0.0000	0.0000	0.0000
ARC + BSP	0.0020	0.0018	0.0057	0.0000	0.0023
Internal One-Time IT update.					
CRS One-Time update.					
Interest Revenue on Float	(0.0146)	0.0029	(0.0089)	(0.0185)	(0.0162)

TABLE 2.—AVERAGE 1999 PFC HANDLING COSTS—Continued

PFC collection cost categories	1999 actual costs—average cost per collected PFC				Average cost per remitted PFC
	Average	Standard deviation	Highest reported	Lowest reported	
Total Average Costs	0.1146	0.0237	0.1594	0.0837	0.1273
Total Average Costs Less Interest	0.1000	0.0228	0.1439	0.0705	0.1111
Number of PFCs Remitted	436,659,521				
Number of PFCs Collected	485,238,737				
% of PFCs Refunded	10.0%				
Range of Refunded Rates	5.4% to 20.2%				
PFC Absorption	0.0628	0.1625	0.4457	0.0000	0.0698

Values shown as $0.0000 on this table were either reported as zero, not reported (assumed to be zero for calculation purposes), or are a calculated figure determined to be statistically insignificant (*i.e.* less than $0.0001).

TABLE 3.—1999 $4.50 PFC PRO-FORMA AND IMPLEMENTATION COSTS

All Airlines—PFC Collection Cost Categories	1999 Pro-Forma [1]		Implementation costs	
	Average cost per collected PFC	Average cost per remitted PFC	Average cost per collected PFC	Average cost per remitted PFC
Credit Card Fees/Bad Debt	$0.0738	$0.0821	N/A	N/A
Audit Fees (External)	N/A	N/A	$0.0002	$0.0002
Disclosure Costs	N/A	N/A	N/A	N/A
Reservations	N/A	N/A	N/A	N/A
Passenger Services	N/A	N/A	N/A	N/A
Data Entry:				
Internal	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A
Revenue Accounting	N/A	N/A	0.0000	0.0000
Accounts Payable	N/A	N/A	N/A	N/A
Tax & Legal	N/A	N/A	N/A	N/A
Corporate Property Department	N/A	N/A	N/A	N/A
Training:				
Reservations	N/A	N/A	0.0001	0.0000
Other	N/A	N/A	N/A	N/A
Ticket Agents	N/A	N/A	0.0001	0.0001
Internal On-Going IT	N/A	N/A	0.0000	0.0001
CRS On-Going fees	N/A	N/A	N/A	N/A
ATPCO	N/A	N/A	0.0000	0.0000
ARC + BSP	N/A	N/A	0.0002	0.0000
Internal One-Time IT update	N/A	N/A	0.0060	0.0066
CRS One-Time update	N/A	N/A	0.0003	0.0006
Interest Revenue on Float	(0.0220)	(0.0245)	NA	NA
Total Average Costs [1]	0.1383	0.1537	0.0069	0.0077
Total Average Costs Less Interest	0.1163	0.1292	0.0069	0.0077
Number of PFCs Remitted	406,526,509		448,929,355	
Number of PFCs Collected	452,173,384		505,223,269	
% of PFCs Refunded	10.1%		11.1%	
Range of Refunded Rates	5.4% to 20.2%		5.4% to 20.2%	

Values shown as $0.0000 on this table are calculated figures determined to be statistically insignificant (*i.e.* less than $0.0001).

[1] Includes actual 1999 costs for carriers reporting pro-forma data incurred for all categories except credit card fees and interest revenue. Agreed-upon procedures have been applied by the independent accountant to actual 1999 costs, but not to pro-forma $4.50 estimates.

Analysis of 1999 Cost Data

The carriers gave data according to the formats requested. FAA examined the presented data and proposes to accept all cost categories suggested (either in whole or in part), except for the PFC absorption category, as valid incremental costs associated with PFC collection and handling, and thus valid average necessary and reasonable expenses of PFC collection and handling.

Some carriers reported that, in some air service markets, they must ''absorb'' the PFC from other carrier revenues because the markets are too price sensitive for the carrier to pass the PFC along to consumers. In this case, the carriers wish to treat such absorbed costs as administrative expenses

associated with PFC collection and handling.

FAA allowed carriers to present estimates of ''absorbed'' PFC costs as part of this data collection effort, but noted that FAA may discount such data. In particular, it is unclear why the PFC should bear the burden of price sensitivity in a market. FAA asked carriers to show why ''absorption'' is an incremental cost of collecting, handling, remitting, reporting, recordkeeping, and/or auditing the PFC. FAA also requested that carriers send detailed explanations of their method for determining markets where absorption occurs and for calculating absorption.

Four carriers sent information on PFC absorption expenses. One of these carriers accounted for 63 percent of the $30.5 million of such charges identified. On average, for all carriers, these charges would add $0.063 to the cost of each PFC collected nationally. For the one carrier accounting for most of the absorption cost, the cost would amount $0.42 for each PFC collected by that carrier.

The carriers presenting PFC absorption cost data did not provide information on how the absorption cost is related to the cost of collecting and handling the PFC. One carrier imputed an $0.08 charge for each PFC it refunded to passengers as an absorbed cost, in that it did not received the $0.08 handling fee for these collections. However, FAA notes that this imputed charge is not an actual cost of collecting and handling PFCs. Air carriers also have not shown why absorption costs should not be associated with some other cost center of the carrier. Further, the carriers did not explain their methods for determining markets where absorption occurs and or their methods for calculating absorption. FAA has determined there is no reason to classify the charge of a ticket price adjustment as an expense associated with PFC collection and handling (including remitting, reporting, recordkeeping, and/or auditing.) FAA finds it more suitable to classify such a charge as one associated with providing air service, such as company overhead, fuel, labor expense, or airport rates and charges.

Based on the foregoing, FAA proposes to exclude PFC absorption from the calculation of average, reasonable, and necessary expenses of PFC collection and handling.

FAA reviewed the non-absorption 1999 data reported by carriers and found that five cost categories account for 92.3 percent of PFC collection and handling expenses. These categories include credit card fees, disclosure costs, reservations, passenger services, and CRS fees.

The credit card fee was the largest single cost item that FAA proposes to accept, accounting on average for 43.7 percent of PFC collection and handling costs. That amount equals just over $0.05 for each PFC collected or $.056 for each $3 PFC remitted to airport public agencies. FAA found a high degree of uniformity in the cost amounts the nine carriers allocated to this item.

The next largest cost item is reservation services, at 17.5 percent of PFC collection and handling costs, accounting on average for $.02 for each PFC collected and $0.022 for each PFC remitted. Reservations charges include the cost of increased telephone ''talk time'' with airline customers explaining PFCs to customers when they make airline reservations by telephone. Air carriers considered, in some degree, the following items: Total reservation calls handled; PFC calls handled; seconds for each normal call; difficult calls handled; seconds for each difficult call; call hours; and average wage rate per hour. FAA found significant variability among carriers in estimates of this cost item, ranging from $0.00 to $0.038 with a standard deviation of $.013 around the average.

The third largest cost item in the raw data is disclosure costs, at 11.2 percent of PFC collection and handling costs. That amount equals, on average, $.013 for each PFC collected and $0.014 for each PFC remitted. Disclosure costs are attributable to FAA requirement that carriers provide notice to the passenger that PFC fees may be applicable to the passenger. One carrier (Southwest Airlines) accounted for 91 percent of the total reported disclosure costs, but only 13 percent of the total PFCs reported collected by the nine carriers.

FAA notes that Southwest's independent accountant, using the agreed-upon procedures, accepted the carrier's claim of disproportionately high disclosure costs. Moreover, the reason provided for the high disclosure cost, that Southwest Airlines relies disproportionately on television fare advertising as causing the higher cost, is not implausible. Consequently, FAA proposes, on a preliminary basis, to set disclosure costs for this carrier at a level equal to the disclosure costs for all other carriers combined to calculate the handling fee. We have therefore reduced the estimate for total cost of disclosure for all nine carriers to $0.0024 for each PFC collected. That amount is equal to twice the combined $.0012 for each PFC collected charge for all carriers except Southwest Airlines. FAA's eventual acceptance of a significantly higher disclosure cost, as identified by Southwest Airlines, depends, in part, on that carrier's or other carriers' submission of data supporting this claim.

The fourth largest cost item is the on-going CRS (Computer Reservation Systems) expense, at 10.5 percent of PFC collection and handling costs. This amount accounts, on average, for $.012 of each PFC collected and $0.013 of each PFC remitted. Air carriers incur on-going CRS costs, in the form of booking fees, for using the CRS. These costs do not include the one-time charges associated with reprogramming the CRS software to allow a $4.50 PFC or other changes associated with AIR–21.

The fifth and last major cost item is passenger services. This item represents 9.4 percent of PFC collection and handling costs, accounting on average for $.011 of each PFC collected and $0.012 of each PFC remitted. Passenger service costs are attributable to increased face-to-face time with airline customers. FAA found significant variability in estimates of this cost item, ranging from $0.00 to $0.029 with a standard deviation of $.010 around the average.

FAA notes that several carriers may have allocated cost items to the passenger services category that other carriers allocated to the reservations category. Combined, the reservations and passenger services categories vary less than they do independently among the nine carriers. The combined average cost has a standard deviation of $0.014 compared to a mean of $0.025.

The remaining 13 cost categories collectively account for less than 8 percent of total cost of collecting and handling PFCs. No one category exceeds 2 percent.

Table 4 shows FAA's proposed adjustments to Table 1, reflecting the exclusion of claimed ''PFC absorption'' expenses and the proposed reduction of PFC disclosure costs.

TABLE 4.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS

PFC collection cost categories	1999 actual costs		1999 Pro-Forma		Implementation	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Credit Card Fees/Bad Debt Exp.	24,311,612	48.1	33,390,598	57.5	.....	.....
Audit Fees (External)	423,502	0.8	296,166	0.5	85,182	2.5
Disclosure Costs [1]	1,159,495	2.3	1,105,495	1.9	.....	.....
Reservations	9,751,032	19.3	9,317,814	16.0	.....	.....
Passenger Services	5,226,254	10.3	5,092,650	8.8	.....	.....
Data Entry:						
Internal	43,609	0.1	29,605	0.1	.....	.....
Other	.....	0.0	.....	0.0	.....	.....
Revenue Accounting	857,925	1.7	728,507	1.3	6,875	0.2
Accounts Payable	109,905	0.2	71,390	0.1	.....	.....
Tax & Legal	77,359	0.2	75,859	0.1	.....	.....
Corporate Property Department	323,570	0.6	282,195	0.5	.....	.....
Training:						
Reservations	99,154	0.2	99,158	0.2	49,675	1.4
Other	413	0.0	413	0.0	.....	.....
Ticket Agents	782,336	1.5	445,625	0.8	55,424	1.6
Internal On-Going IT	552,695	1.1	488,602	0.8	.....	.....
CRS On-Going fees	5,823,761	11.5	5,732,145	9.9	.....	.....
ATPCO	5,407	0.0	4,643	0.0	135	0.0
ARC + BSP	988,694	2.0	946,262	1.6	77,712	2.2
Internal One-Time IT update	.....	0.0	.....	0.0	3,020,947	87.2
CRS One-Time update	.....	0.0	.....	0.0	168,870	4.9
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a	.....	.....
Total Costs [2]	50,536,723	100	58,107,127	100	3,464,820	100
Total Costs Less Interest	43,466,624	n/a	48,137,175	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521	.....	406,526,509	.....	448,929,355	.....
Number of PFCs Collected	485,238,737	.....	452,173,384	.....	505,223,269	.....
Percentage of PFCs Refunded	10.0	.....	10.1	.....	11.1	.....
Range of Refunded Rates	5.4 to 20.2	.....	5.4 to 20.2	.....	5.4 to 20.2	.....
Cost Less Interest Per PFC Remitted	$0.0995	.....	$0.1184	.....	$0.0077	.....
Cost Less Interest Per PFC Collected	0.0896	.....	0.1065	.....	0.0069	.....

[1] Disclosure costs adjusted to equal two times the reported disclosure costs of all reporting carriers except for Southwest Airlines. See discussion on disclosure costs.

[2] Total costs do not include PFC absorption costs reported by some carriers. See discussion on PFC absorption costs.

Analysis of 1999 Interest Income

Interest earned on the PFC revenue collected by the carrier but not yet remitted to the airport public agencies forms a portion of the collection compensation carriers are entitled to under section 158.53. As part of the analysis of the total collection compensation for the carriers, FAA also requested information on the amount of interest earned by the carriers on unremitted PFC revenue. FAA determined that this interest amounted to $0.0146 for each $3 PFC in 1999. This amount is roughly equivalent to what FAA had estimated based on an assumed retention period of 45 to 50 days and a 4 percent annual interest rate. The variability around this average is low. The highest reported interest is $0.0185 at a 5 percent interest rate. The lowest reported interest rate was $0.0089 at a 2.5 percent interest rate.

Total adjusted average cost for each PFC collected, minus interest earned on the PFC while held by the carrier, was $0.0896 for each PFC collected and $0.0995 for each PFC remitted in 1999. We base this amount on the adjusted values in Table 4. This amount compares to the $0.08 for each PFC remitted currently allowed under the PFC regulation for each PFC remitted. This information provided a reference point for the next step in FAA's process.

Analysis of ''Pro Forma'' $4.50 Costs and Interest Income

FAA sought information on projected or ''pro forma'' costs that would be associated with handling $4.50 PFC levels. FAA specifically asked about the effect of the $4.50 level on credit card fees and interest earned on higher PFC balances. We expected that all other costs would not vary significantly between PFC levels.

To simplify presentation of the ''pro forma'' costs, the carriers included their estimates for credit card fees and interest income with actual 1999 data for the other cost items. One of the nine carriers reporting 1999 actual data did not report the pro forma estimate for the $4.50 PFC level. FAA found that, if it excluded the data from the non-reporting carrier, all data other than credit card fees and interest income are identical between 1999 actual and the $4.50 pro forma data for the remaining eight carriers.

The credit card fee expense becomes a significantly larger item in PFC handling costs at the $4.50 PFC level allowed by AIR–21. This is because the fee paid by the carriers to the credit card company is a percentage of the amount charged. The credit card and bad debt expense items for the $4.50 PFC level would cost carriers, on average, just over $0.074 for each PFC collected or $0.082 for each PFC remitted. We have based these amounts on the pro forma estimates provided by eight of the nine reporting carriers. FAA notes the independent accountants did not evaluate these amounts. These amounts compare to an average credit card fee of $0.0501 for each PFC collected and $0.0557 for each PFC remitted at the $3 PFC level. The estimates at the two PFC levels appear consistent. The actual fee

in 1999 equates to about 1.67 percent of the $3 PFC, whereas the estimated pro forma fee equates to 1.64 percent of the $4.50 PFC. The slight difference compared to the $3 PFC amount may be attributable to the one carrier not reporting. It is significant to note that at the $4.50 level, the credit card fee alone would exceed the $0.08 compensation for each PFC remitted currently allowed under § 158.53.

FAA estimated interest earned on the PFC revenue collected by the carrier but not yet remitted to the airport public agencies to be, on average, $0.0220 for each collected $4.50 PFC and $0.0245 for each remitted $4.50 PFC. This amount is about 52 percent more than estimated for a $3 PFC level. FAA notes that one carrier did not report a pro forma estimate of interest.

In summary, collection and handling costs minus interest income for a $4.50 PFC level would yield a cost of $0.1065 for each PFC collected and $0.1184 for each PFC remitted.

Analysis of $4.50 Implementation Costs

FAA requested data from the carriers on the total cost of setting up the $4.50 PFC allowed by AIR–21. Specifically, FAA asked how much it cost the carriers to change their computer systems and other systems such as the CRS providers, the Airline Tariff Publishing Company (ATPCO), and the Airline Reporting Corporation (ARC). Air carriers and other data providers had to change programming codes and terminal screen formats to allow for four data columns. Previously, the systems only needed a single column for the $1, $2, and $3 PFC levels. Now, computer systems need columns for three numbers and a decimal point for the $4.50 PFC charge. Air carriers and other data providers completed reprogramming by April 1, 2001; however, carriers presented their handling cost data to FAA in December 2000 and January 2001 while efforts were still underway. FAA, therefore, did not require the independent accountants to apply the agreed-upon procedures to these cost items.

Cost items claimed by the carriers for setting up the increased PFC levels included charges for revenue accounting, training of reservations and ticket agents, fees to ATPCO, ARC, and CRS vendors, one-time information technology updates, and audit fees. One of these cost items, one-time information technology updates, accounted for 87 percent of the set-up costs. After analyzing the carrier data, FAA found the total set up cost for carriers was only $.0077 for each PFC collected. That means that carriers could recover the total cost of implementation with a one-year handling fee surcharge of less than one cent.

Although the independent accountants did not review the set up costs, the low cost claimed, particularly for reimbursement of computer service providers, was below FAA's expectations given the size of the reprogramming effort.

Analysis of Ticket Refund Rates

The data we received from the carriers reveals an overall average ticket refund rate of 10 percent. Because a carrier must handle refunded tickets twice, a higher volume of refunded tickets means higher costs for the carrier. The data format specified by FAA did not specifically ask the carriers to send data on the costs associated with refunded tickets because gathering the data would burden the carriers. Rather, the carriers included the costs associated with refunds in their overall cost data.

FAA notes that compensating carriers for each PFC collected compared to compensating them for each PFC remitted are equally valid means of compensation. Suppose total industry costs, minus interest earned, for handling PFCs were $50 million where carriers collected 500 million PFCs and remitted 416 million PFCs. In this example, carriers refunded 84 million PFCs after collections. The carriers collectively would receive the same compensation, $50 million, from collecting airports if the handling fee were set at $0.10 for each PFC collected or $0.12 for each PFC remitted. If all carriers had equivalent refund rates, all would receive equal compensation for the expenses associated with PFC refunds under either method.

FAA notes that selection of a standard fee for each PFC collected or for each PFC remitted may yield different amounts of compensation to individual carriers. In particular, a compensation standard for each PFC remitted, calculated from total industry handling costs and PFC remittances, assumes all carriers have the same PFC refund rates. Air carriers with higher ticket refund rates and higher PFC refund-related handling costs would receive less overall compensation relative to their actual costs than would carriers with low refund rates if compensated for each PFC remitted. This assumes everything else is equal. The data received from the carriers show that refund rates vary significantly among carriers. One large carrier reported a refund rate of only 5.4 percent, whereas another large carrier had a refund rate of 20.2 percent.

Section 40117 of title 49 of the U.S. Code requires FAA to set up a compensation fee that is uniform and reflects the average necessary and reasonable expenses incurred in collecting and handling the PFC, minus interest accrued before remittance. Therefore, FAA cannot set two or more compensation rates based on the different needs of each carrier. FAA does, however, have the choice of setting one fee to compensate carriers either for each PFC collected or each PFC remitted. If FAA elects to compensate carriers for each PFC collected, carriers with high refund rates would not be penalized, and carriers with low refund rates would not receive a windfall.

Calculation of PFC Handling Fee

The average PFC handling fee reported by the carriers was $0.0896 for each $3 PFC collected in 1999 and $0.0995 for each $3 PFC remitted in 1999. (*See* the 1999 actual costs at the bottom of Table 4). We propose to subtract interest earned on collected PFCs from this amount and excluded ''PFC absorption'' expenses. The amount also includes a downward adjustment for disclosure costs. Had a $4.50 PFC been in place that year at all airports where PFCs are collected, the carriers estimate the increase in their costs, minus interest, would have raised their overall cost to $0.1065 for each $4.50 PFC collected and $0.1184 for each $4.50 PFC remitted. (See the 1999 pro forma costs at the bottom of Table 4). A surcharge would be necessary to compensate carriers for the one-time cost of setting up the $4.50 PFC level.

Selecting the right compensation level clearly depends on the assumption made about what mix of $4.50 and $3 PFCs carriers will collect. FAA estimates that nearly 50 percent of all collected PFCs will be at $4.50 in 2002, 75 percent will be at $4.50 in 2003, and 90 percent will be at the $4.50 level in 2004, and almost 100 percent thereafter. Therefore, FAA proposes to phase in a new collection fee based on the estimated mix of $3 and $4.50 collections over the next several years. Table 5 summarizes FAA's proposal for compensating carriers for each PFC collected or each PFC remitted.

TABLE 5.—ACTUAL COSTS AND PROPOSED FEES

	Year 2002 [1]	Year 2003 [2]	Year 2004 [3]	Year 2005 [4]
Compensation Based on PFCs Collected:				
1999 Cost Per PFC Collected at $3 (Actual)	$0.0896	$0.0896	$0.0896	$0.0896
1999 Cost Per PFC Collected at $4.50 (Pro-Forma)	0.1065	0.1065	0.1065	0.1065
Weighted Cost Per PFC Collected (Actual)	0.0981	0.1023	0.1048	0.1065
Proposed Fee Per PFC Collected	0.1000	0.1000	0.1000	0.1100
Over/Under Collection Per PFC	00019	(0.0023)	(0.0048)	0.0035
Compensation Based on PFCs Remitted:				
1999 Cost Per PFC Remitted at $3 (Actual)	0.0995	0.0995	0.0995	0.0995
1999 Cost Per PFC Remitted at $4.50 (Pro-Forma)	01184	01.184	0.1184	0.1184
Weighted Cost Per PFC Remitted (Actual)	0.1090	0.1137	0.1165	01184
Proposed Fee Per PFC Remitted	0.1100	0.1100	0.1200	0.1200
Over/Under Collection Per PFC	0.0010	(0.0037)	0.0035	0.0016

[1] (Assumes 50% at $3 and 50% at $4.50)
[2] (Assumes 25% at $3 and 75% at $4.50)
[3] (Assumes 10% at $3 and 90% at $4.50)
[4] (Assumes 0% at $3 and 100% at $4.50).

FAA considered using fees involving fractional cents but opted to use whole cent units for ease of explanation and to prevent possible reprogramming expenses for carriers and airports. Table 5 shows that if carriers receive compensation for each PFC collected, the proposed rate would be $0.10 for each PFC collected, through calendar year (CY) 2004. In CY 2005 and beyond, the rate would increase to $0.11 and remain at that level. If carriers received compensation for each PFC remitted, the proposal would set the fee at $0.11 for each PFC remitted through CY 2003. Then, the rate would go to $0.12 for each PFC remitted in CY 2004 and beyond.

Based on data reported by the nine carriers for 1999, Table 6 shows that either method yields about the same compensation over a ten year period, measured by net present value using a 7 percent discount rate. FAA finds the discounted compensation over a 10-year period exceeds ongoing PFC handling expenses by roughly the amount needed to recover the one-time set up costs (adjusted to 2002 present value) for the $4.50 PFC. Excess compensation would be less than half of one percent of estimated carrier costs over the 10-year period. Air carriers would receive more compensation if the rate is set for each PFC collected instead of each PFC remitted, but the difference between the two methods is not significant.

TABLE 6.—COMPARISON OF COMPENSATION STREAMS, COLLECTED VS. REMITTED

	Per collected PFC		
	Weighted actual handling cost	Proposed compensation	Difference
PFCs Collected by Carriers Reporting Data—485,238,737			
Calendar Year:			
2002	$47,577,658	$48,523,874	$946,216
2003	49,627,792	48,523,874	(1,103,918)
2004	50,857,872	48,523,874	(2,333,998)
2005	51,677,925	53,376,261	1,698,336
2006	51,677,925	53,376,261	1,698,336
2007	51,677,925	53,376,261	1,698,336
2008	51,677,925	53,376,261	1,698,336
2009	51,677,925	53,376,261	1,698,336
2010	51,677,925	53,376,261	1,698,336
2011	51,677,925	53,376,261	1,698,336
Present Value 2002–11 (2002)	356,672,024	362,158,324	5,486,300
Present Value of One-Time $4.50 PFC Implementation Costs (2002)	.....	.....	3,707,357
Present Value of Net Compensation (Difference Less Implementation)	.....	.....	1,778,943
Percent Net Compensation of Total Weighted Actual Handling Costs	.....	.....	0.5%

	Per remitted PFC		
	Weighted actual handling cost [1]	Proposed compensation	Difference
PFCs Remitted by Carriers Reporting Data—436,659,521			
Calendar Year:			
2002	$47,574,055	$48,032,547	$458,492
2003	49,637,271	48,032,547	(1,604,724)

	Per remitted PFC		
	Weighted actual handling cost [1]	Proposed compensation	Difference
2004	50,875,201	52,399,143	1,523,942
2005	51,700,487	52,399,143	698,655
2006	51,700,487	52,399,143	698,655
2007	51,700,487	52,399,143	698,655
2008	51,700,487	52,399,143	698,655
2009	51,700,487	52,399,143	698,655
2010	51,700,487	52,399,143	698,655
2011	51,700,487	52,399,143	698,655
Present Value 2002–11 (2002)	356,790,337	360,134,767	3,344,430
Present Value of One-Time $4.50 PFC Implementation Costs (2002)	.....	.....	3,707,357
Present Value of Net Compensation (Difference Less Implementation)	.....	.....	(362,927)
Percent Net Compensation of Total Weighted Actual Handling Costs	.....	.....	(0.1%)

[1] Weighted actual costs for total remitted PFCs vary slightly from these shown for total collected PFCs (by 0.03) due to slightly different refund rates between the actual and pro-forma cost estimates.

Table 7 shows the proposed rates of compensation compared with the existing $0.08 rate of compensation for each PFC remitted over a ten-year period, from 2002 to 2011. Table 7 is calculated based on compensation for each remitted PFC because that is the method for the current $0.08 compensation level. However, the amount of increase in total compensation to carriers shown in Table 7 for the remitted PFC methodology is comparable to what would result from the collected PFC methodology. Under the proposed rates of compensation, the reporting carriers would receive $13 million more in compensation each year through 2003 than they would under the $0.08 rate of compensation. Then, they would receive more than $17 million in added compensation in 2004 and beyond.

FAA notes the data presented by the nine carriers represented 84 percent of the estimated total PFCs collected in 1999. When we estimated the total impact on the entire PFC program, including all PFC collections and remittances, we found that air carries would receive $16 million more in compensation in 2002 and 2003, and $21 million more in the years after. These estimates are based on 1999 enplanement levels.

By 2005, this added compensation would constitute less than 1 percent (0.89 percent) of the total PFC collection stream realized by the airports. The total compensation amount, including the $0.08 level existing, would constitute 2.67 percent of collections. Over a ten-year period, increased collection as measured in present value terms would be 0.87 percent of total PFCs collected.

TABLE 7—COMPENSATION COMPARISON: PROPOSED FEE VS. $0.08 HANDLING FEE

	Proposed fee per remitted PFC	$0.08 fee per remitted PFC	Difference	Value of PFCs collected
PFCs Remitted by Carriers Reporting Data—436,659,521				
Calendar Year:				
2002	$48,032,547	$34,932,762	($13,099,786)	$1,637,473,204
2003	48,032,547	34,932,762	(13,099,786)	1,801,220,524
2004	52,399,143	34,932,762	(17,466,381)	1,899,468,916
2005	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2006	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2007	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2008	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2009	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2010	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2011	52,399,143	34,932,762	(17,466,381)	1,964,967,845
Present Value (2002)	360,134,767	245,353,100	(114,781,667)	13,298,552,236
Increase as Percent of PV of PFCs Collected	.....	.....	.....	0.8631%
Undiscounted Value	515,258,235	349,327,617	(165,930,618)	19,092,937,556
Increase as Percent of PFCs Collected	.....	.....	.....	0.8691%

Note: This table does not compare fees based on PFC collections because the existing compensation fee ($0.08) is paid per remitted PFC. However, the two proposed compensation methodologies yield approximately the same level of new compensation.

Treatment of Inflation

Most of the nine carriers reporting handling costs also asserted that inflation affects costs. FAA has found, however, that the use of an inflation factor for handling fees is problematic for several reasons. First, the largest cost item, the credit card transaction fee, is not necessarily linked to inflation in the economy. Second, the long-term link between prevailing rates of wage compensation for reservations agents and other airline personnel, and productivity, such as the ability to handle ticket transactions more efficiently through e-ticketing from internet sites, is difficult to forecast. Should handling fees for each PFC rise significantly because of inflation, FAA notes that airlines should document this

increase and provide the information to FAA in a petition to amend part 158.

Conclusion

Currently, FAA bases PFC handling fees on remitted PFCs rather than collected PFCs. However, as noted above, data show that refund rates vary significantly among carriers. Therefore, FAA proposes to compensate carriers for PFCs collected. Specifically, FAA proposes that carriers receive $0.10 for each PFC collected through CY 2004. From CY 2005 and beyond carriers will receive $0.11 for each PFC collected. FAA reminds all parties the current requirements of § 158.53 remain in effect unless FAA issues a final rule changing the PFC rule. Until changed through a final rule, carriers remain entitled to receive $0.08 for each PFC remitted. New fees, if any, set up in a final rule will not be retroactive from the date of that final rule, nor will a change in the basis for compensation be retroactive.

Paperwork Reduction Act

Information collection requirements in the amendment to part 158 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0557. Note that nine carriers voluntarily presented data to FAA for analysis before FAA began this rulemaking action.

International Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to these proposed compensation adjustments.

Economic Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits which do justify its costs, is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket.

Benefit—Cost Analysis

This proposed rule will amend part 158 to bring compensation for PFC collection and handling to levels necessary to meet cost increases resulting in part from the new statutory rules set up under AIR–21. AIR–21 allows airport authorities to increase the PFC level to $4 or $4.50 to collect more funds. Airport authorities will use these funds to (1) enhance the safety, security and capacity of their facilities; (3) reduce noise in nearby communities; and (3) enhance airline competition to the benefit of air travelers. The PFC statute requires that the Secretary of Transportation (whose authority has been delegated to FAA) establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs. This amount, referred to in 14 CFR part 158 as ''carrier compensation,'' is to be determined net of interest earned on PFC revenue between the time of collection and payment. The current compensation amount allowed by § 158.53 is $0.08 for each PFC remitted. However, the increase in the PFC level to $4 or $4.50 from the earlier $3 cap introduced new costs to carriers for which carriers do not receive compensation under the prevailing rate of $0.08 for each PFC remitted. In addition, some carriers and their trade organizations have argued that the $0.08 compensation amount is not enough even at the $3 for each PFC remitted level. FAA proposes a new amount of compensation at $0.10 for each PFC collected through calendar year 2004. In 2005 and beyond carriers would receive $0.11 for each PFC collected. Based on 1999 PFC collections, FAA estimates the change would increase carrier compensation by $21 million yearly in PFC funds. Otherwise, airports would have received this added compensation instead of the carriers. Once airports widely adopt the $4.50 PFC, this higher compensation amount would be less than one percent of estimated airport PFC receipts. This proposed amount would not erode airport authorized PFC collection amounts. Rather, airports would be able to recover this slightly higher compensation amount by minimal extensions of PFC collection periods. In addition, any impact on airport revenue streams caused by the higher compensation amount is an unavoidable result of providing a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs, as required by the PFC statute. Air travelers will not incur an increase in the cost of their tickets because of this adjustment. Air carriers may incur some minor costs (if any) of setting up the change of compensation amounts in their accounting programs, but the benefits of the higher compensation amounts would outweigh this cost.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The change to the compensation amount is necessary to conform with the PFC statute, which requires the Secretary to establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs (net of interest accruing to the carrier and agent after PFC collection and before remittance of the PFC to the airport public agency). Moreover, all costs to the small entity are fully recoverable through the PFC, if approved. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), FAA certifies this rule will not have a significant impact on a substantial number of small entities.

International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified at 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Executive Order 13132, Federalism

FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined this notice of proposed rulemaking would not have federalism implications.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

Environmental Analysis

FAA concludes that issuance of this proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The potential environmental effects of any project funded with PFC revenues are already addressed under § 158.29(b)(1)(iv), which requires all applicable requirements pertaining to the National Environmental Policy Act of 1969 (NEPA) to be satisfied before the Administrator may approve the project to use PFC funds. A copy of this assessment has been placed in the docket.

Energy Impact

We have assessed the energy impact of the proposed notice in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. We have determined the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 158

Air carriers, Airports.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 158 of title 14 of the Code of Federal Regulations as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

2. Amend § 158.53 by revising the introductory text and paragraph (a) to read as follows:

§ 158.53 Collection compensation.

As compensation for collecting, handling, and remitting the PFC revenue, the collecting carrier is entitled to:

(a) Retain $0.10 of each PFC collected on or after (the effective date of the final rule) and before January 1, 2005, after which carriers are entitled to $0.11 of each PFC collected;

* * * * *

Issued in Washington, DC, on November 20, 2002.

Benito DeLeon,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 02–30103 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

November 20, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference.

SUMMARY: Commission staff will convene a technical conference on December 6, 2002 to discuss the cyber-security provisions described in Section M and Appendix G of the Notice of Proposed Rulemaking issued in this docket on July 31, 2002. *See* 67 FR 55,452 (Aug. 29, 2002). There will be an opportunity for interested persons to make very brief public statements at the conference, following the presentations.

DATES: Requests to speak are due November 27, 2002. The conference will take place on December 6, 2002.

ADDRESSES: Send requests to speak to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The conference will take place at: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference

1. Take notice that a technical conference will be held on December 6, 2002, from approximately 9:30 a.m. until 3 p.m., in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The goal of the conference is to discuss and analyze proposed rules for cyber-security.

2. Conference panelists will discuss the security provisions described in Section M and Appendix G of the Notice of Proposed Rulemaking (NOPR) published in this docket on July 31, 2002. They will also address the updated proposal that the North American Electricity Reliability Council (NERC) filed in this docket on November 15, 2002. There will be a discussion of the public comments filed in response to the system security provisions described in the NOPR, and an opportunity to make additional public comments, as described below.

3. Copies of the NOPR security proposal may be obtained from: *http://www.ferc.fed.us/Electric/RTO/Mrkt-Strct-comments/discussion_paper.htm.* Copies of the NERC security proposal are available in Appendix A at: *ftp://www.nerc.com/pub/sys/all_updl/docs/ferc/RM01–12–000–SMD.pdf.*

4. Commission staff has asked selected individuals to speak at this conference, and is not entertaining requests to make presentations. However, interested persons will be permitted to make very brief public statements. Such statements should not be repetitive of materials that speakers have already filed in the public record of this docket. Persons interested in making brief statements should file a request to speak on or before November 27, 2002, in Docket No. RM01–12–000. If possible, interested speakers should also send a copy of their request to speak by e-mail to *customer@ferc.gov.* The request should clearly specify the name of the speaker; his or her title; the person or entity the speaker represents; the speaker's mailing address, telephone number, facsimile number and e-mail address; and a brief description of the issues the speaker wishes to address. As the number of potential speakers may exceed the time allotted for the conference, interested speakers are encouraged to coordinate their efforts with others who may have similar interests.

5. All interested persons may attend the technical conference, and registration is not required. Further details of the conference, and the conference agenda, will be provided in a subsequent notice.

6. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

7. For more information about the conferences, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30032 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, 154, 201, 346, and 352

[Docket No. RM02–7–000]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations

November 21, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a comment date in the Commission's proposed rule published in the **Federal Register** of November 19, 2002, regarding accounting, financial reporting and rate filing requirements for asset retirement obligations. This correction clarifies the Public Comment Procedures to note that comments are due on or before January 3, 2002.

DATES: Comments on the proposed rulemaking are due on or before January 3, 2003.

FOR FURTHER INFORMATION CONTACT:

Raymond Reid (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6125.

Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370.

SUPPLEMENTARY INFORMATION:

Notice of Correction

The Federal Energy Regulatory Commission published in the **Federal Register** of November 19, 2002, a Notice of Proposed Rulemaking proposing to amend its regulations to update its accounting and financial reporting requirements under its Uniform Systems of Accounts. The specific date by which the public should submit comments was not inserted in the Public Comment Procedures section of the preamble. In

the **Federal Register** Document 02–28294 published on November 19, 2002 (67 FR 69816) make the following correction.

On page 69826, in the third column, in number 97, correct the sentence ''Comments are due within 45 days from publication in the **Federal Register**'' to read as follows:

''Comments on the proposed rulemaking are due on or before January 3, 2003.''

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30034 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142599–02]

RIN 1545–BB23

Guidance Regarding Mixed Use Output Facilities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to an advance notice of proposed rulemaking.

SUMMARY: This document contains a correction to an advance notice of proposed rulemaking that was published in the **Federal Register** on Monday, September 23, 2002 (65 FR 59767), relating to the issuance of tax-exempt bonds for the government use portion of an output facility that is used for both a government use and a private business use.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking that is the subject of this correction is under sections 103 and 141 of the Internal Revenue Code.

Need for Correction

As published, the advance notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–142599–02), that was the subject of FR Doc. 02–24138, is corrected as follows:

On page 59767, column 2, in the preamble under the paragraph heading ''Background'', fifth paragraph, line 4, the language ''690 (1986), 1986–3 (Vol. 4) C.B. 686 (the'' is corrected to read ''690 (1986), 1986–3 (Vol. 4) C.B. 690 (the''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–30141 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143321–02]

RIN 1545–BB60

Information Reporting Relating to Taxable Stock Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions.

DATES: The public hearing originally scheduled for Wednesday, March 5, 2003, at 10 a.m., in room 4718, is rescheduled for Tuesday, March 25, 2003, at 10 a.m., in room 4718. Written or electronic outlines of oral comments must be received by Tuesday, March 4, 2003.

ADDRESSES: The public hearing is being held in room 4718 of the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter Main entrance, located at Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:ITA:RU (REG–143321–02), 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–143321–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–143321–02), that was published in the **Federal Register** on Monday, November 18, 2002 (67 FR 69496), announced that a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions under sections 6043(c) and 6045 of the Internal Revenue Service Code would be held on Wednesday, March 5, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The date of the public hearing has changed. The hearing is scheduled for Tuesday, March 25, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. We must receive outlines of oral comments by Tuesday, March 4, 2003.

Because of the controlled access restrictions, attendees are not admitted beyond the lobby on the Internal Revenue Service Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–30142 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124667–02]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, October 7, 2002 (67 FR 62417) that would consolidate the content requirements applicable to

explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans.

FOR FURTHER INFORMATION CONTACT: Sara P. Shepherd at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections is under section 417 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–124677–02), that was the subject of FR Doc. 00–25338, is corrected as follows:

1. On page 62421, column 2, in the preamble under the caption ''Comments and Public Hearing'', second full paragraph, line 2, the language ''for January 14, 2002, at 10 a.m. in room'' is corrected to read ''for January 14, 2003, at 10 a.m. in room''.

2. On page 62421, column 2, in the preamble under the caption ''Comments and Public Hearing'', third full paragraph, line 8, the language ''January 2, 2002. A period of 10 minutes'' is corrected to read ''January 2, 2003. A period of 10 minutes''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–30143 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV 101N; AG Order 2632–2002]

RIN 1105–AA75

Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Expansion of Coverage to Uranium Millers and Ore Transporters; Expansion of Coverage for Uranium Miners; Representation and Fees

AGENCY: Civil Division, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On August 7, 2002, the United States Department of Justice published a proposed rule to implement the Radiation Exposure Compensation Act Amendment of 2000. The original 60-day comment period expired on October 7, 2002. The Department is reopening the comment period for an addition 60-day period.

DATES: Comments must be received on or before January 27, 2003.

ADDRESSES: Comments may be mailed to Gerard W. Fischer, Assistant Director, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616–4090, and Dianne S. Spellberg (Senior Counsel), (202) 616–4129.

SUPPLEMENTARY INFORMATION: On August 7, 2002, the Department of Justice (Department) published a rule that proposed amendments to the regulations governing radiation exposure compensation claims. The principal reason for the amendments was implement the provisions of the Radiation Exposure Compensation Act (Act) Amendments of 2000 that expanded coverage under the Act to uranium mill workers and individuals employed in the transport of uranium ore or vanadium-uranium ore, and that expanded the population of eligible uranium mine workers by lowering the radiation exposure threshold for miners, by enlarging the number of uranium mining states with respect to which miners may be eligible for compensation, and by including ''above ground'' miners within the scope of the regulations. See 67 FR 51440.

The Navajo RECA Reform Working Group, a coalition of six organizations within the Navajo Nation, has requested an additional 60-day period in which to provide comment on the proposed rule. This additional period of time would allow the coalition to translate the proposed rule into the Navajo language, thereby allowing the Navajo elders to participate in the regulation review process. Granting this request ensures that this community, as well as other entities and individuals, have ample opportunity to fully review and comment on the proposed rule.

Accordingly, the Department is reopening the comment period and will accept public comments for an additional 60 days after publication of this notice.

Dated: November 22, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–30129 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–132]

RIN 2115–AA97

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

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent safety and security zones around the Indian Point Nuclear Power Station (IPNPS), all commercial waterfront facilities, Liquefied Hazardous Gas (LHG) Facilities on the Arthur Kill; moored or anchored U.S. Coast Guard vessels; Coast Guard Stations New York, Sandy Hook, and Kings Point and Aids to Navigation Team New York; Ellis and Liberty Islands; all bridge piers and abutments, and overhead power cable towers, piers and abutments; tunnel ventilators; the New York City Passenger Ship Terminal; a moving safety and security zone around ''Designated Vessels'' (DVs) deemed by the Captain of the Port to require special protection on account of their hazardous cargo or passenger carrying capacity; and revise the current regulations that establish moving safety zones around Liquefied Petroleum Gas vessels. This action is necessary to safeguard facilities, vessels, public, and the surrounding areas from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: Comments and related material must reach the Coast Guard on or before December 27, 2002.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–02–132), Coast Guard Activities New York, 212 Coast Guard Drive, Room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and 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 room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–132), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Activities New York Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001, terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13,273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States,* 67 FR 56215 (September 3, 2002).

Immediately following the September 11th attacks, we published a temporary final rule (66 FR 51558) that established a temporary regulated navigation area, and safety and security zones in the New York Marine Inspection and Captain of the Port New York Zones. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That temporary final rule was subsequently revised (67 FR 16016; 67 FR 53310) to extend its effective period through December 31, 2002.

The Coast Guard proposes to establish permanent safety and security zones throughout the New York Marine Inspection and Captain of the Port Zones as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, the proposed permanent safety and security zones are necessary to provide for the safety of the port and ensure that vessels, facilities, bridges, overhead power cables, or tunnel ventilators, are not used as targets of, or platforms for terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones. We anticipate that the final rule developed as a result of this rulemaking will be effective no later than January 1, 2003.

Discussion of Proposed Rule

This proposed rule would establish the following safety and security zones:

Indian Point Nuclear Power Station (IPNPS)

The Coast Guard proposes to establish a permanent safety and security zone in all waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W. The zone is necessary to protect the IPNPS, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to vessels, the port, or the environment. Commercial vessels would still be able to transit through the 540 yards between the western boundary of the safety and security zone and Hudson River Lighted Buoy 27 (LLNR 37930), and recreational vessels would still be able to transit through the western 1,115 yards of the 1,415-yard wide Hudson River. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liquefied Hazardous Gas Vessels (LHG), LHG Facilities, and Designated Vessel (DV) Transits

The Coast Guard proposes to revise the Liquid Petroleum Gas (LPG) vessel safety zone at 33 CFR 165.160. That regulation establishes a 100-yard moving safety zone around any LPG vessel while it transits between Scotland Lighted Horn Buoy S (LLNR 35085) and the Arthur Kill. The proposed revision would establish a safety and security zone to include all waters within the New York Marine Inspection and Captain of the Port Zones within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility. We also propose to establish a moving safety and security zone to include all waters within a 100-yard radius of any ''Designated Vessel'' (DVs) transiting the New York Marine Inspection and Captain of the Port Zones. DVs include: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State, or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

These proposed safety and security zones are necessary to protect the LHG vessels, LHG facilities, DVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel or a facility that could potentially cause serious negative impact to human life, the vessels, facilities, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to their potential as a target of subversive or terrorist attack, which could result in significant casualties. Vessels may transit through any portion of the proposed LHG facility safety and security zones that extend into the navigable channel for the sole purpose of transiting through the safety and

security zones so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the safety and security zones.

The Captain of the Port will notify the maritime community of the periods during which the proposed safety and security zones will be enforced by the methods identified in 33 CFR 165.7 including electronic mail broadcasts identifying ''Designated Vessel'' transit.

U.S. Coast Guard Cutters and Shore Facilities

The Coast Guard proposes to establish permanent safety and security zones within 100 yards of each moored, or anchored, Coast Guard Cutter operating within the New York Marine Inspection and Captain of the Port Zones. We also propose to establish a safety and security zone within 100 yards of Coast Guard Station New York, Staten Island, NY, Coast Guard Station Sandy Hook, NJ, Coast Guard Station Kings Point, NY, and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

The proposed safety and security zones would protect Coast Guard assets, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the Coast Guard that could cause serious damage to vessels, the port or the environment or adversely impact the Coast Guard's ability to conduct its assigned missions. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to any cutter or shoreside facility. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Commercial Waterfront Facilities

The Coast Guard proposes to establish a permanent safety and security zone within 25 yards of each commercial waterfront facility located within the New York Marine Inspection and Captain of the Port Zones that is capable of accepting barge, ship, or ferry vessels. A ''commercial waterfront facility'' means all piers, wharves, docks and similar structures to which commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings. During transfer operations at a commercial waterfront facility, the 25-yard zone would be measured from the outboard side of the commercial vessel instead of the pierhead. These zones prohibit the entry of vessels that are not actively engaged in legitimate, scheduled transfer operations at the individual facilities. Vessels may transit through any portion of the proposed zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

The proposed safety and security zones are necessary to protect each facility, commercial vessels moored at the facility, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to commercial vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liberty and Ellis Islands

The Coast Guard proposes to establish a permanent safety and security zone encompassing all waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

The proposed safety and security zones are necessary to protect each Island, the bridge between Liberty State Park and Ellis Island, authorized sight-seeing vessels operating at each island, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the islands that could potentially cause serious negative impact to vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each Island. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Bridge Piers and Abutments, Overhead Power Cable Towers, Piers, and Tunnel Ventilators

The Coast Guard proposes to establish a permanent safety and security zone within 25 yards of each bridge pier and abutment, overhead power cable tower, pier, and tunnel ventilator, located within the waters of the New York Marine Inspection and Captain of the Port New York Zones, south of the Troy, NY Locks.

The proposed safety and security zones are necessary to protect each bridge, overhead power cable, pier, abutment, tunnel ventilator, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the protected structures that could potentially cause serious negative impact to commercial ground shipments by vehicle or railroad, private vehicle traffic, vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each bridge, overhead power cable, and tunnel ventilator. Vessels may transit through any portion of the proposed zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the protected structure and do not stop or loiter within the zone. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

New York City Passenger Ship Terminal, Hudson River, NY

The Coast Guard proposes to establish a permanent safety and security zone that would be enforced whenever passenger vessels are pierside at Pier 88, 90, or 92, or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan are being used as an Emergency Operations Center. The Coast Guard will provide notification and termination of a particular safety or security zone by way of methods identified in 33 CFR 165.7.

This proposed safety and security zone includes all waters of the Hudson River bound by the following points: from the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the seawall, thence north along the shoreline to the point of origin. Marine traffic will still be able to transit through the western 660 yards of the 900-yard wide Hudson River during the activation of the zone. Vessels moored at piers within the safety and security

zone, however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the proposed safety and security zone. The only vessels that would be affected by the safety or security zones would be other passenger vessels at the Passenger Terminal or visiting vessels at the Intrepid Sea, Air and Space Museum. The Captain of the Port may authorize these vessels to transit through these zones. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety and security zone.

The safety and security zones are necessary to protect the passenger vessels, their crews and passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

The Captain of the Port will notify the maritime community of periods during which this safety and security zone will be enforced in accordance with methods identified in 33 CFR 165.7.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

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

Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and advance notifications will be made by methods in accordance with 33 CFR 165.7.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry would be prohibited by safety or security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and the advance notifications that will be provided by the methods described above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining 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 want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Morton, Waterways Oversight Branch, Activities New York, at 718–354–4012.

Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed 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. This rule fits paragraph 34(g) as it establishes safety and security zones. A ''Categorical Exclusion Determination'' is available in the docket 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 proposes to amend 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. Revise § 165.160 to read as follows:

§ 165.160 Safety and Security Zones: Liquefied Hazardous Gas Vessel, Liquefied Hazardous Gas Facility and Designated Vessel Transits, New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following areas are safety and security zones:

(1) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility.

(2) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 100-yard radius of any Designated Vessels.

(b) *Designated Vessels (DVs).* For the purposes of this section, DVs are: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

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

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

(3) The Captain of the Port will notify the maritime community of periods during which these zones will be enforced by methods in accordance with 33 CFR 165.7 and will identify DV vessel transits by way of electronic mail broadcast.

3. Add § 165.169 to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are safety and security zones:

(1) *Indian Point Nuclear Power Station (IPNPS).* All waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W (NAD 83).

(2) *U.S. Coast Guard Cutters and Shore Facilities.* All waters within 100 yards of: Each moored, or anchored, Coast Guard Cutter; Coast Guard Station New York, Staten Island, NY; Coast Guard Station Sandy Hook, NJ; Coast Guard Station Kings Point, NY; and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

(3) *Commercial Waterfront Facilities.* All waters within 25 yards of each commercial waterfront facility that is capable of accepting barge, ferry or other commercial vessels. For purposes of this section, ''commercial waterfront facility'' means all piers, wharves, docks and similar structures to which barge, ferry or other commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings.

(i) When a barge, ferry or other commercial vessel is conducting transfer operations at a commercial waterfront facility, the 25-yard zone is measured from the outboard side of the commercial vessel.

(ii) Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the commercial waterfront facility and do not stop or loiter within the zone.

(4) *Liberty and Ellis Islands.* All waters within 150 yards of Liberty Island, Ellis Island, and the bridge

between Liberty State Park and Ellis Island.

(5) *Bridge Piers and Abutments, Overhead Power Cable Towers, Piers and Tunnel Ventilators.* All waters within 25 yards of any bridge pier or abutment, overhead power cable tower, pier or tunnel ventilators south of the Troy, NY Locks. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

(6) *New York City Passenger Ship Terminal, Hudson River, NY*—(i) *Location.* All waters of the Hudson River bound by the following points: from the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the seawall, thence north along the shoreline to the point of origin.

(ii) *Enforcement period.* This zone will be enforced whenever passenger vessels are pierside at Pier 88, 90 or 92 or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan are being used as an Emergency Operations Center. The activation and termination of a particular zone will be announced in accordance with 33 CFR 165.7.

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

(2) Vessels not actively engaged in legitimate transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

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

Dated: November 1, 2002.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 02–30105 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–13698]

RIN 2135–AA15

Seaway Regulations and Rules: Automatic Identification System

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before January 27, 2003.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/submit/BlankDSS.asp.* All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

Background and Purpose

Since the opening of the Saint Lawrence Seaway in 1959, the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Management Corporation Vessel Traffic Services (VTS) system has been responsible for monitoring the progress of commercial traffic to ensure the safe and expeditious passage of vessels operating in Seaway sectors under their control. Procedures in use today include limits on vessel speed and requirements for all commercial traffic to report by voice on marine VHF radio to the Vessel Control (VTC) centers. These reports are made at designated ''call-in-points'' along the river. Traffic managers at VTC centers use the vessel reports to monitor traffic patterns, including one-way vessel traffic restricted areas and project the estimated times of arrival (ETA) of vessels at locks in the Seaway.

SLSDC and SLSMC sponsored successful prototype demonstrations and evaluations of a Global Positioning System based VTS system in the fall of 1994 and during the 1995 shipping season. The demonstrations established that a VTS using AIS technology was both feasible and cost effective and can improve the efficiency and safety of operations. In the 1999 shipping season, SLSDC and SLSMC deployed a modernized vessel Traffic Management System (TMS). Now, for the first time, all vessel control centers in the Saint Lawrence Seaway share a common vessel information database. Presently, vessel positions, derived from simulations based on transit histories of vessels, are entered manually into the TMS system by traffic controllers and then updated by voice reports from the vessels during actual transits.

AIS is a broadcast system, operating in the VHF maritime mobile band. It is capable of sending and receiving ship information such as identification,

position, course, speed and more, to and from other ships and to and from shore. The Seaway TMS will send pertinent navigation information such as local wind speed and direction, water levels, ice conditions, availability of next lockage, and safety-related messages to vessels.

With the capabilities of ship-to-ship, ship-to-shore and shore-to-ship communications, AIS will greatly enhance the safety, improve the efficiency of the traffic management and increase the vessel security and emergency response capabilities. Specifically, the potential benefits of AIS for the Seaway entities include providing a more efficient vessel traffic management as a result of knowing accurate location and speed of the vessels, monitoring vessel speeds especially for hazardous cargo and deeper draft vessels and faster response time to vessels in case of security concerns and vessel accidents or incidents. The potential benefits to the carrier users include the reduction of overall transit time as a result of better scheduling of lockages and other services timely dispatching of pilots. It also provides real-time position, speed, heading and other pertinent information of the vessel, which will allow master or pilot to better coordinate on the meeting or overtaking in critical reaches of the Seaway.

Proposed Rule

The SLSDC and the SLSMC are proposing a new § 401.20 that would require mandatory use of AIS in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003. All vessels that require pre-clearance and have a 300 gross tonnage or greater, have an Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire, would have to use an AIS transponder to transit the Saint Lawrence Seaway. Dredges and floating plants and towing vessels over 8 meters in length would also be required to use AIS, except only each lead unit of combined and multiple units (tugs and tows) would have to use it. Each vessel would have to meet the following international recommendations, standards, and guidelines:

1. International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

2. International Telecommunication Union, ITU–R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

3. International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS —Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

4. International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended, and for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

5. Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services.

6. The use of portable AIS is permissible.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of human environment. All nine AIS shore base stations (three in U.S. and six in Canada) are co-located with the existing Seaway VHF radio or private telephone towers.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. Part 401 would be amended by adding a new § 401.20 to read as follows:

§ 401.20 Automated Identification System.

(a) Each of the following vessels must use an Automatic Identification System (AIS) transponder to transit the Seaway:

(1) each vessel that requires pre-clearance in accordance with § 401.22 and has a 300 gross tonnage or greater, has a Length Over All (LOA) over 20 meters, or carries more than 50 passengers for hire; and

(2) each dredge, floating plant or towing vessel over 8 meters in length,

except only each lead unit of combined and multiple units (tugs and tows).

(b) Each vessel listed in paragraph (a) of this section must meet the following requirements to transit the Seaway:

(1) International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

(2) International Telecommunication Union, ITU–R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

(3) International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS —Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

(4) International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended, and, for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

(5) Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services; or

(6) The use of portable AIS is permissible.

Issued at Washington, DC, on November 22, 2002.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–30095 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

RIN 1024–AC85

Commercial Use Authorizations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish National Park Service (NPS) regulations concerning the issuance and administration of commercial use authorizations. Commercial use authorizations are a form of NPS written authorization under which persons are allowed to provide certain commercial services to visitors of areas of the national park system. The issuance of commercial use authorizations is authorized by Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–391. The proposed commercial use authorization program will replace the current NPS ''incidental business permit'' program when adopted.

DATES: Written comments on the rulemaking must be received on or before January 27, 2003. Written comments on the information collection must be received by Office of Management and Budget on or before December 27, 2002.

ADDRESSES: Written comments for the rulemaking should be sent to Cynthia Orlando, Concessions Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371–2090. Email: *WASO_Regulations@nps.gov.* Written comments for the information collection should be sent to Attention Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371–2090.

SUPPLEMENTARY INFORMATION:

Background

Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–391 authorizes NPS to issue commercial use authorizations to persons to provide commercial services to visitors of areas of the national park system. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations. The types of commercial activities that may be authorized under commercial use authorizations are similar in many respects to the type of activities that are authorized by concession contracts issued under 36 CFR part 51, as amended. Generally, however, commercial use authorizations, unlike concession contracts, do not authorize the construction of improvements in a park area by a holder, and, except in limited circumstances, require that the services provided by the holder begin and end outside of a park area. The proposed regulations when finalized will assure that all NPS commercial use authorizations are issued or solicited and awarded consistently and that the private sector will be aware of NPS authorizing procedures. The proposed commercial use authorization program will replace the current NPS ''incidental business permit'' program when adopted.

Section 52.1 Authority and Purposes generally describes the authorities for and purposes of the proposed rule. The basic authority is 16 U.S.C. 1 *et seq.*, the National Park Service Organic Act. This is supplemented by section 418 of the National Parks Omnibus Management Act of 1998, 16 U.S.C. 5966. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR Part 51. Concession contracts may be issued to authorize the provision of services to visitors rather than a commercial use authorization even though the proposed services may be suitable to authorization under a commercial use authorization. The Director may only issue commercial use authorizations under the terms and conditions of this part.

Drafting Information

The primary authors of this rule are the members of a team of NPS officials that manage commercial activities in units of the National Park System.

Compliance with Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget makes the final determination as to the significance of this regulatory action and it has determined that this document is a significant rule and is subject to review.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. (5 U.S.C. 553 does not apply to regulations regarding contracts or public lands.) NPS is soliciting public comment on this proposed rule as a matter of policy.

However, NPS considers that, even if the proposed regulations were subject to the Regulatory Flexibility Act, they would not have a significant effect on a substantial number of small businesses within the meaning of the Act. This is because the proposed regulations generally only codify, in response to Section 418 of Public Law 105–391, NPS's current requirements regarding incidental business permits. After the proposed regulations are finalized, incidental business permits will be replaced by commercial use authorizations with no anticipated significant changes to the program as currently implemented. In addition, although the large majority of the some 4,000 businesses now holding incidental business permits are ''small businesses'' within the meaning of the Regulatory Flexibility Act, these businesses (firewood sales, trail guiding, tow truck operators, etc.) represent only a minuscule fraction of the total number of such businesses operating in the United States. In this connection, NPS also notes that the proposed regulations do not in fact ''regulate'' small businesses in the usual sense of the word. This is because no business is subject to the proposed regulations unless its owner seeks to conduct commercial activities on federal land. The regulations have no applicability to the activities of any business that is not conducted on federal lands.

Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish policies and procedures for the issuance of commercial use authorizations for areas of the National Park System.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (Executive Order 12998)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I has been reviewed by the Department and sent to the Office of Management and Budget (OMB) for approval. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days. Therefore, in order to assure maximum consideration, written comments, suggestions or objections should be submitted on or before December 27, 2002 to Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Also, provide a copy of any written comments on this information collection submitted to OMB by mail to: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. E-mail: *Cindy_Orlando@nps.gov.*

The information collection contained in this proposed regulation is entitled Commercial Use Authorization, Issuance and Reporting Requirements. This collection is based on the requirement for persons interested in conducting business within national parks to provide information regarding their business (documented in the CUA form submitted for approval), provide a non-refundable application fee when filing, and annually report gross receipts from business conducted within national parks. The initial request and the CUA form allows the holder to apply for and conduct business in national parks and the NPS to retain a written record of the holder's business information. The application fee is used to recover the administrative costs associated with issuing the CUA permit. The reporting requirement enables the NPS to verify that the holder has received less than $25,000 in gross receipts for business conducted within national parks and determines eligibility for the CUA.

The NPS expects to receive/award about 3,500 applicants annually. Holders will be required to report gross receipts once a year to the NPS. We expect the annual hours burden to the public to be 14,000 hours—3,500 hours for the initial request, 3,500 hours for the application and 7,000 hours for the reporting requirement. Additionally, we expect to have an annual monetary burden of $525,000 resulting from the application fee [$\$150 \times 3{,}500$ applicants]. The application fee total burden is based on an average fee of $150 per applicant (from a range of $50–$250 per application) and 3,500 applicants.

Regarding this information collection, the NPS specifically requests comments on whether the collection of information is necessary or the proper for the performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of

park areas, introduce non-compatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects on the tribes.

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (6) What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Cindy Orlando, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. You may also comment via the Internet to *WASO_Regulations@nps.gov.* Please also include ''Attn: RIN 1024–AC85'' in the subject line and your name and return address in your Internet message. You may fax your comments to (202) 371–2090. Finally, you may hand-deliver comments to Cindy Orlando, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

List of Subjects in 36 CFR Part 52

Concessions, National parks, Small businesses.

Accordingly, we propose to add 36 CFR Part 52 to read as follows:

PART 52—COMMERCIAL USE AUTHORIZATIONS

Subpart A—Authority Purpose and Definitions

Sec.
52.1 What does this part cover?
52.2 Are commercial bus tour permits covered by this part?
52.3 How are certain terms defined in this part?

Subpart B—Issuance of Commercial Use Authorizations

52.4 What general conditions apply to the issuance of commercial use authorizations?
52.5 What are examples of an incidental activity commercial use authorization?
52.6 What are examples of an in-park commercial use authorization?
52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?
52.8 When must the Director limit the number of Special Park Use Permits to be issued to a park area?

Subpart C—Issuance of Commercial Use Authorizations

52.9 Who may be issued a commercial use authorization?
52.10 How does a person request the issuance of a commercial use authorization?
52.11 What happens after a written request for issuance of a commercial use authorization is made?
52.12 When must the Director limit the number of commercial use authorizations to be issued?
52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?
52.14 When will the Director establish visitor use limits.
52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?
52.16 What fees must the Director charge in connection with a commercial use authorization?
52.17 How will the Director expend fees received from holders?

Subpart D—Terms and Conditions of Commercial Use Authorizations

52.18 What is the term of a commercial use authorization?
52.19 May a commercial use authorization be transferred?
52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?
52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?
52.22 May the Director terminate a commercial use authorization?
52.23 What reporting requirements must a commercial use authorization contain?
52.24 May incumbent holders obtain rights or a perference to the issuance of subsequent commercial use authorizations or to particular visitor use allocations?
52.25 What records must a holder maintain and what access does the Director have to these records?
52.26 What other terms and conditions may or must a commercial use authorization contain?

Authority: 16 U.S.C. 1 *et seq.*; Sec. 418, Pub. L. 105–391, 112 Stat. 3497 (16 U.S.C. 5966).

Subpart A—Authority, Purpose and Definitions

§ 52.1 What does this part cover?

This part covers the issuance and administration of commercial use authorizations. A commercial use authorization authorizes the holder to provide specific commercial services to visitors to a park area in certain circumstances and under specified terms and conditions. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR part 51. The Director at any time may choose to issue a concession contract in accordance with 36 CFR part 51 to authorize the conduct of commercial services even though the proposed services may be subject to authorization under a commercial use authorization. The Director may only

issue commercial use authorizations under the terms and conditions of this part. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations.

§ 52.2 Are commercial bus tour permits covered by this part?

No. The Director administers commercial bus tour permits under separate regulations and guidelines.

§ 52.3 How are certain terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part.

Commercial bus tour means a type of commercial service provided to park area visitors where passengers are conveyed into and/or out of a park area by motor vehicle for a direct or indirect fee or charge and no other services (except for on-board interpretation) are provided.

Commercial bus tour permit means a form of written authorization issued for the conduct of commercial bus tours in park areas.

Commercial use authorization means a form of written authorization issued by the Director to a person. The authorization authorizes the holder to provide specific commercial services to park area visitors in certain circumstances and under specified terms and conditions. Except as otherwise indicated the term ''commercial use authorization'' as used in this part collectively refers to incidental activity commercial use authorizations and in-park commercial use authorizations.

Gross receipts means the total amount of revenue received by a holder, in cash, credit, or barter or any other form of compensation, from persons patronizing a holder's services.

Holder means a person to whom a commercial use authorization has been issued.

Incidental activity commercial use authorization means a commercial use authorization that authorizes the holder to provide specified commercial services to visitors to a park area when the services originate and terminate outside of park area boundaries.

In-park commercial use authorization means a commercial use authorization (issued only if projected annual gross receipts under the authorization are less than $25,000) that authorizes the holder to provide specified commercial services to visitors of a park area that originate and are provided solely within the boundaries of a park area.

Non-profit organization means an entity that has been determined by the Internal Revenue Service to be exempt from federal income taxation as a non-profit or not-for-profit organization under the terms of the Internal Revenue Code.

Taxable income means income that is subject to federal income tax under the terms of the Internal Revenue Code.

Use limits means limits the Director may impose on a holder's access to park area lands or limits on a holder's park area entries and/visitor levels.

Visitor use allocations means allocations of a specified portion of a park area entrance, user days, or similar visitor use allowances that are required in order to implement park area visitor use limitations.

Subpart B—Issuance of Commercial Use Authorizations.

§ 52.4 What general conditions apply to the issuance of commercial use authorizations?

Both types of commercial use authorizations (incidental activity commercial use authorizations and in-park commercial use authorizations) may be issued only to authorize the provision of commercial services to park area visitors that the Director determines are appropriate to the applicable park area. In addition, a commercial use authorization may be issued only if the Director determines that the authorization and the services authorized by the authorization: (1) Will have minimal impact on the park area's resources and values; (2) are consistent with the purposes for which the park area was established; (3) are consistent with all applicable park area management plans, policies and regulations; and (4) meet all other requirements of this part. The Director must require that provision of services under a commercial use authorization are accomplished in a manner that is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the applicable park area.

§ 52.5 What are examples of an incidental activity commercial use authorization?

An incidental activity commercial use authorization authorizes the holder to enter a park area to provide commercial services to visitors if those services originate and terminate outside of the park area's boundaries. The authorization does not authorize solicitation of customers, sales, payment or other direct commercial activity within a park area. An example of the type of services authorized by an incidental activity commercial use authorization is a guided horseback trail ride operation based outside of a park area that guides visitors into and out of a park area on a trail ride. In this example, all solicitation of customers, sales, and payment for the services must occur outside of park area boundaries. Incidental activity commercial use authorizations must contain appropriate provisions limiting the conduct of services by the holder in a manner consistent with the limitations set forth in this part. The Director may issue a single incidental activity commercial use authorization allowing commercial services to visitors in more than one area of the park if all other applicable requirements of this part are met.

§ 52.6 What are examples of an in-park commercial use authorization?

An in-park commercial use authorization authorizes the holder to provide specified commercial services to visitors (issued only if projected gross receipts under the authorization are less than $25,000) that originate and are provided solely within the boundaries of the park area. For example, the Director may issue an in-park commercial use authorization to a firewood sales operator who enters a park area campground to sell firewood to visitors. For another example, the Director may issue an in-park commercial use authorization to a person selling crafts in a park area on a one time or occasional basis. In both examples, the authorization may not be issued unless the Director projects that the holder's annual gross receipts from the services is less than $25,000. If the Director projects that the annual gross receipts are expected to exceed $25,000, an in-park commercial use authorization may not authorize the services. In that instance a concessions contract or other applicable authorization must be issued. In-park commercial use authorizations must contain appropriate provisions limiting the holder's provision of services in a manner consistent with the limitations of this part.

§ 52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?

Unless a non-profit organization holds a concession contract or is otherwise authorized to conduct visitor-related commercial activities in a park area, a non-profit organization is required to obtain a commercial use authorization in order to conduct visitor-related commercial activities in a park area if the non-profit organization derives taxable income from the conduct of the activities. If a non-profit organization

demonstrates to the satisfaction of the Director that it derives no taxable income from the provision of the services or if all income derived is exempt from taxation under the terms of the Internal Revenue Code, the non-profit organization will not be required to obtain a commercial use authorization in order to conduct the activity. However, the activities of a non-profit organization in a park area are subject to similar oversight and control through a Special Park Use Permit and issued according to the provisions of Director's Order 53 and Reference Manual 53 (DO–53/RM–53). The Special Park Use Permit shall include appropriate terms, conditions, and requirements, including without limitation insurance requirements and fees adopted by the Director under separate legal authority.

§ 52.8 When must the Director limit the number of Special Park Use Permits to be issued for a park area?

The Director must limit the number of Special Park Use Permits issued for a park area, including those issued to non-profit organizations, if the Director determines that issuing an unlimited number of such permits is inconsistent with the preservation and proper management of the resources and values of the park area or is inconsistent with the provisions of DO–53/RM–53.

Subpart C—Issuance of Commercial Use Authorizations.

§ 52.9 Who may be issued a commercial use authorization?

Any person may request the Director to issue a commercial use authorization in accordance with this part and if the Director issues a commercial use authorization, the Director upon request must issue a similar commercial use authorization to all qualified persons, subject to section 51.12 of this part. No one is entitled to issuance of a commercial use authorization. Issuance of a commercial use authorization is in the discretion of the Director.

§ 52.10 How does a person request the issuance of a commercial use authorization?

To request issuance of a commercial use authorization, a person must submit a written request. The written request must be mailed or delivered to the Director (to the attention of the Superintendent of the applicable park).

§ 52.11 What happens after a written request for issuance of a commercial use authorization is made?

If the Director determines, in accordance with section 52.4 of this part, that it is not appropriate to issue a commercial use authorization for the specified commercial services, the Director will so advise the requester in writing. If the Director determines, in accordance with section 52.4 of this part, that it appears to be appropriate to issue a commercial use authorization for the specified services under this part, and the Director considers under this part that there is no need to limit the number of commercial use authorizations for the specified services, the Director will seek additional information to support completing the CUA form. The Director will then send the requester a proposed commercial use authorization with conditions. A signed copy of the proposed commercial use authorization, and, where required, a non-refundable application fee payment, must be submitted to the applicable park area. Upon receipt of this submission, the Director will make a final decision as to whether to issue a commercial use authorization for the specified commercial services in accordance with this part and as to whether the applicant is qualified to provide the services.

§ 52.12 When must the Director limit the number of commercial use authorizations to be issued?

The Director must limit the number of commercial use authorizations issued for a particular type of commercial services if the Director determines that issuing an unlimited number of such commercial use authorizations is inconsistent with the preservation and proper management of the resources and values of the park area. The Director must also limit the number of commercial use authorizations issued for a park area if the Director determines in accordance with section 52.14 of this part to establish visitor use limits and that continuation of issuance of an unlimited number of commercial use authorizations makes infeasible a fair and equitable distribution of visitor use allocations.

§ 52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?

If the Director determines to limit the number of commercial use authorizations to be issued for a particular type of commercial services, the issuance of the available commercial use authorizations must be accomplished by the Director by random selection under which all qualified applicants have an equal opportunity to obtain an authorization. Special Park Use Permit applicants, including non-profit organization applicants, would have similar limitations placed on the number of permits issued based on criteria outlined in DO–53/RM–53. An incumbent holder will have no right or any form of preference to issuance of a subsequent commercial use authorization or Special Park Use Permit.

§ 52.14 When will the Director establish visitor use limits?

The Director will establish visitor use limits if the Director determines that the limits are appropriate to protect park area visitors or resources. If visitor use limits are established, authorized visitor use will be allocated by the Director among all holders of commercial use authorizations and Special Park Use Permits in a fair and equitable manner. Incumbent holders have no right of preference for visitor use allocations. If it is not feasible to fairly and equitably allocate limited visitor use among all holders, the Director must limit the number of commercial use authorizations to be issued in accordance with this part.

§ 52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?

If the Director limits the number of commercial use authorizations issued for a park area with respect to a particular type of commercial services, and/or, if the Director establishes visitor use limits under this part, the Director must take appropriate measures to assure that all holders provide quality services to visitors at rates and charges that are reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant to the Director: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services after taking into account the factors referred to in the preceding sentence.

§ 52.16 What fees must the Director charge in connection with a commercial use authorization?

The Director must charge a reasonable fee for a commercial use authorization, in addition to any application fee. The fee must at least be sufficient to recover the Director's costs associated with management and administration of the holder's activities under the authorization. The fee may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities. If a holder is assigned the use of improvements within a park area, the fee must also include the fair value of the use of the assigned improvements.

§ 52.17 How will the Director expend fees received from holders?

All fees paid to the Director pursuant to commercial use authorizations shall be expended in the park area where collected to pay for management and administrative costs associated with commercial use authorizations and for other park area activities.

Subpart D—Terms and Conditions of Commercial Use Authorizations

§ 52.18 What is the term of a commercial use authorization?

A commercial use authorization must have a term of two years or less.

§ 52.19 May a commercial use authorization be transferred?

No. A commercial use authorization is not transferable. All commercial use authorizations must contain provisions prohibiting their sale or transfer.

§ 52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?

No. Commercial use authorizations may only authorize a non-exclusive right to provide commercial services in a park area.

§ 52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?

No. A commercial use authorization may not authorize the construction of structures, fixtures or improvements on lands located within the boundaries of a park area. A commercial use authorization may assign a holder use of existing structures, fixtures or improvements when necessary to assist in providing services to visitors. An incumbent holder shall have no right or any form of preference to the continuing utilization of assigned structures, fixtures or improvements under the terms of a subsequent commercial use authorization.

§ 52.22 May the Director terminate a commercial use authorization?

Yes. A commercial use authorization must contain appropriate provisions allowing the Director to terminate the authorization without liability at any time at the discretion of the Director.

§ 52.23 What reporting requirements must a commercial use authorization contain?

Commercial use authorizations must contain appropriate provisions requiring the permittee to provide the Director annually a statement of its gross receipts for the prior year's activities and any specific information related to the commercial use that the Director may request, including but not limited to, visitor use statistics and resource impact assessments. If a commercial use authorization authorizes the conduct of commercial services in more than one park area, gross receipts and other requested information and reports must be provided on an individual park area basis.

§ 52.24 May incumbent holders obtain rights or a preference to the issuance of subsequent visitor use authorizations or to particular visitor use allocations?

No. A commercial use authorization will not grant the holder a right or preferences of any form to the issuance of subsequent commercial use authorizations or to particular visitor use allocations.

§ 52.25 What records must a holder maintain and what access does the Director have to these records?

A commercial use authorization must contain appropriate provisions requiring the holder to maintain normal accounting books and records and granting the Director and the General Accounting Office access to such books and records at any time for the purpose of determining compliance with the terms of a commercial use service authorization and this part.

§ 52.26 What other terms and conditions may or must a commercial use authorization contain?

Commercial use authorizations must contain such provisions as are otherwise required by law and must contain such provisions as the Director determines are necessary and appropriate (1) to protect park area visitors; (2) to assure that holders provide appropriate services to visitors; and (3) to protect and properly manage the resources and values of the park area. Commercial use authorizations must also contain appropriate provisions strictly limiting the holder's conduct of services to the services specified in the authorization issued.

Dated: November 13, 2002.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.; I.D. 110602A]

RIN 0648–AQ30

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2003 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2003 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2003 summer flounder, scup, and black sea bass fisheries. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the FMP.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 12, 2002.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive,

Gloucester, MA 01930–2298. The EA/RIR/IRFA is also accessible via the Internet at *http:/www.nero.nmfs.gov.*

Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, ''Comments—2003 Summer Flounder, Scup, and Black Sea Bass Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, a Monitoring Committee (MC) for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review annually the best available scientific information and to recommend catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the MC's recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their annual recommendations at a joint meeting held August 6–8, 2002.

Explanation of Research Set-Asides

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each of the species to be set aside each year for scientific research purposes. For the 2003 fishing year, a Request for Proposals was published in March 2002 to solicit research proposals based upon the research priorities that were identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission of proposals was May 13, 2002. Five applicants were notified in August 2002 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes. The quota set-asides may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused research set-aside amount to the applicable TAL.

Explanation of Quota Adjustments Due to Quota Overages

In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP previously required that any landings in excess of a commercial quota allocation for a state or period in one year must be deducted from that state's or period's annual quota allocation for the following year. However, complete landings data for the year were not available until after the beginning of the subsequent fishing year. As a result, it was impossible to compile complete landings data for one fishing year, establish overages, and finalize adjustments for the following year prior to the start of the next fishing year on January 1. It was often necessary for NMFS to publish several quota adjustments over the course of the fishing year as additional landings data from the previous year became available. These frequent adjustments complicated the resource management efforts of state marine fisheries agencies and hampered efficient planning by commercial fishers.

NMFS established a cut-off date of October 31 for landings data to be used in calculating quota overages and making the resultant adjustments to the quotas for the following fishing year. Any additional overages due to landings occurring after October 31, or landings reported late, will be deducted from a state's (or period's) quota allocation the next year (i.e., 2 years later). This proposed rule calculates commercial quotas based on the proposed TALs and TACs and the formulas for allocation contained in the FMP. If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by time of publication of the final rule to implement these specifications. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment. Accordingly, landings information will be based upon: (1) Landings reported for the period January 1–October 31, 2002; (2) landings from the period November 1–December 31, 2001; and (3) late reported landings for the period January 1–October 31, 2001.

Summer Flounder

The FMP specifies a target F for 2003 of F_{max}, that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that F_{max} is currently equal to

0.26 (equal to an exploitation rate of about 22 percent from fishing). The TAL associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP.

The status of the summer flounder stock is re-evaluated annually. The most recent assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June 2002, indicated that the summer flounder stock is overfished and overfishing is occurring, according to the definitions in the FMP. This conclusion was derived from the fact that, in 2001, the estimated total stock biomass of 94.6 million lb (42,900 metric tons (mt)) was below the biomass threshold of 117.3 million lb (53,200 mt) under which the stock is considered overfished (B_{msy}), and the estimated F of 0.27 was marginally above the FMP overfishing definition of 0.26 (F_{max}).

However, the F of 0.27 estimated for 2001 represents a significant decline since 1994, when F was estimated to be 1.32. Also, total stock biomass has increased substantially from below 39.7 million lb (18,008 mt) in 1989 to 94.6 million lb (42,900 mt) in 2001. Likewise, spawning stock biomass (SSB) has increased steadily from 20.51 million lb (9,303 mt) in 1993 to 84.21 million lb (38,192 mt) in 2001, the highest value in the time series. Projections based on assumptions about future landings, discards, and recruitment to the stock indicate that, if the 2002 TAL and projected discard level are not exceeded, total stock biomass will exceed, by December 31, 2002, the biomass threshold of 117.3 million lb (53,200 mt), below which the stock would be considered overfished. When the total stock biomass is above this biomass threshold, the stock will no longer be considered overfished, although it will still be below the 234.6 million lb (106,400 mt) necessary to produce maximum sustainable yield (B_{msy}). Because the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that stocks be rebuilt to the level that produces maximum sustainable yield (MSY), additional rebuilding of the stock will still be required.

The Summer Flounder MC reviewed the stock status and the projections based upon these data and made a TAL recommendation to achieve the target F. The Summer Flounder MC recommended a TAL of 23.3 million lb (10,569 mt), which would be allocated 13.98 million lb (6,341 mt) to the commercial sector and 9.32 million lb (4,227 mt) to the recreational sector. This TAL was determined by the MC to have a 50–percent probability of achieving the F target (0.26) that is specified in the FMP, if the 2002 TAL and assumed discard levels are not exceeded. Biomass estimates for 2002 are lower than had previously been estimated, due to a combination of: recreational landings that have consistently exceeded the harvest targets, lower recruitment in recent years, and to a possible underestimation of discards in stock forecasts. Therefore, because the biomass estimate is smaller than previously estimated, the maximum TAL that has at least a 50–percent probability of achieving the target F is lower. It is important to emphasize that the recommended TAL for 2003 is still considerably larger than the average TAL from 1995–2001 of 18.5 million lb.

The Council and Board reviewed the Summer Flounder MC's recommendation and adopted it. The Council and Board also agreed to set aside 91,163 lb (41.4 mt) of the summer flounder TAL for research activities. After deducting the research set-aside, the TAL would be divided into a commercial quota of 13.92 million lb (6,314 mt) and a recreational harvest limit of 9.28 million lb (4,209 mt).

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document, because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the 23.3–million lb (10,569–mt) TAL with a 91,163–lb (41.4–mt) research set-aside, as recommended by the Council and Board. The 9.28–million lb (4,209–mt) recreational harvest limit is allocated on a coastwide basis. The commercial quota is allocated to the states as shown in Table 1. Table 1 presents the allocations by state, with and without the commercial portion of the 91,163–lb (41.4–mt) research set-aside deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's 2002 quota (using the landings information and procedures described earlier). Any commercial quota adjustments will be published in the **Federal Register** in the final rule implementing these specifications.

TABLE 1. 2003 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent Share	Commercial Quota		Commercial Quota with Research Set-Aside	
		lb	kg[1]	lb	kg[1]
ME	0.04756	6649	3,016	6,623	3,004
NH	0.00046	64	29	64	29
MA	6.82046	953,502	432,501	949,772	430,809
RI	15.68298	2,192,485	994,494	2,183,907	990,603
CT	2.25708	315,540	143,127	314,306	142,567
NY	7.64699	1,069,051	484,914	1,064,869	483,016
NJ	16.72499	2,338,158	1,060,571	2,329,010	1,056,421
DE	0.01779	2,487	1,128	2,477	1,124
MD	2.03910	285,067	129,304	283,951	128,798
VA	21.31676	2,980,089	1,351,746	2,968,429	1,346,457
NC	27.44584	3,836,936	1,740,405	3,821,924	1,733,596
Total	100.00	13,980,029	6,341,235	13,925,332	6,316,424

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Scup

Scup was most recently assessed at the 35th Northeast Regional Stock Assessment Review Committee (SARC 35) in June 2002. SARC 35 concluded that scup are no longer overfished, but stock status with respect to overfishing cannot currently be evaluated. Scup SSB is increasing. The NEFSC spring survey 3–year average (2000 through 2002) for scup SSB was 3.20 kg/tow, which is about 15 percent higher than the threshold that defines the stock as overfished (2.77 kg/tow of SSB). SARC 35 noted that the change in stock status (from overfished to not overfished) was the result of an extremely high survey observation in 2002 (8.94 kg/tow of SSB) and its contribution to the calculation of the 3–year moving average. However, SARC 35 also cautioned that the spring survey index for 2002 is highly uncertain because the abundance of all age groups in the survey increased substantially as compared with the 2001 results.

SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of F cannot be determined because of a lack of reliable discard estimates and information regarding the length composition of scup landings and discards. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure. SARC 35 noted that the stock can likely sustain modest increases in catch, but that such increases should be taken with due consideration of the uncertainties associated with the stock status determination.

The target exploitation rate for scup in 2003 is 21 percent. The total allowable catch (TAC) associated with a given exploitation rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)--45.11 percent; Summer (May-October)--38.95 percent; and Winter II (November-December)--15.94 percent.

The proposed scup specifications for 2003 are based on an exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8. On April 28, 1999, NMFS disapproved that rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. NMFS advised the Council that the exploitation rate reflects the overfishing definition (converted to an F rate) which is conceptually sound and supported by NMFS. Therefore, for the short term, the proposed scup specifications for 2003 are based on an exploitation rate of 21 percent which was found to be conceptually sound. NMFS believes that the long-term risks associated with the disapproved rebuilding plan are not applicable to the proposed specifications since they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. The scup stock has shown signs of significant rebuilding and is no longer overfished. It is, therefore, not necessary for 2003 to deviate from the specified exploitation rate. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements.

The Scup MC reviewed the available data in making its recommendation to the Council. Given the uncertainty associated with the spring survey, the Scup MC used a new approach to develop a TAC recommendation. The stock is just above the overfished threshold and this indicates that it is at approximately B_{msy}. Although MSY has not been calculated for scup, long-term potential catch (LTPC) has been used as a proxy. The NEFSC has indicated that the LTPC ranges from 22–33 million lb (9,979–14,969 mt), based upon historical catches. These results were corroborated with yield per recruit analysis indicating that the long-term average yield would be approximately 31 million lb (14,061 mt). If these MSY proxies are accurate, then yields at B_{msy} could range from approximately 11–16.5 million lb (4,990–7,484 mt). SARC 35 indicated that the scup stock ''can likely sustain modest increases in catches, but managers should do so with consideration of high uncertainty in stock status determination.'' Given this advice, the Scup MC recommended that the TAL for 2003 be 13.5 million lb (6,123 mt), a value that is 25 percent above the 2002 TAL, yet within the range of yields that could be expected at B_{msy}, as discussed above. Assuming the same level of discards in 2003 as used in 2002 (2.15 million lb (975 mt)), the Scup MC recommended a TAC of 15.65 million lb (7,099 mt).

Using the sector allocation specified in the FMP (commercial 78 percent; recreational—22 percent), the MC's recommendation would result in a commercial TAC of 10.08 million lb (4,572 mt) and a recreational TAC of 2.84 million lb (1,288 mt). Using the same commercial and recreational discard estimates used for the 2001 specifications (i.e., 2.08 million lb (943 mt) for the commercial sector, and 0.07 million lb (32 mt) for the recreational sector), the Scup MC recommendation would result in a commercial TAL of 8.0 million lb (3,629 mt) and a recreational harvest limit of 2.77 million lb (1,256 mt).

The Council and Board reviewed the Scup MC's recommendation, but did not adopt it. Instead, the Council and Board adopted an 18.65–million lb (8,459–mt) TAC and a 16.5–million lb (7,484–mt) TAL. This recommendation is 53 percent higher than the 2002 TAL. The Council and Board justified their recommendation by stating that, if scup biomass is approximately equal to B_{msy}, then a 16.5–million lb (7,484–mt) TAL corresponds to 50 percent of the upper estimate of the scup LTPC, which is estimated to be 33 million lb (14,969 mt). This TAL recommendation is the upper limit of the range of yields that would be expected at B_{msy}, the level at which the fishery is no longer considered overfished. The Council and Board also agreed to set aside 66,650 lb (30.2 mt) of the scup TAL for research activities. The TAL, after deducting the 66,650–lb (30.2–mt) research set-aside, would result in a commercial quota of 12.42 million lb (5,634 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt).

NMFS is proposing to implement the Council's and Board's TAC and TAL recommendation because it is within the range of yields that could be expected at B_{msy}. Given the lack of information regarding the status of the stock (i.e., status based solely upon the survey indices), this method of determining the TAC/TAL is reasonable. Traditional methods would have resulted in a much higher TAC/TAL. If scup abundance is increasing, as preliminarily signals indicate, the Council's TAC/TAL recommendation is likely to achieve the 21–percent exploitation rate that is required by the FMP.

Disapproval of Recommended Scup Winter I Possession Limit

To achieve the commercial quotas, the Council and Board recommended a 15,000–lb (6.8- mt) per week (Sunday through Saturday) landing limit for the scup Winter I quota period (January-April). NMFS is disapproving the Council's recommendation to implement a 15,000–lb (6.8–mt) per week landing limit for the Winter I quota period. NMFS' Office of Law Enforcement has indicated that a weekly landing limit would complicate, and possibly compromise, effective dockside monitoring and enforcement. With a weekly landing limit, multiple landings would have to be monitored for each vessel on a weekly basis. This would be an inefficient use of limited law enforcement resources and could jeopardize the effectiveness of the limit by eliminating the ability to assess dockside violations at the time of landing. The current possession limit provision is effective primarily because enforcement officers need only be present for one landing to assess a violation.

For the Winter I period, NMFS is proposing to retain the current 10,000–lb (4.5–mt) possession limit, with a reduction to 1,000 lb (454 kg) when 80 percent of the period's quota is projected to be harvested. Public comments are requested on this proposed measure.

For the Winter II quota period (November-December), the Council and Board recommended a 1,500–lb (680–kg) possession limit. NMFS is proposing to implement the recommended 1,500–lb (680–kg) Winter II possession limit.

The Council and Board did not recommend any other changes to the existing commercial minimum mesh size, minimum mesh threshold possession limit, or the commercial minimum fish size. Therefore, these management measures are proposed to remain unchanged.

The 2003 commercial allocation recommended by the Council is shown, by period, in Table 2. Table 2 presents the allocations with, and without, the 66,650–lb (30.2–mt) research set-aside deduction. These 2003 allocations are preliminary and may be subject to downward adjustment due to 2002 overages in the final rule implementing these specifications, using the procedures for calculating overages described earlier.

TABLE 2. 2003 PROPOSED INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

Period	Percent	TAC[1]	Discards[2]	Commerical Quota		Possession Limits	
				W/O Research Set-Aside	With Research Set-Aside	Lb	Kg
Winter I	45.11	6,562,152 (2,976,542)	936,935 (424,987)	5,625,217 (2,551,555)	5,601,766 (2,540,918)	10,000[3]	4,536
Summer	38.95	5,666,056 (2,570,080)	808,991 (366,952)	4,857,065 (2,203,128)	4,836,816 (2,193,943)	na*	na*
Winter II	15.94	2,318,792 (1,051,786)	331,074 (150,173)	1,987,718 (901,614)	1,979,431 (897,855)	1,500	680
Total[4]	100.00	14,547,000 (6,598,408)	2,077,000 (942,111)	12,470,000 (5,656,297)	12,418,013 (5,632,716)		

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[4] Totals subject to rounding error.
* n/a-Not applicable.

Scup Gear Restricted Areas (GRAs)—Request for Comments

In 2000, the 31st Stock Assessment Review Committee (SARC 31) emphasized the need to reduce scup mortality resulting from discards in the scup fishery and in other fisheries. In response to that recommendation, GRAs were established during the 2000 fishing year (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and modified for the 2001 fishing year (66 FR 12902, March 1, 2001). The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass and silver hake (whiting)) when fishing with mesh smaller than that required to fish for scup.

In the proposed rule for the 2002 fishing year specifications (66 FR 58097, November 20, 2001), NMFS disapproved a Council recommendation that would have allowed small-mesh vessels to fish for non-exempt species in the GRAs, if they used specially modified trawl nets (possessing an escapement extension of 45 meshes of 5.5–inch (13.97–cm) square mesh between the body of the net and the codend). NMFS disapproved the recommendation because the supporting research regarding the effectiveness of the modified trawl gear was not complete.

For the 2003 fishing year, the Council has again recommended allowing vessels to fish for non-exempt species with small mesh in the GRAs, provided they use specially modified trawl nets. In addition, however, the Council has recommended requiring vessels to carry observers, consistent with Atlantic Coastal Cooperative Statistics Program (ACCSP) observer standards.

NMFS has previously indicated that gear modifications are a potential solution to the scup bycatch problem, but that additional work is needed to obtain more information regarding the effectiveness of the modifications. Observed trips on vessels using modified trawl gear could provide such information. The ACCSP observer standards specify a certain level of observer coverage, generally less than 100 percent. To implement such a program, NMFS would likely need to require: (1) Pre-enrollment of all vessels intending to make trips into the GRAs; (2) declaration of the intended number of trips into the GRAs by each vessel; (3) notification from the vessels owner 5 days prior to the start of a trip; (4) issuance of waivers for trips not requiring an observer; and, possibly, (5) vessel monitoring systems (VMS) on board all participating vessels. These administrative and enforcement requirements preclude further consideration of this alternative at this time. Rather, NMFS proposes to implement an alternative requiring 100–percent observer coverage for all vessels fishing with small mesh for non-exempt

species in the GRAs, using the modified gear. This proposed alternative would impose significantly fewer administrative and enforcement complexities, and provide more data to evaluate the effectiveness of the gear modifications.

Specifically, NMFS is seeking comment through this proposed rule on an alternative whereby vessels fishing for non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) with mesh less than the minimum mesh size required to fish for scup (specified at § 648.123) in the GRAs (described at § 648.122) for any portion of a trip would be required to use modified trawl gear (possessing an escapement extension of 45 meshes of 5.5–inch (13.97–cm) square mesh between the body of the net and the codend), and would also be required to carry a NMFS-certified observer. An initial enrollment would be required through a phone call, and NMFS would issue a Letter of Authorization to each participating vessel. Obtaining and paying for the observer would be the responsibility of the participating vessel.

Implementation of the proposed alternative is contingent upon the availability of NMFS-trained and certified observers. Therefore, NMFS is currently working to ensure that a sufficient number of observers will be trained, certified, and available prior to the start of the GRAs on January 1, 2003. However, it is possible that all of the necessary components to implement successfully the proposed observer program may not be in place prior to the start of 2003. If implemented, NMFS intends to commence with the proposed Scup GRA Access Program as soon as practicable.

Black Sea Bass

Black sea bass was last assessed by the 27th Northeast Regional Stock Assessment Review Committee (SARC 27), with results published in December 1998. SARC 27 indicated that black sea bass are overfished and at a low level of abundance. However, relative exploitation rates, based on the total commercial and recreational landings and the moving average of the log-transformed spring survey index (an index based on scientific sampling of the distribution and relative abundance), indicate a significant reduction in mortality from 1998 through 2001 relative to 1996 and 1997 levels.

Results of the spring trawl surveys conducted by the NEFSC indicate that the black sea bass stock size has increased in recent years. The 3–year moving average of exploitable biomass recorded by the NEFSC spring trawl survey for 2000 through 2002 (0.59 kg/tow) is 64 percent higher than the value recorded for 1999 through 2001 (0.36 kg/tow). The stock is currently at approximately 2/3 the level of abundance that defines an overfished stock (1977–1979 average of 0.9 kg/tow of exploitable biomass). In addition, black sea bass recruitment indices (fish <eqt;14 cm) indicate that the stock size is likely to continue growing due to several large year classes that have been produced in recent years. The 2000 recruitment index (2.782 fish/tow) remains, by far, the highest in the time series. The 1999 and 2002 indices (0.700 fish/tow and 0.718 fish/tow, respectively) are more than twice as large as the average for the period 1968 through 1998, and are the fifth and sixth largest values in the time series. The 2001 year class was the only below average year class within the past 4 years, according to the NEFSC spring survey recruitment index.

Amendment 9 to the FMP, which was approved in 1996, established a recovery schedule to reduce overfishing on black sea bass over an 8–year timeframe. In 2003, the target exploitation rate is scheduled to drop from 37 percent to 25 percent, which is the exploitation rate associated with Fax (0.32).

The 2003 TAL recommendation is contingent upon assumptions regarding the black sea bass stock size in 2003. If the 2003 NEFSC spring survey biomass index is at least equal to 0.52 kg/tow (the estimate derived for 2003 using a regression through the 1999–2001 survey points), and if an exploitation rate of 48 percent is assumed for 1998, then the TAL associated with a 25–percent exploitation rate would be 7.2 million lb (3,266 mt). Alternatively, if the 2003 spring survey equals 0.44 (the average of the 2001 and 2002 survey points) and if an exploitation rate of 48 percent is assumed for 1998, the TAL associated with a 25–percent exploitation rate would be 6.0 million lb (2,722 mt). The Black Sea Bass MC indicated that the stock size was likely to continue to increase, and determined that the 2003 TAL could remain the same as the 2002 TAL (6.8 million lb (3,084 mt)) and achieve a 25–percent exploitation rate, as required by the FMP for 2003. The Black Sea Bass MC also recommended that all other management measures remain unchanged for 2003.

At their August 2002 meeting, the Council and Board adopted the MC's recommendation for a status-quo 6.8 million-lb (3,084–mt) TAL for the 2003 fishing year, with a research set-aside of 67,676 lb (30.7 mt) for 2003. Additionally, the Council voted to retain a 7,000–lb (3.2- mt) possession limit for Quarter 1, and to increase the Quarters 2–4 possession limits from 2,000 lb (907 kg) to 5,000 lb (2.3 mt). Until Amendment 13 is implemented, a quarterly system will remain in effect for Federal waters; the states, through ASMFC, would manage the resource using a state-by-state quota system. Therefore, the Council recommended the higher possession limits for Quarters 2–4 so as not to constrain Federal permit holders from landing black sea bass in states with different landing limits.

This rule proposes to implement the Council's recommended TAL of 6.8 million lb (3,084 mt), with a 67,676–lb (30.7–mt) research set-aside, and possession limits of 7,000 lb (3.2 mt) for Quarter 1 and 5,000 lb (2.3 mt) for Quarters 2 - 4.

The proposed initial 2003 black sea bass commercial quota and corresponding possession limits are shown in Table 3. Table 3 presents the quarterly quota allocations with, and without, the 67,676–lb (30.7–mt) research set-aside deduction. These 2003 allocations are preliminary and may be subject to downward adjustment, as required by the FMP, in the final rule implementing these specifications, according to the procedures for calculating overages described earlier.

TABLE 3. 2003 PROPOSED INITIAL BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND POSSESSION LIMITS

Quarter	Percent	W/O Research Set-Aside[1]	With Research Set-Aside[1]	Possession Limits	
				Lb	Kg
1 (Jan—Mar)	38.64	1,287,485 (583,993)	1,274,671 (578,181)	7,000	3,175
2 (Apr—Jun)	29.26	974,943 (442,227)	965,240 (437,826)	5,000	2,268
3 (Jul—Sep)	12.33	410,836 (186,352)	406,747 (184,497)	5,000	2,268
4 (Oct—Dec)	19.77	658,736 (298,798)	652,180 (295,824)	5,000	2,268
Total	100.00	3,332,000 (1,511,370)	3,298,838 (1,496,328)		

[1] Commercial Quotas in pounds (kilograms in parentheses).

Classification

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

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**) or via the Internet at http:/www.nero.nmfs.gov. A summary of the analysis follows.

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) no proposed specifications for the 2003 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2003; and (4) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quota). Because implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act, would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources, the no action alternative is not considered to be a reasonable alternative to the preferred action and is not analyzed in the EA/RIR/IRFA.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2003, it would also likely exceed the biological targets specified in the FMP.

First, a preliminary adjusted quota was calculated by deducting the research set-aside from the TAL. Then, the preliminary commercial quota overages for the 2002 fishing year were deducted from the initial 2003 quota alternatives. The quota overages were calculated according to the procedures described earlier, using available data as of September 2002. The resulting preliminary adjusted commercial quotas alternatives presented in Table 4 are provisional and may be further adjusted in the final rule implementing the 2003 specifications.

TABLE 4. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED (''FLK'' IS SUMMER FLOUNDER)

	2003 Initial TAL	2003 Research Set-Aside	2002 Commercial Quota Overage	2003 Preliminary Adjusted CommercialQuota*	2003 Preliminary Recreational Harvest Limit
Quota Alternative 1 (Preferred)					
FLK Preferred Alternative	23.30	0.09	0.06	13.87	9.28
Scup Preferred Alternative	16.50	0.07	0.00	12.42	4.01
Black Sea Bass Preferred Alternative (Status quo)	6.80	0.07	0.17	3.13	3.43
Quota Alternative 2 (More Restrictive)					
FLK Preferred Alternative 2	21.50	0.09	0.06	12.79	8.56
Scup Alternative 2 (Status Quo)	10.77	0.07	0.00	7.95	2.75
Black Sea Bass Alternative 2	4.60	0.07	0.17	2.05	2.31
Quota Alternative 3 (Least Restrictive)					
FLK Preferred Alternative 3 (Status Quo)	24.30	0.09	0.06	14.47	9.68
Scup Alternative 3	22.00	0.07	0.00	16.71	5.22

TABLE 4. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED (''FLK'' IS SUMMER FLOUNDER)—Continued

	2003 Initial TAL	2003 Research Set-Aside	2002 Commercial Quota Overage	2003 Preliminary Adjusted CommercialQuota*	2003 Preliminary Recreational Harvest Limit
Quota Alternative 3 (Least Restrictive)					
Black Sea Bass Alternative 3	7.20	0.07	0.17	3.32	3.64

*Note that preliminary quotas are provisional and may change to account for overages of the 2002 quotas.

Table 5 presents the percent change associated with each of commercial quota alternatives (adjusted for overages and research set-aside) compared to the final adjusted quotas for 2002.

TABLE 5. PERCENT CHANGE ASSOCIATED WITH ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2002 ADJUSTED QUOTA

	Total Changes Including Overages and RSA		
	Quota Alternative 1(Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
Summer Flounder			
Aggregate Change	-4.48%	-11.92%	-0.34%*
Scup			
Aggregate Change	+71.22%	+9.61%	+130.36%
Black Sea Bass			
Aggregate Change	-0.10%	-34.51%	+6.16%

*Denotes status quo management measures. The status quo or ''no action'' measure for summer flounder, scup, and black sea bass refers to what most likely will occur in the absence of implementing the proposed regulation.

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the proposed 2003 quotas could affect 1,830 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of July 15, 2002. However, the more immediate impact of this rule will likely be felt by the 1,073 vessels that actively participated (i.e., landed these species) in these fisheries in 2001, including vessels holding only state permits.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2001 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2002 to 2003. For example, if 90 percent of a vessel's 2001 revenue was derived from summer flounder, then a small decrease in the summer flounder quota from 2002 to 2003 would be expected to have a large proportional reduction in the revenue of that vessel. Conversely, because that vessel did not derive a large percent of its revenue from scup in 2001, a large increase in the scup quota from 2002 to 2003 would not be expected to produce a large proportional increase in the revenue of that vessel. Generally, the percent of a vessel's revenue reduction depends upon the permits it holds and the species it lands. Diversity in landings helps to balance losses in one fishery with revenue generated from other fisheries. The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for 321 commercial vessels that are expected to be impacted by this rule. The remaining 752 vessels were projected to incur small revenue losses (i.e., <5 percent) under Alternative 1. The small revenue losses were attributed to a decrease in the summer flounder quota and a decrease in the adjusted black sea bass quota.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2001 ex-vessel prices (summer flounder -- $1.62/lb; scup -- $0.84/lb; and black sea bass -- $1.55/lb), the 2003 quotas in Preferred Alternative 1 (after overages have been applied) would decrease total summer flounder revenues by approximately $1.1 million, increase total scup revenues by $4.3 million, and decrease total black sea bass ex-vessel revenues by less than $5,000 relative to 2002 revenues.

If the decrease in summer flounder total ex-vessel gross revenue associated with the Preferred Alternative is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in the Preferred Alternative would be $1,324 per vessel. If the increase in scup total gross revenue associated with the Preferred Alternative is distributed equally

between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in the Preferred Alternative would be $8,984 per vessel and, similarly, if the decrease in black sea bass total gross revenue associated with the Preferred Alternative is distributed equally between the 740 vessels that landed black sea bass in 2001, the average decrease in gross revenue associated with the black sea bass quota in the Preferred Alternative would $7 per vessel.

The overall increase in gross revenue associated with the three species combined in 2003 compared to 2002 is approximately $3.3 million (assuming 2001 ex-vessel prices) under the Preferred Alternative. If this is distributed among the 1,073 vessels that landed summer flounder, scup, and/or black sea bass in 2001, the average increase in revenue would be $3,058 per vessel.

The Councils analysis of Alternative 2 (i.e., most restrictive harvest limits) indicated that these harvest limits would produce a revenue loss for most of the 1,073 commercial vessels expected to be impacted by this rule. Only 64 commercial vessels expected to be impacted by this rule would experience a revenue increase under Alternative 2, primarily because a large proportion of their revenues were derived from scup.

An analysis of changes in total gross revenue associated with Alternative 2 indicated that the 2003 quotas would decrease summer flounder ex-vessel revenues by $2.8 million, increase scup ex-vessel revenues by $0.6 million, and decrease black sea bass ex-vessel revenues by approximately $1.7 million, relative to 2002 revenues.

If the decrease in total gross revenue associated with the summer flounder quota in Alternative 2 is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in Alternative 2 would be $3,525 per vessel. If the increase in total gross revenue associated with the scup quota in Alternative 2 is distributed equally between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in Alternative 2 would be $1,212 per vessel and, similarly, if the decrease in black sea bass total gross revenue associated with Alternative 2 is distributed equally between the 740 vessels that landed black sea bass in 2001, the average decrease in gross revenue associated with the black sea bass quota in Alternative 2 would be $2,264 per vessel.

Under Alternative 2, the overall decrease in gross revenue associated with the three species combined in 2003 compared to 2002 is approximately $3.9 million (assuming 2001 ex-vessel prices). If this is distributed among the 1,073 vessels that landed summer flounder, scup, and black sea bass in 2001, the average decrease in revenue would be $3,635 per vessel.

The Council's analysis of Alternative 3 (least restrictive harvest limits) indicated that these harvest levels would produce a revenue increase for any of the 1,073 commercial vessels expected to be impacted by this rule.

An analysis of changes in total gross revenue associated with Alternative 3 indicated that the 2003 quotas (after overages have been applied) would decrease summer flounder ex-vessel revenues by $81,000, and increase scup and black sea bass ex-vessel revenues by approximately $7.9 million, and $0.3 million, respectively, relative to 2002 revenues.

If the decrease in summer flounder total gross revenue associated with Alternative 3 is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in Alternative 3 would be $101 per vessel. If the increase in scup total gross revenue is distributed equally between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in Alternative 3 would be $16,444 per vessel. Similarly, if the increase in total gross revenue associated with the black sea bass quota in Alternative 3 is distributed equally between the 740 vessels that landed black sea bass in 2001, the average increase in gross revenue associated with the black sea bass quota in Alternative 3 would be $402 per vessel.

The overall change in gross revenue associated with the three species combined in 2003 compared to 2002 would be approximately $8.2 million (assuming 2001 ex-vessel prices) under Alternative 3. If this is distributed among the 1,073 vessels that landed summer flounder, scup, and/or black sea bass in 2001, the average increase in revenue would be $7,642 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2003 recreational harvest limits were compared with previous years through 2001, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5–percent overage in 1993 to a 122–percent overage in 2000. In 2001, summer flounder recreational landings were 11.64 million lb (5,280 mt), exceeding the harvest limit of 7.16 million lb (3,248 mt) by 63 percent.

For summer flounder, the adjusted 2003 preferred recreational harvest limit of 9.28 million lb (4,209 mt) in Alternative 1 is greater than the recreational harvest limits for the years 1995 through 2001. However, it is approximately 5 percent lower than the 2002 recreational harvest limit, and it would be a decrease of approximately 20 percent from 2001 recreational summer flounder landings. The adjusted summer flounder Alternative 2 recreational harvest limit of 8.56 million lb (3,882 mt) in 2003 would be a 12–percent decrease from the 2002 recreational harvest limit, and a 26–percent decrease from 2001 recreational summer flounder landings. The adjusted Alternative 3 recreational harvest limit is 9.68 million lb (4,391 mt). This is the status quo alternative. It is less than 1 percent lower than the 2002 recreational harvest limit, and represents a 17–percent decrease from 2001 recreational landings. If either Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2003 recreational harvest limit, depending upon the effectiveness of the 2002 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects may be minimal. The effect of greater recreational restrictions is not known at this time. The Council intends to recommend specific measures to attain the 2003 summer flounder recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations in early 2003.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 500 percent from 1998 to 2000. In 2001, recreational landings were 4.26 million lb (1,932 mt). Under Preferred Alternative 1, the adjusted scup recreational harvest limit for 2003 would be 4.01 million lb (1,819 mt). This is a 6–percent decrease from 2001 recreational landings. However, it is approximately 48 percent higher than the scup recreational harvest limit in 2002. The Alternative 2 scup recreational harvest limit of 2.75 million lb (1,247 mt) in 2003 would be the same recreational harvest level that was

implemented in 2002. It is a decrease of 1.51 million lb (685 mt), or 35 percent, from 2001 estimated recreational landings. The Alternative 3 scup recreational harvest limit of 5.22 million lb (2,368 mt) in 2003 is 2.47 million lb (1,120 mt) higher than the 2002 recreational harvest limit, and 0.96 million lb (435 mt) above 2001 recreational landings. With Alternative 2, and possibly Alternative 1, more restrictive management measures might be required to prevent anglers from exceeding the 2003 recreational harvest limit, depending largely upon the effectiveness of the 2002 recreational management measures. The effect of greater restrictions on scup party/charter boats is unknown at this time. The Council intends to recommend specific measures to attain the 2003 scup recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations early in 2003.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2001, recreational landings were 3.42 million lb (1,551 mt). For the recreational fishery, the adjusted 2003 harvest limit under Alternative 1 is 3.43 million lb (1,558 mt). This is nearly identical to the 2001 recreational landings estimate and the 2002 recreational harvest limit. Therefore, it is not expected to result in negative economic impacts on the recreational fishery. Under Alternative 2, the 2003 recreational harvest limit would be 2.32 million lb (1,052 mt). This level would represent a 32 percent decrease from 2001 recreational landings and from the 2002 recreational harvest limit. As such, this alternative could cause some negative economic impacts, depending upon the effectiveness of the 2002 recreational black sea bass measures. The 2003 recreational harvest limit under Alternative 3 would be 3.64 million lb (1,651 mt). This is 6 percent higher than the 2001 recreational landings estimate and the 2002 recreational harvest limit. Alternative 3 would likely result in positive economic impacts on the recreational fishery. The Council intends to recommend specific measures to attain the 2003 black sea bass recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations early in 2003.

The effects of the existing GRAs are fully described in the proposed rule (65 FR 71046, November 28, 2000) and the final rule (66 FR 12910, March 1, 2001) implementing the 2001 specifications. Those impacts are not repeated here. The impacts of the GRAs are expected to remain unchanged in 2003. However, the Council's recommendation to allow vessels carrying observers (consistent with ACCSP protocol) and using small-mesh to fish for non-exempt species in the GRAs if they utilize a 5.5–inch (13.97–cm) square mesh extension between the body and codend of the trawl net will also have economic impacts. Similarly, the NMFS proposal to require 100–percent observer coverage for vessels participating in the Scup GRA Access Program will have economic impacts.

The Scup GRA Access Program would not be mandatory. If a vessel owner chooses to participate in the program, it is likely that the additional costs of carrying an observer and using the modified gear would be offset by increased landings of non-exempt species (*Loligo* squid, silver hake (whiting), and black sea bass). As such, an increase in *Loligo* landings relative to 2002 would have positive economic impacts on the *Loligo* fishery, relative to the status quo. However, it is not possible to assess the exact monetary value associated with the additional harvest because quantitative data on these nets are limited.

The actual net modifications are inexpensive and can be incorporated into existing nets with minimal labor. For vessels operating in the inshore fishery, compliance costs are estimated to be approximately $775 per vessel, and for vessels operating in the offshore fishery, costs are estimated at approximately $1,354 per vessel.

The cost of one at-sea observer day is approximately $1,150, which would be paid by the vessel owner intending to fish in the GRAs. Fishing trips to the Southern GRA are expected to last approximately 4 days, and trips to the Northern GRA are expected to last approximately 3 days. Therefore, the total observer costs are estimated to be $4,600 and $3,450 for trips in the Southern and Northern GRAs, respectively. The observer costs would be in addition to operating costs. A survey of small Northeast fishing vessels (<65 ft (19.8 m) in length) whose primary gear was otter trawl and who reported landings in New England indicated that average total operating cost per trip for small trawlers in 1996 was $267. A survey of large Northeast fishing vessels (>65 ft (19.8 m) in length) whose primary gear was otter trawl and who reported landings in New England in 1997 indicated that the average total operating cost per trip for large trawlers in 1997 was $2,608. The average ex-vessel value (1996–1999) of *Loligo* in directed trips in the Southern GRA is $24,013 and in the Northern GRA was $4,456. These values are based on the average landings of *Loligo* from 1996–1999 in the GRAs, and the average ex-vessel value (1996–1999) of *Loligo*, adjusted to 2001 dollars. Therefore, the requirement to carry at-sea observers would increase vessel operating costs. However, larger vessels fishing in the southern area would be most likely to recoup any increased operating costs. The observer requirement is anticipated to impose a larger negative impact on the profits of vessels fishing in the northern area. Individual vessels would need to assess changes in costs and revenues upon their operations before participating in the non-mandatory Scup GRA Access Program.

An analysis of Vessel Trip Report (VTR) data (1996–1999) indicates that, on average, 72 vessels had directed *Loligo* trips (>50% of the total landings were *Loligo*) in the GRAs, for a total of 209 trips. Assuming that all of these vessels choose to fish the same number of trips in the GRAs, a 5–percent observer requirement (Council recommendation) would mean that approximately 11 trips would have to carry observers in the GRAs. A 100–percent observer requirement (NMFS proposal) would mean that approximately 209 trips would be required to carry observers in the GRAs. The actual total number of trips required to carry an observer would vary, depending upon the individual decisions of vessel owners regarding the potentially increased profitability of fishing in the GRAs versus additional observer costs.

In 2002, the black sea bass possession limits were 7,000 lb (3.2 mt) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2 through 4. For 2003, the Commission adopted state-specific allocations for 2003. If Amendment 13 to the FMP is approved by January 1, 2003, a Federal coastwide quota will go into effect to facilitate the state quotas and there would be no Federal possession limits. Until Amendment 13 is implemented, a quarterly system will remain in effect for Federal permit holders. Because state-by-state measures were approved by the Board, and there is the possibility that Federal implementation will not occur by January 1, 2003, the Council adopted liberal possession limits of 5,000 lb (2.3 mt) for Quarters 2–4, so as not to constrain Federal permit holders from landing in states with different landings limits. The possession limits in Quarters 2–4 are not expected to result in an overharvest of the black sea bass

commercial quota, since states' management measures will control landings. Because of the states' ability to tailor management measures to the needs of their fisheries, the more liberal possession limits in Quarters 2–4 are expected to result in positive social and economic impacts relative to the status quo.

The current regulations for scup specify a 10,000–lb (4,536–kg) possession limit for Winter I and a 2,000–lb (907–kg) possession limit for Winter II. For 2003, the alternative adopted by the Council and Board includes a limit of 15,000 lb/week (6.8 mt/week) for Winter I and a possession limit of 1,500 lb (680 kg) for Winter II. The reduced possession limits are expected to constrain commercial landings to the commercial TAL and to distribute landings equitably throughout the periods to avoid derby-style fishing effort and associated market gluts. The Council and Board are recommending weekly possession limits for Winter I to allow fishermen to determine the best time for them to fish and to help avoid market gluts and unsafe fishing practices. These possession limits were chosen as an appropriate balance between the economic concerns of the industry (e.g., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over the period. As such, the possession limits would be expected to result in positive social and economic impacts. However, due to serious enforcement concerns, NMFS is proposing to disapprove the recommendation for weekly possession limits and to retain the status-quo 10,000–lb (4,536 kg) possession limit for Winter I. This possession limit was successful at keeping the fishery open for the duration of the 2002 Winter I quota period, while nearly achieving the entire quota.

The impacts of the summer flounder research set-aside in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as $147,684 dockside, based on a 2001 ex-vessel price of $1.62 per pound. Assuming an equal reduction among all active vessels (i.e., 795 vessels that landed summer flounder in 2001), this could mean a reduction of about $186 per individual vessel. Changes in the summer flounder recreational harvest limit as a result of the 91,163–lb (43,619–kg) research set-aside are not expected to be significant. The research set-aside would reduce the recreational harvest limit from 9.32 million lb (4,227 mt) to 9.28 million lb (4,209 mt). It is unlikely that the recreational possession, size, or seasonal limits would change as the result of the research set-aside. Overall, long-term benefits are expected as a result of the research set-aside due to improved summer flounder data.

The impacts of the scup research set-aside in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as $55,986 dockside, based on a 2001 ex-vessel price of $0.84 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 483 vessels that landed scup in 2001), this could mean a reduction of about $116 per vessel. Changes in the scup recreational harvest limit would be insignificant. The 66,650–lb (30,232–kg) research set-aside would reduce the scup recreational harvest limit from 4.03 million lb (1,828 mt) to 4.01 million lb (1,819 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the research set-aside. Overall, long-term benefits are expected as a result of the research set-aside due to improved scup data.

The impacts of the black sea bass research set-aside are expected to be as follows. The set-aside could be worth as much as $104,898 dockside, based on a 2001 ex-vessel price of $1.55 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 740 vessels that caught black sea bass in 2001), this could mean a reduction of about $142 per vessel. Changes in the black sea bass recreational harvest limit would be minimal. The research set-aside would reduce the black sea bass recreational harvest limit from 3.46 million lb (1.57 million kg) to 3.43 million lb (1.55 million kg). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this research set-aside. Overall, long-term benefits are expected as a result of the research set-aside due to improved black sea bass data.

If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL.

In summary, the 2003 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in small decreases in summer flounder and black sea bass landings and substantially higher scup landings, relative to 2002. The proposed specifications contained in the Preferred Alternative were chosen because they allow for the maximum level of landings, yet still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The proposed possession limits for scup and black sea bass were chosen because they are enforceable and are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this proposed rule. The alternative to allow small-mesh vessels to voluntarily fish for non-exempt species in the GRAs if they deploy modified trawl gear and carry a NMFS-certified observer is being proposed to give vessels an opportunity to fish with small-mesh trawl gear in the GRAs while providing much-needed data on the selectivity of the modified trawl gear. Although the Scup GRA Access Program does impose additional voluntary compliance and operating costs, this alternative is expected to minimize both the reporting burden on small entities and the administrative support required of NMFS to oversee the program. The Scup GRA Access Program will keep intact the scup conservation benefits associated with the GRAs, but provide important selectivity information that can be evaluated in future management decisions regarding the GRAs.

Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set-asides are utilized.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average approximately 2 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Patricia A. Kurkul (see ADDRESSES), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (a)(122) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b), or unless the vessel is in compliance with the Gear Restricted Area Access Program requirements specified at § 648.122(d).

3. In § 648.122, paragraphs (a)(1) and (b)(1) are revised, and paragraph (d)(1) is added to read as follows:

§ 648.122 Season and area restrictions.

(a) * * *

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	39°20′	72°50′
SGA2	39°20′	72°50′
SGA3	38°00′	73°55′
SGA4	37°00′	74°40′
SGA5	36°30′	74°40′
SGA6	36°30′	75°00′
SGA7	37°00′	75°00′
SGA8	38°00′	74°20′
SGA1	39°20′	72°50′

(b) * * *

(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA 1

Point	N. Lat.	W. Long.
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

* * * * *

(d) *Gear Restricted Area Access Program*–Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may fish for, or possess, non-exempt species using trawl nets having a minimum mesh size less than that specified in paragraphs (a) and (b) of this section, provided that:

(1) The vessel possesses on board all required Federal fishery permits and a Scup GRA Access Program Exemption Authorization issued by the Regional Administrator, Northeast Region, and is in compliance with all conditions and restrictions specified in the Scup GRA Access Program Exemption Authorization;

(2) The vessel must carry a NMFS-approved observer on board if any portion of the trip will be, or is, in a GRA; and,

(3) While fishing in a GRA, the vessel must fish only with a specially modified trawl net that has an escapement extension consisting of 45 meshes of 5.5–inch (13.97–cm) square mesh that is positioned behind the body of the net and in front of the codend.

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Notices

Federal Register
Vol. 67, No. 229
Wednesday, November 27, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program: Title VI Civil Rights Collection Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0025, Civil Rights Title VI Collection Reports—Forms FNS–191 and FNS–101, for the Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program.

DATES: Comments on this notice must be received by January 27, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Civil Rights Title VI Collection Reports—FNS–191 and FNS–101.

OMB Number: 0584–0025.

Expiration Date: December 2002.

Type of Request: Revision of a currently approved collection.

Abstract: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–7, prohibits discrimination on the basis of race, color, and national origin in programs receiving Federal financial assistance. Department of Justice (DOJ) regulations, 28 CFR 42.406, require all Federal agencies to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI.

For purposes of the Information Collection Notice only, the Food and Nutrition Service (FNS) employs program terminology in place of the standard Title VI terminology adopted by the U.S. Department of Agriculture (USDA) and codified at 7 CFR 15.2. Thus, ''State agencies,'' ''local agencies,'' and/or ''operators'' are the program entities responsible for fulfilling the data collection requirements associated with ''primary recipients'' and/or ''recipients'' as defined by Title VI. Moreover, the program terms ''respondents,'' ''applicants,'' and/or ''participants'' refer to the ''potential beneficiaries,'' ''applicant beneficiaries,'' and/or ''actual beneficiaries'' of Federal financial assistance as defined by Title VI.

In order to conform with the statutory mandates of Title VI of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination in Federally assisted programs, the USDA's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of persons receiving benefits from FNS food assistance programs.

In all three programs, State and local agencies collect racial/ethnic information on the benefits application form that applicants may complete and file manually or electronically. The application form must clearly indicate three points: (1) The information is voluntary, (2) the race and ethnic information will not affect an applicant's eligibility or level of benefits, and (3) the reason for the collection of the information is to assure that program benefits are distributed without regard to race, color or national origin. All three programs allow the individual to self-identify his or her racial/ethnic status on the application. Visual observation by a program representative is used to collect the data when the individual does not self-identify. In either case the information is recorded on the application form and entered into the agency's information system. The Federal reporting forms do not identify individual participants.

Local agencies use the two forms referenced above (*i.e.*, the FNS–191 and FNS–101) to report data on the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), and the Food Stamp Program (FSP) to FNS as explained below. FNS' data collection requirement for operators is found in the regulations for the CSFP at 7 CFR part 247.13(d), and for the FSP at 7 CFR part 272.6(g); the requirement for the FDPIR is found in FNS Handbook 501.

All State or local agencies must submit the appropriate form in order to receive benefits and comply with applicable legislation. If a State or local agency does not comply voluntarily, the State or local agency is subject to fund termination, suspension, or denial; or judicial action.

CSFP local agencies complete the FNS–191 for the CSFP. FNS requires local agencies to provide annually the actual number and racial/ethnic designations of women, infants, children and elderly who receive CSFP benefits during the month of April.

FSP and FDPIR State or local agencies complete the FNS–101. FNS requires State or local agencies to report annually the actual number and racial/ethnic designation of households who receive FDPIR and/or FSP benefits during the month of July.

FNS is proposing substantial changes in the collection and reporting of racial/ethnic data. These changes are discussed below.

The New Categories and Reporting Forms

Background

Currently, State agencies collect data on five racial and ethnic categories: American Indian or Alaska Native, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic, and White (not of Hispanic origin). The current racial and ethnic categories, which have been in place for over 20 years, conform to standards set by the Office of Management and Budget (OMB) in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. On October 30, 1997, OMB issued a revision of Statistical Policy Directive No. 15 in a notice in the **Federal Register** (62 FR 58781 (Oct. 30, 1997)). The 1997 standards revise the categories and manner of reporting. Under the revised standards, the Asian or Pacific Islander category is now separated into two categories—''Asian'' and ''Native Hawaiian or Other Pacific Islander.'' In addition, Hispanic now becomes an ethnic category separate from the racial categories. The ethnic categories are ''Hispanic or Latino'' and ''Not Hispanic or Latino.'' Applicants will now be allowed to choose more than one race. All Federal and State agencies are to comply with the new standards.

In order to comply with the revised OMB policy directive, on November 30, 1999, FNS issued a notice in the **Federal Register** proposing new reporting forms for FNS–191 and FNS–101. The proposed forms included the single race blocks and a category for the count of the number of people who chose more than one race. Since that notice was published, OMB, on March 9, 2000, issued OMB Bulletin No. 00–02, which provided new guidance to Federal agencies on the collection of aggregate data from non-Federal entities and the compiling of the data for Federal purposes. That guidance directed Federal agencies to collect data for the four double race combinations most commonly reported in studies and for any other racial combinations that exceed one percent of the State population or other population of interest. The four double race categories are American Indian or Alaska Native and White; Asian and White; Black or African American and White; and American Indian or Alaska Native and Black or African American. Accordingly, FNS has revised the forms for this notice based on the additional guidance.

State Collection of Data

For all three programs, the new five racial categories for State agency data collection are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. The two revised ethnic categories are: ''Hispanic or Latino'' and ''Not Hispanic or Latino.'' These categories are to be included on the application or data input screen.

State agencies must use separate questions on the application form or data input screen for collecting data on race and ethnicity, collecting ethnicity data first, then race. Applicants may choose only one response to the ethnicity question, either ''Hispanic or Latino'' or ''Not Hispanic or Latino.'' For all three programs, State and local agencies must offer applicants the option of selecting one or more racial designations from the above categories, distinct from a selection for the ethnic category. State agencies may not offer respondents (applicants) a ''multiracial'' category. Instructions on race reporting on the application form should ask the respondent to ''Mark one or more * * *'' or ''Select one or more. * * *'' If racial and ethnic information are not provided voluntarily by the applicant, the State agency is to obtain the information based on visual observation. When visual observation is used, only a single race need be collected, along with the ethnicity. The new multiple race data collection and reporting are intended to capture information on the number of people reporting that they are of more than one race. State agencies will need to modify their application forms, computer input screens and information systems to capture and retrieve data in the revised categories.

For the CSFP, State agencies currently collect this data by participant. CSFP State agencies will continue to collect the data by participant, but must use the revised racial and ethnic categories and provide for multiple race reporting.

For FDPIR and FSP, State agencies currently collect the data by ''household'' with each household unit being counted under only one race. In actuality, most State agencies collect racial/ethnic data for one person in the household, normally the person who completes the application or is interviewed. This is done because the reporting of racial information by an applicant is voluntary and not all household members are required to be present for the eligibility interview. FDPIR and FSP State agencies may continue to collect the data for one person per household but must use the revised racial and ethnic categories and provide for multiple race reporting.

Reporting of Data

FNS is proposing drafts of the revised forms for comment at this time in order to begin to comply with the revised racial and ethnic categories and to inform State agencies of the reporting changes to come. The proposed forms FNS–101 and FNS–191 are included in this notice for review and comment.

For both the FNS–191 and the FNS–101 forms, FNS is proposing to have State agencies report the total number of people (*i.e.*, participants for the FNS–191 and household contacts for the FNS–101 as explained below) in the revised racial and ethnic categories for each single race, and for the following combinations:

(1) American Indian or Alaska Native and White.

(2) Asian and White.

(3) Black or African American and White.

(4) American Indian or Alaska Native and Black or African American.

(5) Any other racial combinations with a population in the State that exceeds 1 percent of the total population for the State.

(6) The balance of respondents reporting more than one race.

State agencies would need to review Census 2000 data to determine which other racial combinations have a population that exceeds the one percent population threshold in their State. Each such combination would be reported as a separate line item. Census 2000 summary data shows 2.4 percent of the Nation's population chose more than one race and in four States more than four percent of the State's population chose more than one race. Census 2000 data on the poverty population by combination is expected to become available in 2003. In addition, State agencies must report in a separate break out column the number of persons in each single or multiple race category line item who are Hispanic or Latino. Detailed reporting instructions will be issued by FNS when the revised forms are approved by OMB and finalized. State agencies should note that the additional one percent combination categories they must report

are subject to change with the next U.S. Census.

The FNS–191 and FNS–101 are being revised to include the revised racial/ethnic categories described above. Additionally, other changes are being made to the forms. For the FNS–191, respondents will simply report the total number of participants in each category, without a breakout by women, infants, children and elderly participants. For the FNS–101, respondents will continue to report the data by household, but we have changed the designation on the form to ''household contact'', which is a more appropriate term.

In addition, there are certain other changes for the FNS–101 that apply only to the FSP. Currently, FSP State and local agencies report the racial ethnic data by project area for approximately 2,800 projects. The increase in data elements (from the current 5 to the proposed 26) will have a significant impact on a State's reporting burden if we were to retain the project area reporting. To ease the impact on State reporting, we propose to have State agencies report this data in a single Statewide report to FNS for the FSP, which would eliminate project area reporting to FNS. Most State agencies have Statewide information systems which can provide State totals and we encourage State agencies to automate all their data compilations. Although we are proposing Statewide reporting on the FNS–101 for the FSP, the State agency will need to maintain the data by project area for FNS review. The data must be kept in an easily retrievable form and be made available to FNS upon request. FNS also intends to provide for electronic reporting of the new Statewide form through our State Cooperative Data Exchange (SCDEX) process for the FSP in the near future.

Currently, Hawaii, Guam, and the Virgin Islands are exempt from reporting racial/ethnic data on the current FNS–101 for the FSP. This exemption, which FNS granted in 1972 and reaffirmed in 1983, was due to the significant multiracial composition in Hawaii that did not fall neatly into the single race blocks on the form and the essentially homogeneous racial/ethnic population in Guam and the Virgin Islands. Our review of the latest available Census Bureau racial statistics for all three of these areas showed a diverse population. In view of this diversity, and since the revised form will allow multiple race reporting, we propose to terminate the current exemption for the above entities and will require that the above-mentioned State agencies to begin to report racial statistics to FNS on the revised FNS–101 along with all other FSP State agencies.

The more detailed data for all three programs will allow FNS to more accurately capture the increasing diversity of participants and household contacts in its programs. The one percent categories are intended to minimize the reporting burden on State agencies while providing FNS with line item data on program participation by additional multiple race combinations which exceed the threshold percentage in that State. Finally, the data will be used for civil rights monitoring and enforcement.

We estimate a State agency will need to report on average 24 data elements on the proposed form based on the available Census data. State agencies in a very small number of States may have to report an additional category or two for additional combinations that exceed one percent of the State's population. However, State agencies will be responsible for maintaining the aggregate data by each single race and by every possible racial combination category for State agency monitoring and for Federal review purposes. Thus, the State agency's information system will need to compile and maintain the data for a total of 62 racial and ethnic categories, 10 categories for those who report exactly one race (5 categories for all household contacts by race and 5 categories for Hispanic contacts only by race) and 52 categories for those who report more than one race (26 categories for all household contacts and the remaining 26 for Hispanic contacts only).

Implementation

FNS recognizes that State and local agencies will need time to modify their application forms, data input screens, and information systems in order to begin capturing and tabulating the revised data for all three programs. It is crucial for FNS' information system that all State agencies for a given program implement the revised reporting format at the same time. Lastly, published elsewhere in this issue of the **Federal Register**, a proposed rule addressing the implementation of collection and reporting of racial ethnic data for the Food Stamp Program is available for public comment. As explained in the preamble to the proposed rule, until comment is received on this notice and the proposed rule, and approval for the revised forms are approved by OMB, State agencies would continue with the current data collection requirements for the fiscal year 2003 reporting period. FNS anticipates the publication of the final rule early in 2003.

FNS proposes that CSFP, FDPIR, and FSP State and local agencies begin collecting the racial/ethnic data for the revised reporting with new applications filed beginning no later than October 1, 2003 and in any event that caseload conversion be completed prior to the FY 2004 report month. The revised reporting to FNS would be effective for the report month of April 2004 for the FNS–191 and the report month of July 2004 for the FNS–101.

FNS is requesting comments on the proposed reporting forms, FNS' estimate of the burden hours, and the proposed implementation date. We invite State agencies to include in their comments any estimates of significant cost increases that the proposed reporting changes may entail. We ask that State agencies be as specific as possible as to which data elements might increase costs most significantly. We also ask commenters to identify the program involved in their comments. After considering the comments, FNS will finalize the revised forms and include them in the burden package for OMB approval. FNS will formally announce the effective date(s) for each of the affected programs through implementing memoranda as appropriate and will provide copies of the revised forms at that time. The two revised forms follow this notice.

Burden Estimate

Respondents: Local agencies that administer the CSFP, FDPIR, and FSP.

Number of Respondents: 265 (101 for CSFP, 111 for FDPIR, and 53 for FSP).

Estimated Number of Responses per Respondent:

Form FNS–191: 101 local CSFP agencies once a year.

Form FNS–101: 111 local FDPIR agencies and 53 State FSP agencies once a year.

Estimate of Burden:

Form FNS–191: The local CSFP agencies submit Form FNS–191 at an estimate of 1.75 hours per respondent, or 176.75 total hours. There is an additional recordkeeping burden of .25 hours per respondent for maintaining the responses, or 25.25 hours. Total burden is 202 hours.

Form FNS–101: The local FDPIR and State FSP agencies submit Form FNS–101 at an estimate of 1.75 hours per respondent, or 287 total hours. There is an additional burden of .25 hours per respondent for maintaining the responses, or 41 hours. The lower burden per respondent reflects the increased use of automation to complete the report. Total burden is 328 hours.

Estimated Total Annual Burden on Respondents: The revised annual

reporting and recordkeeping burden for OMB No. 0584–0025 is estimated to be 530 hours, a reduction of 6,065 hours. The burden reduction is due primarily to the decrease in the number of agencies that will complete a report.

Dated: November 21, 2002.

Roberto Salazar,

Administrator.

BILLING CODE 3410–30–P

PARTICIPATION IN FOOD PROGRAMS - BY RACE

1. STATE/ITO: _____

2. PROGRAM: ☐ FOOD STAMP ☐ FDPIR

3A. NAME OF PROJECT AREA: _____

3B. PROJECT AREA CODE: _____

4. NAME & ADDRESS OF REPORTING AGENCY:

_____

_____

5. REPORTING YEAR: JULY _____

		NUMBER OF HOUSEHOLD CONTACTS BY RACE	NUMBER OF HISPANIC OR LATINO HOUSEHOLD CONTACTS BY RACE
INDIVIDUALS WHO MARKED ONLY ONE RACE	6. AMERICAN INDIAN OR ALASKA NATIVE		
	7. ASIAN		
	8. BLACK OR AFRICAN AMERICAN		
	9. NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		
	10. WHITE		
INDIVIDUALS WHO MARKED TWO RACES	11. AMERICAN INDIAN OR ALASKA NATIVE AND WHITE		
	12. ASIAN AND WHITE		
	13. BLACK OR AFRICAN AMERICAN AND WHITE		
	14. AMERICAN INDIAN OR ALASKA NATIVE AND BLACK OR AFRICAN AMERICAN		
OTHER COMBINATIONS >1% (SPECIFY)	15.		
	16.		
	17. BALANCE REPORTING MORE THAN ONE RACE		
	18. TOTAL (ADD LINES 6 THRU 17)		

19. REMARKS:

DATE: _____ TITLE: _____ SIGNATURE: _____

FORM FNS-101 (0-2004) Previous Editions Are Obsolete
Electronic Form Version Designed in JetForm 5.01 version

PAGE 1

INSTRUCTIONS

This report will be prepared annually covering the month of July.

REPORTING UNITS - Send the original and one copy to reach the State agency as soon as possible, but no later than the 20th of August.

STATE AGENCIES AND INDIAN TRIBAL ORGANIZATIONS (ITOs) - Shall determine that reports have been received from all reporting units. The original copy shall be forwarded to the appropriate FNS Regional Office to reach that office as soon as possible, but no later than the 19th of September.

REGIONAL OFFICES - Shall determine that reports have been received from all State agencies, Indian Tribal Organizations, and reporting units. *The regional office shall enter all local agency information into FSPIIS and SNPIIS databases by the 20th of November.*

Items 1 through 5 and 19 - self explanatory.

For items 6 through 18, a household contact is the person who completes the application or is interviewed. Report for only one household contact per participating household. Report for each racial group the number of household contacts that participated (received program benefits or commodities) during July. For purposes of this form, "Hispanic or Latino" is an ethnic group, not a race. Report in the first column the total household contacts (including individuals of Hispanic or Latino origin) by race and in the second column only Hispanic or Latino household contacts by race. The form is requesting separate counts for individuals who chose only one race and those who chose more than one race.

For items 15 and 16, if applicable, report for any other specific racial combinations that are greater than 1 percent of the population for the jurisdiction. Specify the racial combination and the FNS system code for that combination in the appropriate space.

For item 17, report the total number of household contacts who chose racial combinations not included in items 11 through 16.

RACIAL/ETHNIC GROUP PARTICIPATION
COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. STATE:_____ 2. STATE#_____ L/A#_____ NO. OF CLINICS_____

3. REPORTING: LOCAL AGENCY NAME _____
ADDRESS _____
CITY_____
STATE_____ZIP CODE_____ TELEPHONE NUMBER _____

4. REPORTING YEAR: APRIL _____

NUMBER OF PARTICIPANTS BY RACE/ETHNIC GROUP IN APRIL

		NO. OF PARTIC-IPANTS BY RACE	NO. OF HISPANIC OR LATINO PARTIC-IPANTS BY RACE
INDIVIDUALS WHO MARKED ONLY ONE RACE	5. AMERICAN INDIAN/ALASKA NATIVE		
	6. ASIAN		
	7. BLACK OR AFRICAN AMERICAN		
	8. NATIVE HAWAIIAN/PAC. ISLANDER		
	9. WHITE		
INDIVIDUALS WHO MARKED TWO RACES	10. AMERICAN INDIAN/ALASKA NATIVE AND WHITE		
	11. ASIAN AND WHITE		
	12. BLACK OR AFRICAN AMERICAN AND WHITE		
	13. AMERICAN INDIAN/ALASKA NATIVE AND BLACK OR AFRICAN AMERICAN		
OTHER COMBINATIONS >1% (SPECIFY)	14.		
	15.		
	16. BALANCE MORE THAN ONE RACE		
	17. TOTAL (Add lines 5 thru 16)		

DATE:_____ TITLE:_____ SIGNATURE:_____

INSTRUCTIONS

This report will be prepared annually covering the month of April.

LOCAL AGENCIES - Shall forward the original and one copy to the State agency by the 7th day of July, retaining the second copy.

STATE AGENCIES - Shall determine that reports have been received from all local agencies and review all information prior to forwarding the original copy to the appropriate FNS regional office in time to reach that office no later than the 31st of July. The duplicate copy form shall be retained and used for analysis in monitoring local agencies and State agency compliance with civil rights requirements.

FNS REGIONAL OFFICES - Shall determine that all local agency reports have been received from the State agencies and reviewed for completeness. The regional office shall enter all local agency information into the SNPIIS database by the 19th of September.

Item 1. Self-explanatory.

Item 2. For State agency, enter the four-digit Letter of Credit number. For local agency, enter the 3-digit identification number used in previous years that was assigned by FNS. New local agencies shall obtain the identification number from the State agency. The new local agency 3-digit number should be the next unused consecutive identification number. Enter the number (001 or more) of clinics under each local agency's supervision.

Items 3 and 4 Self-explanatory.

Items 5 - 17. Report for each racial group the number of participants who received commodities in April. For purposes of this form, "Hispanic or Latino" is an ethnic group, not a race. Report in the first column the total number of participants (including those of Hispanic or Latino origin) by race and in the second column only Hispanic or Latin participants by race. The form is requesting separate counts for individuals who chose only one race and those who chose more than one race.

For Items 14 and 15, if applicable, report the total number of participants for any specific racial combinations that are greater than 1 percent of the population for the State. Specify the racial combination and the FNS system code for that combination in the appropriate space.

For item 16, report the total number of participants who chose racial combinations not included in items 10 through 15.

[FR Doc. 02–30113 Filed 11–26–02; 8:45 am]
BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Baseline and Trend Information on Wilderness Use and Users

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of an existing information collection that has, since 1990, collected data about wilderness recreation users in the United States. The information is necessary to help the Forest Service and other Federal wilderness management agencies meet the needs and expectations of visitors, who look to the National Wilderness Preservation System for recreational experiences that are dependent upon natural wilderness conditions away from human development and devoid of crowds. Respondents will be visitors, or potential visitors, to the National Wilderness Preservation System.

DATES: Comments must be received in writing on or before January 27, 2003.

ADDRESSES: Written comments concerning this notice should be addressed to Forest Service, USDA, Attn: Alan Watson, Aldo Leopold Wilderness Research Institute, P.O. Box 8089, Missoula, Montana 59807. Comments may also be sent via e-mail to *awatson@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Alan Watson, Aldo Leopold Wilderness Research Institute, (406) 542–4197.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking an extension of an existing information collection authorized under Office of Management and Budget Control Number 0596–0108. This information collection approval allows the Forest Service to collect information from visitors, or potential visitors, to the lands of the National Wilderness Preservation System.

The Wilderness Act of 1964 directs that the National Wilderness Preservation System be managed to protect natural wilderness conditions and to provide outstanding opportunities for the public to find solitude or primitive and unconfined types of recreational experiences.

To meet the requirements of the Wilderness Act of 1964 and to help the Forest Service enhance visitors' recreational experiences, the agency monitors trends of visitor recreational activities. Forest Service personnel also want to ensure that visitors' recreational activities do not harm the natural resources of the National Wilderness Preservation System. The agency is expanding the scope of the survey to include wilderness areas about which the agency has little information in regard to visitor recreational trends.

The Forest Service will use information from this collection to: (1) Establish visitor recreational use baselines; (2) monitor visitor recreational use trends; (3) gain an understanding of how the agency's management of the National Wilderness Preservation System influences a visitor's wilderness experience; and (4) help understand how to educate visitors, so that they may enjoy their wilderness experience without leaving permanent reminders of their visits, such as damaged vegetation, litter, and polluted streams. The information also will be used for planning management direction for various wilderness areas managed by the agencies in the Departments of Agriculture and Interior.

Data from this information collection are not available from other sources and will be maintained at the interagency (Agriculture and Interior) Aldo Leopold Wilderness Research Institute in Missoula, Montana.

Description of Information Collection

The following describes the information collection to be extended:

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Number: 0596–0108.

Expiration Date of Approval: January 31, 2003.

Type of request: Extension of a currently approved information collection.

Abstract: Respondents will be visitors, or potential visitors, to the National Wilderness Preservation System (System). Forest Service personnel will conduct face-to-face, on-site interviews with visitors as they enter the System or will send mailback survey forms to visitors at their homes using addresses that visitors provide when visiting the System. Forest Service personnel will contact visitors at nonwilderness sites to ask if they have plans to visit the System. When unable to conduct face-to-face interviews with potential visitors, the agency will send mailback survey forms to the homes of those who visited nonwilderness areas, using addresses provided by them as they entered the nonwilderness sites. In some cases, the agency forms will be made available on a self-service basis to visitors in trailhead displays.

Respondents will be asked questions that include how many times they visit, when they plan their next visit, or if they plan to visit at all. Respondents will be asked, when visiting, if they come in groups and, if so, the size of those groups. Respondents will be asked how long they stay when visiting. Do they use equipment, such as stoves, or use wood for fires while visiting? Do they have preferences for social conditions? For example, do they like or will they accept crowded conditions, such as crowded camping areas and areas designed to limit the negative effects of visitor use on natural resources, such as soil compaction, damage to tree roots, and negative impacts to water quality? Do respondents support various wilderness management strategies (such as limiting visitor use of wilderness areas) to lessen negative effects to the wilderness environment? Do they support separating uses (such as designating some campsites for use only by groups with pack animals) to avoid conflict?

Estimate of Annual Burden: 15 minutes.

Types of Respondents: Visitors or potential visitors to the National Wilderness Preservation System.

Estimated Annual Number of Respondents: 3,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: November 20, 2002.

Robert Lewis, Jr.,

Deputy Chief, Research and Development.

[FR Doc. 02–30017 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–c]

Cancellation of Mississippi's Delegation

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides for state agency delegations at export port locations within a state. The Mississippi Department of Agriculture and Commerce (Mississippi), is delegated to provide official export inspection and weighing services. However, there are no longer any bulk grain export port facilities in the State of Mississippi. Accordingly, GIPSA is announcing that Mississippi's delegation is being canceled effective December 1, 2002. This does not affect Mississippi's current designation to provide official domestic grain inspection and weighing services, effective January 1, 2001, through September 30, 2003.

DATES: December 1, 2002.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647–S, 1400 Independence Ave. SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(e)(2) of the Act authorizes GIPSA's Administrator to delegate authority to a qualified State agency to perform all or specified functions involved in official inspection at export port locations within the state. GIPSA originally delegated Mississippi, main office in Jackson, Mississippi, under the Act on April 18, 1978. The sole grain export port facility in Pascagoula, Mississippi, has been razed. Therefore, Mississippi's delegation is cancelled. If any grain export port facility were to open in the future within the State of Mississippi, Mississippi would have the opportunity to become delegated again.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 14, 2002.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–30048 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Benchmark Survey of Foreign Direct Investment in the United States—2002.

Form Number(s): BE–12(LF) (long form), BE–12 (SF) (short form), BE–12 Bank (bank form), and BE–12X (Claim for Not Filing a BE–12(LF), BE–12(SF), or BE–12 Bank).

Agency Approval Number: 0608–0042.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 199,500 hours.

Number of Respondents: 17,700.

Avg Hours Per Response: 11.3 hours.

Needs and Uses: The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: Quinquennial.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6086, 14th Street and Constitution Avenue, NW, Washington, DC 20230, or via internet at *dHynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30080 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank).

Form Number(s): BE–605 and BE–605 Bank.

Agency Approval Number: 0608–0009.

Type of Request: Revision of a currently approved collection.

Burden: 19,750 hours.

Number of Respondents: 3,950 per quarter; 15,800 annually.

Avg Hours Per Response: 1¼ hours.

Needs and Uses: The U.S. Government requires data from the BE–605 (quarterly) survey for compiling the international transactions accounts, input-output accounts, and national income and product accounts of the United States. The data are also needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

Also, the data from the BE–605 survey complement data from BEA's other ongoing surveys of foreign direct investment in the United States, namely the BE–13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate, and the BE–12 (benchmark) and BE–15 (annual) surveys, which provide data on the overall operations of U.S. affiliates.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dHynek@doc.gov*.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 2002.

Madeleine Clayton,

Management Analyst.

[FR Doc. 02–30081 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Firearms Convention.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0114.

Type of Request: Renewal of an existing collection of information.

Burden: 374.

Average Time Per Response: 40 minutes per response (electronic copy), 45 minutes (hard copy).

Number of Respondents: 1,100 respondents.

Needs and Uses: This collection is required by Section 5(h) of the Export Administration Act of 1979, as amended (EAA), and authorized under Section 15(b) of the EAA. U.S. firms as a matter of practice already obtained the Import Certificate in order to do business in OAS countries. The United States now requires them to obtain it, provide the information to BIS, and retain the certificate in company records. The Import Certificate is essential to the prevention of the spread of illicit firearms. The USG can use it to prosecute illegal transactions, and it is useful in other enforcement activities.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230.

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 20230.

Dated: November 22, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30082 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Statement by Ultimate Consignee and Purchaser.

Agency Form Number: BXA–711.

OMB Approval Number: 0694–0021.

Type of Request: Extension of a currently approved collection of information.

Burden: 959 hours.

Average Time Per Response: 16 minutes per response.

Number of Respondents: 3,594 respondents.

Needs and Uses: The Form BIS–711 or letter puts the importer on notice of the special nature of the goods and receive a commitment against illegal disposition. In order to effectively control commodities, BIS must have sufficient information regarding the end-use and end-user of the U.S. origin commodities to be exported. The information will assist the licensing officer in making the proper decision on whether to approve or reject the application for the license.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230.

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 20230.

Dated: November 22, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30083 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 021104266–2266–01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving ''Schedule 1'' Chemicals Through Calendar Year 2002

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention has had on commercial activities involving ''Schedule 1'' chemicals through calendar year 2002. This notice of inquiry is part of an effort to collect information to assist in the preparation of the annual Presidential certification required under condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments are due December 18, 2002.

ADDRESSES: Written comments (four copies) should be submitted to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. In order to meet the due date for comments, single copies may be faxed to (202) 482–3355, provided that you follow up by submitting the appropriate number (four copies) of written comments.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact Larry Denyer, Treaty Compliance Division, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (703) 605–4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In its resolution to advise and consent to the ratification of the Chemical Weapons Convention (S. Res. 75, April 24, 1997), the Senate included several conditions. Condition 9 of Senate Resolution 75, titled ''Protection of Advanced Biotechnology,'' provides that the President shall certify to the Congress on an annual basis that ''* * * the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1 * * *''. The Bureau of Industry and Security is collecting data to assist in determining the impact, if any, that the implementation of the Convention's requirements have had on commercial ''Schedule 1'' activities through calendar year 2002.

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC), is an international treaty that establishes the Organization for the Prohibition of Chemical Weapons (OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority for liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

''Schedule 1'' chemicals are those toxic chemicals and precursors identified in the Convention as posing a high risk to the object and purpose of the Convention. The ''Schedule 1'' chemicals are set forth in the Convention's ''Annex on Chemicals,'' as well as in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (15 CFR 712).

The ''Schedule 1'' provisions of the Convention that affect commercial activities are implemented through part 712 of the Chemical Weapons Convention Regulations and parts 742 and 745 of the Export Administration Regulations, both administered by the Bureau of Industry and Security. These regulations:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2);

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year (*i.e.*, declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.3(a) and (b));

(3) Require government approval of ''declared Schedule 1'' facilities (15 CFR 712.3(e));

(4) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.3(d);

(5) Require 200 days advance notification of establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.5, 742.18 and 745); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18 and 745.2).

Discussion and Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are being significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention has had on commercial activities involving ''Schedule 1'' chemicals.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 18, 2002. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to

the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration, at (202) 482–0637, for assistance.

Dated: November 20, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–30011 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Ryan Langan at (202) 482–0176 or (202) 482–2613, respectively; AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: The Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of dynamic random access memory from the Republic of Korea have received countervailable subsidies.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department'') regulations are references to the provisions codified at 19 CFR Part 351 (April 2002).

The Petition

On November 1, 2002, the Department received a petition filed in proper form by Micron Technology, Inc. (the ''petitioner''). The Department received supplemental information to support the petition on November 13 and 19, 2002.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of the subject merchandise from the Republic of Korea (''Korea'') receive countervailable subsidies within the meaning of section 701 of the Act, and that imports of the subject merchandise are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support. See ''Determination of Industry Support for the Petition'' section, below.

Scope of Investigation

The products covered by this investigation are Dynamic Random Access Memory semiconductors (''DRAMs'') from Korea, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMs from Korea. A memory module is a collection of DRAMs, the sole function of which is memory. Memory modules include single in-line processing modules (''SIPs''), single in-line memory modules (''SIMMs''), dual in-line memory modules (''DIMMs''), small outline dual in-line memory modules (''SODIMMs''), Rambus in-line memory modules (''RIMMs''), and memory cards or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope. This investigation also covers future DRAM module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory (''VRAM''), and synchronous graphics RAM (''SGRAM''), as well as various types of DRAMs, including fast page-mode (''FPM''), extended data-out (''EDO''), burst extended data-out (''BEDO''), synchronous dynamic RAM (''SDRAM''), Rambus DRAM (''RDRAM'') and Double Data Rate DRAM, (''DDR SDRAM''). The scope also includes any future density, packaging, or assembling of DRAMs. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit (''CPU''), unless the importer of the motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMs or memory modules that are re-imported for repair or replacement.

The DRAMs subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The memory modules containing DRAMs from Korea, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Scope Issue

The scope language as proposed by the petitioner included ''[p]rocessed wafers fabricated outside Korea, and assembled into finished semiconductors in Korea.'' As discussed below, the Department has determined not to include this language in the scope of this investigation. In past semiconductor cases, the Department has determined that country of fabrication confers country of origin and in fact has specifically excluded wafers produced in a third country that are

assembled and packaged in Korea. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') From Taiwan*, 64 FR 56308, 56309 (October 19, 1999) and *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467 (March 23, 1993).

The petitioner states that it considers DRAMs to originate in Korea if the DRAMs are fabricated and/or assembled in Korea, asserting that this position takes into account the country of origin rule used for U.S. Customs purposes, which is based on the country of assembly. The petitioner further asserts that the subsidies that are being provided by the Government of the Republic of Korea (''GOK'') provide a significant benefit to all facets of the semiconductor production process in Korea, including the assembly and testing phases. The petitioner notes that the past cases before the Department have been antidumping cases and asserts that the scope from earlier antidumping cases should not be imported into a countervailing duty case based on the fundamental differences between the two types of proceedings. According to the petitioner, unlike an antidumping case where the Department is concerned with unfair pricing between private parties, a countervailing duty case involves the examination of government subsidies that benefit an entire production process. The petitioner claims that any DRAM assembled in Korea must be included in the scope because all DRAMs have benefitted from the subsidies. According to the petitioner, while the limitation of scope to the country of fabrication may be reasonable in an antidumping case, such a finding in this case would address only a part of the overall DRAM production process in Korea and would permit a continuation of the material injury the law is designed to prevent.

The petitioner further argues that the increasing cost and sophistication of the assembly and testing operations in recent years separately justifies including DRAMs assembled in Korea in the scope of this investigation. In addition, the petitioner asserts that to include assembly in the scope resolves an inconsistency in the earlier semiconductor cases where the Department based the scope on country of fabrication but the International Trade Commission's definition of the domestic industry included fabricators and assemblers. Finally, the petitioner states that the Department typically defers to the petitioner when framing the scope of the merchandise being investigated.

At consultations and in its later filings, the GOK has argued that the Department should not expand the scope from prior determinations to include merchandise fabricated outside Korea but assembled and tested in Korea. The GOK contends that the expanded scope is contrary to Department practice and that the facts do not support a change in practice. The GOK asserts that the wafers are the defining component of the DRAM or memory module and that the value added for final assembly is much smaller than the wafer fabrication, accounting for less than 15 percent of the total cost of the DRAM. In support of its position, the GOK cites *Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value* (''*EPROMs*''), 51 FR 39680 (October 30, 1986), where the Department found that EPROM wafers and dice originated in the country of fabrication, not in the country where assembly and testing occurred. In *EPROMs*, the Department found that third country assembly and testing did not constitute a ''substantial transformation'' that changed the country of origin from the country of fabrication. Concerning the petitioner's assertion that the language in past cases is not applicable because those cases were antidumping cases, the GOK notes that the Department based its analysis in *EPROMS* on its interpretation of the ''class or kind of foreign merchandise'' as defined in the antidumping statute, and that the subsidy statute uses almost the identical language.

Concerning the petitioner's argument regarding Customs' rulings, the GOK points out that the Department has not felt bound by Customs' country of origin rulings because these rulings serve different purposes.

We have considered this issue carefully and, as stated in the ''scope of investigation'' section above, have determined that processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope. The principal reason for this determination is that in numerous past proceedings on DRAMs and similar products such as EPROMs, the Department has consistently maintained that the country of origin is the country where wafer fabrication occurs. Given those precedents, we are unwilling to adopt different criteria for determining origin absent compelling information that new criteria are appropriate. The information presented by the petitioner does not meet that threshold.

First, section 701(a)(1) of the Act provides for the investigation of whether a countervailable subsidy is being provided to ''a class or kind of merchandise.'' A single definable class or kind of merchandise is linked inextricably to its country of origin, which is in turn determined, for purposes of both antidumping and countervailing duty proceedings, by the substantial transformation test. (*EPROMs*, *supra*, at General Comment 28.) Accordingly, the Department finds that it would not be appropriate or feasible to have a class or kind of merchandise subject to investigation that would require two different and potentially conflicting country-of-origin tests. Thus, the Department cannot accept the alternative test implicated by petitioner's proposed scope language, i.e., that the assembly and testing operations should also set country-of-origin.

The Department has independent authority to determine the scope of its investigations. See *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983). The Department's authority to make its own country of origin determinations is inherent in its independent authority to determine the scope of AD/CVD investigations. Moreover, the Department's country-of-origin determinations, which have not always been identical with Customs's country-of-origin determinations, reflect concerns specific to enforcement of the AD/CVD laws, such as the potential for the circumvention of orders. *See, e.g., EPROMS from Japan*, 51 FR 39680 (October 30, 1986); *DRAMS of 256 Kilobits and Above from Japan*, 51 FR 28396 (August 7, 1986); *Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 58 FR 37062 (July 9, 1993).

Given this authority, the Department has determined that it is appropriate to continue to base origin on wafer fabrication. While the petitioner may be correct that testing and assembly may be more costly than in the past, there does not seem to be any dispute that wafer fabrication is still the more important stage of the production process. Indeed, the petitioner contends, and we agree as in past determinations, that wafers fabricated in Korea and assembled and tested in third countries are within the scope of this proceeding. Consequently, we have not adopted the petitioner's proposed scope.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited

representatives of the GOK for consultations with respect to the petition filed. On November 12, 2002, the Department held consultations with the GOK. The points raised in the consultations are described in a memorandum to the file entitled ''CVD Consultations with Officials from the Government of the Republic of Korea,'' dated November 13, 2002. This memorandum is on file in the Department's Central Records Unit, Room B–099 of the main Department of Commerce building. The GOK filed submissions with the Department on November 18 and 19, 2002.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. As discussed in the scope section of this notice, we have modified the scope from the scope presented in the petition. For purposes of calculating industry support, we have used a domestic like product definition that is consistent with our revised scope language. The petition covers DRAMs as defined in the ''Scope of the Investigation'' section, above, a single class or kind of merchandise.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Finally, section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A); or (ii) determine industry support using any statistically valid sampling method to poll the industry.

The Department has determined, pursuant to section 702(c)(4)(D), that there is support for the petition as required by subparagraph (A). Specifically, the Department made the following determinations. The domestic producers or workers who support the petition established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the Initiation Checklist dated November 21, 2002 (''*Initiation Checklist*'').

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, an industry in the United States.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidization of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in domestic prices, operating income and profitability, market share, budgeting for research and development, capital expenditures, inventory valuations,[2] production capacity,[3] as well as lost sales and revenue due to subject imports. The petitioner further alleges threat of injury due to increased import volumes, inventory levels in Korea, unused and increasing production capacity, and price depression. The petitioner asserts that because of the negative trends discussed above, several domestic producers have either ceased operations or consolidated operations with other domestic producers, and there have been no new entrants in the domestic industry. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, the financial statements of Micron and Infineon Technologies, lost sales and revenue data, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

[2] Specifically, the petitioner alleges that the industry has recently experienced large write-downs of inventory valuation due to historically low selling prices.

[3] The petitioner states that wafer capacity has not increased over the last three years. Rather, capacity has been reduced due to industry consolidation and plant closures, and it has been retooled for production of other types of semiconductors or upgraded with new equipment to accommodate new densities, die shrinks, or address technologies.

under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Period of Investigation

The petitioner has identified numerous instances of alleged government support for Hynix Semiconductor Inc. (''Hynix'')[4] in 2001. The petitioner has argued that much of this assistance should be addressed under the Department's grant methodology because although the assistance was ostensibly in the form of loans, there were non-viable contingencies on repayment. Alternatively, the petitioner has argued that the assistance should be treated as long-term loans with special characteristics such that the benefit would be recognized at the time the funds were disbursed to Hynix in accordance with the methodology described in 19 CFR 351.505(b) and 351.505(c)(3). If the Department rejects these methodologies, then its regulations indicate that the benefit would accrue at the time that interest would be paid on a comparable commercial loan, according to the petitioner. However, based on information reasonably available to it, the petitioner has not been able to determine the terms of the allegedly subsidized assistance and, consequently, has not been able to calculate the interest that would have been paid in 2001 or whether, in fact, interest obligations even began before 2002.

To address these unique circumstances, the petitioner requests that the Department expand the period of investigation (''POI'') to include not only 2001, but also the first six months of 2002. The petitioner claims this is necessary because a POI limited to 2001 may permit the subsidies to Hynix to escape scrutiny. If the Department finds that the assistance to Hynix should be addressed under a methodology that assigns the benefits to 2001, the petitioner states that there may be no need to extend the POI.

In consultations, the GOK argued that Hynix, Samsung Electronics Company (''Samsung''), and the GOK have calendar fiscal years and, as such, the Department's standard practice is to use only the calendar year 2001 as the POI. The GOK claims that no basis for expanding the POI exists because 1) any benefits received in 2002 would be captured in a review; 2) expanding the POI would unnecessarily complicate the case; 3) completed and audited financial statements or completed and submitted tax returns would not be available, placing an unnecessary burden on the U.S. government, the GOK, and the respondents; and 4) no rationale was provided to expand the POI, nor has the petitioner cited any cases in which the Department departed from its practice of using a single calendar year POI.

Under 19 CFR 351.204(b)(2), the Department normally relies on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. That same regulation also states, however, that we may rely on information for any additional or alternative period that we conclude is appropriate. In this proceeding, because the petition was filed in November 2002, the normal POI would be 2001.

Recognizing that adoption of an 18–month period of investigation would be a departure from our normal practice, we have carefully considered the merits of the petitioner's claims and the concerns raise by the GOK. Given the lateness of the filing in 2002, we considered collecting data for two separate 12–month periods, 2001 and 2002, and then deciding which data set to use once the relevant facts were discovered through the investigation process. However, such an approach has the obvious drawback that the Department would have to select between the two periods in making its final determination of subsidies, and the period picked could have a significant effect on the outcome of the proceeding.

Instead, we have determined from the outset of this proceeding that we will use the 18–month period of investigation urged by the petitioner. We agree that the terms of various alleged subsidies are not reasonably available to the petitioner and that the methodology, including the point in time that the benefits would be deemed to have accrued, will only be known after an investigation and analysis of the parties' comments. In these circumstances, we do not believe that we should limit this investigation to the normal POI because doing so may be tantamount to telling the petitioner that it has to bring a case simply to learn that the petition should have been filed at a later time (despite that fact that allegedly injurious imports have been occurring all along). Our regulations at 19 CFR 351.204(b)(2) accord us the flexibility to address these unusual circumstances by expanding the POI.

Moreover, we do not intend to scale back the 18–month period of investigation if, as the petitioner suggests, we find it unnecessary. By setting out an 18–month POI at the outset, we avoid the situation of having parties seek to shape the period of investigation to achieve a particular outcome.

Regarding the concerns raised by the GOK, the issue is not whether the subsidies will be captured in the investigation or a possible administrative review. Instead, the petitioner has provided information available to it indicating that the subject merchandise is subsidized. The lack of perfect information, or questions about the timing of the benefits under the Department's various methodological approaches, should not preclude the petitioner from seeking meaningful relief. Second, we do not see that an expanded POI would complicate the investigation beyond the collection of additional data. Third, although completed and audited 2002 financial statements might not be initially available, the Department routinely relies on draft financial statements. Finally, although the petitioner has not cited any cases in which the Department departed from its practice of using a single calendar year as the POI, as noted above, the Department has the discretion to do so.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on DRAMs from Korea and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of DRAMs from Korea receive countervailable subsidies.

I. Creditworthiness and Equityworthiness

The petitioner alleges that Hynix was uncreditworthy in 2000 and 2001 and continues to be uncreditworthy in 2002. The petitioner claims that at the end of 1999, HEI was at a cash crisis point, with 495 billion Won in short-term debt and 2,502 billion Won in long-term debt, and approximately one trillion Won in interest payments due in 2000. HEI had only 808 billion Won in operating profits in 1999 so it was clear that HEI would be unable to pay off the loans and meet its interest obligations. Specifically, the petitioner claims that Hynix has not received any new lending on commercial terms since the beginning of 2001. With one exception, all loans received by Hynix in 2002 were from government agencies or creditors entrusted or directed by the

[4] Hynix was known as Hyundai Electronics Industries Co. Ltd. (''HEI'') until March 29, 2001.

government to extend credit to Hynix. The petitioner states that Hynix received one ''relatively insignificant'' loan from Citibank. However, the petitioner notes that the Department's practice is to examine the circumstances surrounding commercial bank loans that are part of financing packages that involve the government to determine whether there are any special features of the package that would lead the commercial lender to offer lower, more favorable terms than would be offered absent the government/ commercial bank package (citing to the Preamble to the *Countervailing Duties: Final Rule*, 63 FR 65348, 65363–64 (November 25, 1998). The petitioner claims that the loan from Citibank, for several reasons, could not be viewed as being comparable to the GOK's loans.

The petitioner further alleges that throughout the period 2000 and 2001, Hynix had a significant amount of debt coming due and the company would not be able to pay off this debt using its internal free cash flow. Therefore, Hynix needed help from the government. To support this, the petitioner points to comments made by investment banks in their reports during 2000 and 2001. For example, the reports stated: ''[w]e believe it would be difficult for [Hynix] to secure sufficient funds to repay its debt...;'' ''[Hynix has a] fundamental problem of excessive debt which was around 87 percent of 2001 sales;'' ''[Hynix is] not profitable and is not paying off debt at a sufficiently fast rate from internal cash flow or asset disposals;'' ''we believe Hynix's balance sheet risk remains high.'' According to the petitioner, the investment community's analyses at the time reveals that it was known that Hynix did not have the cash flow to repay debts and would not be able to obtain funding from normal commercial sources.

Since the two bailouts in 2001, the petitioner claims that Hynix's financial situation has continued to worsen, with Hynix reporting a loss of more than 410 billion Won for the first half of 2002. Meanwhile, the petitioner notes, Hynix still has 5,982 billion Won in debt, a large portion of which is coming due in the next few years. With DRAM prices at historical lows, the petitioner argues that there is no reasonable expectation, under normal commercial considerations, that Hynix's debt will ever be repaid without GOK assistance. Without GOK intervention, the petitioner claims, banks would not continue to provide new money to Hynix, at any interest rate.

The petitioner additionally examines Hynix's financial condition during the time relying on various financial indicators: total liabilities to net worth; fixed assets to net worth; current liabilities to net worth; the current ratio; and the quick ratio. According to the petitioner, the current ratio indicates that even if Hynix were to liquidate its current assets at full book value, it would be unable to pay off its current liabilities in full. Regarding the quick ratio, the petitioner notes that Hynix could cover only 8 percent of its current liabilities with current assets other than inventories. The petitioner also claims that Hynix's debt was increasing. The company's debt-to-equity ratio was 186 percent in 2000 and rose to 193 percent in 2001. Finally, the petitioner notes that for the period 1998 to 2001, Hynix had current liabilities which exceeded its net worth for three of the years. According to the petitioner, only after the bailout in 2001, did this ratio drop below one. In examining a company's creditworthiness we attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. 19 CFR 351.505(a)(4). We find that the financial information submitted by the petitioner provides a reasonable basis to believe or suspect that Hynix was uncreditworthy in 2000 - 2002. Therefore, if we find that Hynix received any non-recurring grants, loans, or loan guarantees in those years, we will determine whether the company was creditworthy in those years.

The petitioner also alleges that Hynix was unequityworthy in 2001, the year in which Hynix recorded convertible bonds as capital adjustments (*i.e.*, swapped debt for equity). Specifically, according to the petitioner: 1) Hynix posted net losses since 1998; 2) the lead underwriter of Hynix's 2001 issuance of global depository receipts (''GDR'') did not foresee positive free cash flow for the company through the fourth quarter of 2003; 3) without free positive cash flow, Hynix could not service its debt, forcing it into bankruptcy and eliminating any claims by the shareholders on the company's proceeds; 4) Hynix's return on equity was negative for the period 1998 through 2000 (negative 35.5 in 2000), and was projected to range from negative 54.1 percent to negative 89.1 percent through 2003; and 5) although Hynix had a GDR equity offering to private investors in June 2001, because the 72 percent drop in the prices of these GDRs showed that Hynix's financial position had degenerated, this offering does not indicate that Hynix was equityworthy at the time of the debt-equity swap in October 2001. The petitioner claims that the convertible bonds should be treated as equity, not debt, because the bondholders were obligated to convert the bonds and Hynix treated these bonds as capital adjustments. In the case of a government equity infusion, the Department measures the benefit by examining the investment decision against the usual investment practice of a private investor. 19 CFR 351.507(a)(1). Specifically, the Department compares the purchase price paid by the government to prices paid for new shares by private investors, if such prices exist. 19 CFR 351.507(a)(2). If actual private investor prices are unavailable, the Department will determine the equityworthiness of a company at the time of the equity infusion. 19 CFR 351.507(a)(3).

In this case, although Hynix did issue GDR's in the first half of 2001, we find that the petitioner provides a reasonable basis to believe or suspect that, at the time of the October 2001 bailout, Hynix was not equityworthy. If we determine that Hynix received an equity infusion in 2001, we will make a determination regarding Hynix's equityworthiness at the time of the infusion.

II. Programs

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Korea. The bases for our determination to investigate these programs are set forth in the *Initiation Checklist*.

For several of the programs listed below, the petitioner alleges that the GOK 1) directs credit in Korea, and 2) this credit was directed specifically to the semiconductor industry. For the reasons stated in the *Initiation Checklist*, we are investigating whether the GOK directs credit in Korea and whether the semiconductor industry receives a disproportionate share of the directed credit.

A. Bailout Subsidies to Hynix

1. Syndicated Bank Loan of 800 Billion Won
2. 22.7 Billion Won Citibank Loan
3. KDB Fast Track Program
4. May 2001 Bailout
a. Creditor Purchase of 994.1 Billion Won of Convertible Bonds
b. 6 Billion Won Grant
c. 5.9 Billion Won Loan
d. Extension of Maturities of 58 Billion Won of Short-Term Loans
e. Extension of Maturities of Long-Term Loans
f. Committed Availability of Short-Term Financing

5. 680 Billion Won Bond Guarantee
6. October 2001 Bailout
a. Equity Infusion
b. Extension of Debt Maturities and Reduction or Elimination of Interest Obligations
c. Debt Forgiveness
d. Conversion of Short-Term Financing to Long-Term Loans
e. Fresh Loans
7. D/A Financing
B. Other Subsidies
1. Preferential Loan Programs
a. Fund for Industrial Technology Development
b. Fund for Promotion of Science and Technology
c. Fund for Rental Housing
d. Fund for Promotion of Defense Industry
e. Long-Term Usance Loans
f. Export Industry Facility Loans (''EIFLs'')
g. Short-term Export Financing
h. Export Credit Financing From Export-Import Bank of Korea
i. Loans From the Energy Savings Fund
j. Fund for Machinery Made in Korea
k. Fund for Promotion of Informatization
2. R&D Support
3. Tax Programs
a. Reserve for Overseas Market Development - (Former) Article 17 of TERCL
b. Technological Development Reserve Funds - (Former) Article 8 of TERCL
c. Reserve for Export Loss - (Former) Article 16 of TERCL
d. Tax Credit for Investment in Facilities for Productivity Enhancement under Article 24 of RSTA
e. Miscellaneous Investment Tax Credits - Article 10, 18, 25, 26, and 71 of RSTA
f. Foreign Investment Promotion Act (Formerly Foreign Capital Inducement Law (''FCIL''))
4. Other Benefits
a. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates
b. Export Insurance
c. Electricity Discounts Under the Requested Load Adjustment Program
d. Targeted Assistance Programs
i. Operation G&/HAN Program and 21st Century Frontier R&D Program
ii. Korean Semiconductor Research Project

We are not investigating the following alleged subsidy programs: Tax Credit for Investment in Equipment to Develop Technology and Manpower - Article 11 of RSTA (formerly Article 9 of TERCL) and Special Taxation Provisions Relating to Corporate Restructuring.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a public version of the petition has been provided to the GOK. We will attempt to provide a public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than December 16, 2002, whether there is a reasonable indication that imports of DRAMs from Korea are causing material injury, or threatening to cause material injury, to an industry in the United States. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30138 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Open Town Meeting for Information Gathering on Exploring the Development of a Textile ''Marker'' System

November 22, 2002.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of an open meeting.

SUMMARY: The International Trade Administration (ITA) will hold a public meeting on technologies under investigation for a textile ''marker'' system.

DATES: The meeting is scheduled for December 10, 2002, from 10:00am to 12:00pm.

ADDRESSES: The meeting will be held at the North Carolina Center for Applied Textile Technology (NCCATT), 7220 Wilkinson Boulevard, Belmont, NC. Telephone, (704) 825-3737.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, Jr. at (202) 482-4058, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Directions to the NCCATT are as follows: Take Exit 27 off of I-85 South. Go left at the top of the exit ramp on Highway 273 for approximately 1/3 of a mile. Go left on Highway 74 for approximately 2/3 of a mile until you reach the NCCATT campus on your right. Proceed to the auditorium in the ''new building'' at 7230 Wilkinson Boulevard. From Charlotte airport follow signs to I-85 South and the directions are the same as above. For further information please contact the North Carolina Center for Applied Textile Technology at (704) 825-3737.

The meeting will be co-chaired by James C. Leonard III, Commerce Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries and Dr. Glenn O. Allgood, Principal Investigator, Oak Ridge National Laboratory. During the meeting the following agenda item will be discussed.

Department of Commerce (DOC)/ Department of Energy (DOE) Project to Explore the Development of a Special Textile ''Marker'' System

DOE will make a presentation on the technologies under investigation for a textile ''marker'' system. DOE and DOC officials will discuss this project at the meeting, and will encourage participants to provide individual comments and information on these technologies with particular reference to: cost effectiveness; compatibility with U.S. manufacturing processes; the ability to survive foreign fabrication techniques; and compatibility with U.S. Customs processes and procedures. Discussion will include possibilities of and opportunities for plant visits by DOE personnel and other pertinent issues.

Background

On October 29, 2002 the Department of Commerce entered into an agreement with the Department of Energy's Oak Ridge Operations Office to explore the development of a special ''marker'' system to track the presence of U.S.-made yarns and fabrics in U.S. apparel imports.

Certain provisions of U.S. apparel import preference programs and free trade area agreements require the use of U.S. textile inputs. However, the origin of such inputs is difficult to determine and the development of a textile marker system is intended to ensure the use of U.S. fabrics and yarns in products receiving preferences.

Dated: November 22, 2002.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc.02–30096 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 10, 2002, from 8:25 a.m. to 5:30 p.m. and Wednesday, December 11, 2002, from 8 a.m. to Noon. The Visiting Committee on Advanced Technology is composed of twelve members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST Update; an Update on Near-Term Strategic Environment; NIST 2010 Implementation—Cross-cutting Themes from OU Operational Plan Reviews and Results of Initial Planning Review Sessions on Nanotechnology and Homeland Security and a tour of the Advanced Measurement Laboratory. Discussions scheduled to begin at 2:45 p.m. and to end at 5:30 p.m. on December 10, 2002, and to begin at 8 a.m. and to end at Noon on December 11, 2002, on the NIST budget, personnel issues, planning information and feedback sessions will be closed. Agenda may change to accommodate Committee business. Final agenda will be posted on website. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Thursday, December 5, 2002, and she will provide you with instructions for admittance. Mrs. Peter's email address is carolyn.peters@nist.gov and her phone number is (301) 975–5607.

DATES: The meeting will convene December 10, 2002 at 8:25 a.m. and will adjourn at Noon on December 11, 2002.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 16, 2002, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 20, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–30137 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

Amendments to the Area To Be Avoided Off The Olympic Coast National Marine Sanctuary

AGENCY: National Ocean Service (NOS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic Atmospheric Administration (NOAA) is notifying the public of its implementation of amendments to the existing Area to be Avoided (ATBA) off the Washington Coast to include all vessels of 1,600 gross tons and above solely in transit in accordance with the International Maritime Organization's (IMO) adoption of MSC 75/24, para 6.7.4 on May 29, 2002.

DATES: The effective date of the amended ATBA is December 1, 2002.

FOR FURTHER INFORMATION CONTACT: George Galasso, Assistant Manager, Olympic Coast National Marine Sanctuary, phone (360) 457–6622, email: *george.galasso@noaa.gov.*

SUPPLEMENTARY INFORMATION: An ATBA is defined by the IMO as an area that all ships or certain classes of ships should avoid because navigation is particularly hazardous or it is exceptionally important to avoid casualties within the area. On December 7, 1994, the Maritime Safety Committee of the IMO adopted an ATBA proposed by the U.S. government off the Olympic Coast National Marine Sanctuary (OCNMS). Since implementation in June 1995, the United States has been monitoring compliance through the use of Canadian Coast Guard radar data from the Tofino Marine Communications and Traffic System. Compliance with the ATBA is estimated to be between 90–95%, due to the excellent cooperation by the maritime community, vigorous education and outreach efforts by the OCNMS staff and the U.S. Coast Guard, and the sending of educational letters to those ships found to be in non-compliance.

The U.S. Coast Guard has recently conducted a Port Access Route Study (PARS) to critically review all aspects of vessel movements in the area. The conclusions of the PARS resulted in three vessel routing proposals, which were approved by the Sub-Committee on Safety of Navigation and forwarded to the Maritime Safety Committee for adoption. The three proposals were: (1) A proposal to amend the IMO-adopted ATBA ''Off the Washington Coast'' to increase its size and extend its applicability to commercial ships of 1,600 gross tons and above; (2) A proposal for recommended routes in the United States waters of the Strait of Juan de Fuca for smaller, slower moving vessels that normally do not use the traffic separation scheme; and (3) A proposal amending the existing traffic separation schemes (TSSs) ''In the Strait of Juan de Fuca and Its Approaches,''

and ''In Puget Sound and Its Approaches,'' and adding TSSs and other routing measures ''In Haro Strait, Boundary Pass, and in the Strait of Georgia.'' These proposals were adopted by the IMO's Maritime Safety Committee on May 29, 2002. MCS 75/24.

NOAA's amendment of the existing ATBA off the OCNMS has two elements. First, it increases the size of the ATBA to the north and west, to take into account the amendment of the TSS. This increased size will enhance maritime safety because it provides a greater margin of safety around the navigational hazards of Duntze and Duncan Rocks and Tatoosh Island.

Second, NOAA has expanded the class of ships to which the ATBA applies to include ships of 1,600 gross tons and above. These ships carry substantial amounts of bunker fuel, which, if spilled, would have a devastating impact on the unique, valuable, and sensitive resources of OCNMS.

The OCNMS and surrounding waters contain economically important fishery resources, including a variety of baitfish, shellfish, and salmon. The resources in this area are also critical to the cultural activities and subsistence living of Native American Indian tribes. Important archeological sites of these peoples are found on the shoreline and which could probably be affected by an oil spill from a ship.

In addition, the area has been designated as a UNESCO Biosphere Reserve and World Heritage Site and overlaps with the Washington Islands National Wildlife Refuge and Olympic National Park. The coastal rocks and islands provide important breeding, nesting, and roosting areas for marine birds. Marbled murrelets, abundant in this area, are listed by the United States as a threatened species and are of special concern due to their high vulnerability to oil spills. Bald eagles, listed as a threatened species, are also important to the marine ecosystem in the region. There are also resident and transient killer whale (orca) pods and several dolphin species which frequent the area.

When viewed in conjunction with the U.S. Coast Guard amendment of the TSS, the expansion of the scope of the ATBA is necessary for protection of natural resources from maritime casualty and for general maritime safety. Moving the northern border of the ATBA to a consistent 4,000 yards south of the southernmost edge of the TSS will provide an improved safety buffer for those smaller, slower moving vessels that choose to transit south of the TSS. Continuing this buffer area parallel to the TSS to a point at 124° 52.8′ W will allow sufficient room for this slower moving traffic to transit without conflicting with the inbound traffic steering for the southern approach to the TSS. It also provides a greater margin of safety around the hazards of Duntze and Duncan Rocks, and Tatoosh Island which is known for its strong tides.

NOAA is also applying the ATBA to commercial ships of 1,600 gross tons and above because these ships carry a substantial amount of bunker fuel. Concerns regarding spills of bunker fuel were heightened on the U.S. west coast after the 1999 incident involving the *New Carissa* which spilled approximately 70,000 gallons of bunker fuel. Requiring commercial ships of 1,600 gross tons and above to transit outside the ATBA would move these ships farther offshore, thus increasing the time available to respond to a propulsion or steering casualty and decreasing the potential for a drift or powered grounding. If there were to be a discharge of bunker fuel, the increased distance offshore would diminish the impact on the shoreline and provide more time to mobilize a response. NOAA analyzed various ship sizes to which the ATBA should be made applicable. Commercial ships of 1,600 gross tons (versus those of only 300 gross tons) are considered large enough to be able to maneuver safely while avoiding the ATBA, in most weather conditions. NOAA has determined there will be minimal adverse impacts on shipping by expanding the applicability of the ATBA to commercial ships of 1,600 gross tons and above. It will not affect those ships bound for the Strait of Juan de Fuca from the north or west. Most ships coming from destinations well to the south of the ATBA will have to alter their course to enter the TSS and thus the expanded applicability of the ATBA will have limited, if any, adverse affect.

The area is bounded by a line connecting the following geographical positions:

Point 1. 48° 23.30′ N, 124° 38.20′ W.
Point 2. 48° 24.17′ N, 124° 38.20′ W.
Point 3. 48° 26.15′ N, 124° 44.65′ W.
Point 4. 48° 26.15′ N, 124° 52.80′ W.
Point 5. 48° 24.67′ N, 124° 55.71′ W.
Point 6. 48° 51.70′ N, 124° 15.50′ W.
Point 7. 48° 07.70′ N, 124° 47.50′ W.
Point 8. 48° 07.70′ N, 124° 11.00′ W.

The Olympic Coast National Marine Sanctuary Advisory Council and North Puget Sound Risk Management Panel have discussed the extension of the provisions of the ATBA to vessels not currently included. Both of these federal advisory bodies supported the extension of the ATBA applicability. The Olympic Coast National Marine Sanctuary has analyzed the population of vessels transiting the ATBA for the risk they pose to Sanctuary resources. The Sanctuary's analysis and further information on NOAA's proposal, including charts and reports, can be viewed at *http://www.ocnms.nos.noaa.gov/pubdocs/pars.html.*

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–30146 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110502A]

Endangered Species; File No. 1397

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Jeanette Wyneken, Florida Atlantic University, Department of Biological Sciences, 777 Glades Rd., Boca Raton, FL 33431, has applied in due form for a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 27, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a 2–year permit to capture, sample, and release green sea turtles on shallow reefs in Palm Beach County, FL. The research is designed to examine the seasonal habitat utilization, abundance, and movements of green sea turtles in this region. Forty sea turtles will be captured by hand at night and transported to land for sampling. All turtles will be weighed, measured, photographed, and have stomach lavage performed. Captures will be limited to twice a month to minimize the affects of possible recapturing. Ten of the 40 turtles captured will also have a VHF transmitter attached to the carapace and a unique identification number painted on the carapace with white epoxy paint. Turtles will be released within 12 hours of capture and will be returned to site of capture. At the completion of the study, tagged turtles will be located, recaptured, the tag removed, and released.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: November 21, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–30134 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

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

ACTION: Notice of intent to issue EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, NMFS (Director) has received EFP applications from the State of North Carolina to conduct experimental fishing operations otherwise restricted by regulations prohibiting the use of flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras. The Director has made a preliminary determination that the EFP applications contain all the required information; that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Atlantic weakfish fishery under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act); and that the applications warrant further consideration.

A draft environmental assessment (EA) that addresses the impacts of the proposed study associated with the EFP applications has been prepared. This document requests public input in the form of written comments to NMFS relative to the issuance of EFPs to the State of North Carolina. If granted, these EFPs would authorize a flynet characterization study to be conducted by the North Carolina Division of Marine Fisheries in a closed area south of Cape Hatteras. Two participating flynet vessels, each with its own EFP and observer aboard, would conduct up to a total of 18 trips over each of two seasons, from 15 January through 1 April, in 2003 and 2004, south of Cape Hatteras, for a maximum of 36 trips. A third vessel would be deployed in the closed area for up to three (3) trips at the beginning of the study to test three proto-type turtle excluder devices (TEDs) developed by NMFS. An additional flynet vessel would test the proto-type TEDs in the area north of Cape Hatteras, where flynets are permitted to operate. This vessel would not require an EFP.

DATES: Written comments on the applications must be received on or before December 12, 2002.

ADDRESSES: Send comments to John H. Dunnigan, Director, Office of Sustainable Fisheries (F/SF), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. The applications, related documents, including the draft EA, and copies of the regulations under which EFPs are issued may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Anne Lange 301–713–2334; FAX: 301–713–0596.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.22 concerning the conduct of activities that are otherwise prohibited by the regulations in this part. Since regulations under the Atlantic Coastal Act must be consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, EFPs requested under the Atlantic Coastal Act need to be addressed in the same manner as EFPs requested under the Magnuson-Stevens Act, and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

Currently, weakfish regulations at 50 CFR 697.7(a)(5) prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area south of Cape Hatteras, as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock, especially the harvest of juvenile weakfish known to congregate in the closed area. In addition, 50 CFR 697.7(a)(1) and (2) prohibited fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ. Further, 50 CFR 697.7(a)(3) prohibited fishing for weakfish coastwide in the EEZ with a minimum mesh size less than 3 1/4–inch (8.3 cm) square stretched mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5 cm) diamond stretched mesh for trawls.

The North Carolina Division of Marine Fisheries (NCDMF) proposes to conduct a flynet characterization study, in cooperation with NMFS, with two flynet vessels using mesh at least as large as defined in the Atlantic States Marine Fisheries Commission's

(Commission) Weakfish Fishery Management Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3), to collect information on the size and species composition of finfish caught in modified flynets in the closed area. The NCDMF and NMFS would assess the effects, including the species and size composition of the catch, of using larger mesh size nets in the North Carolina flynet fishery if it were to be allowed to resume operations south of Cape Hatteras. The mesh size used in the flynet fishery, prior to the 1997 closure of this area, was significantly smaller than is currently required. This information would permit NCDMF, the Commission, and NMFS to properly assess the potential impacts of reopening the closed area to flynets with larger minimum-mesh sizes after management goals have been met and the stock is declared to be restored.

In addition, this study would address concerns about the take of endangered sea turtles by flynet gear. A 1997 NMFS Biological Opinion (BO) determined that the flynet fishery may adversely affect, but is not likely to jeopardize the continued existence of endangered sea turtles. An informal Endangered Species Act (ESA) section 7 consultation on this proposal determined that the study would be in compliance with the 1997 BO, and that the study should include testing of TEDs previously developed by NMFS as part of the reasonable and prudent measures of the 1997 BO. A third flynet vessel would operate in the closed area, at the beginning of the study, and would carry NMFS gear technology experts who would test several proto-type TEDs, developed by NMFS, to determine feasibility and effectiveness of these devices in flynets. An additional vessel would also test the proto-type TEDs in the area north of Cape Hatteras.

The two vessels that test the TEDs would follow protocols determined by the NMFS gear experts deployed for that portion of the study. If an effective TED is found, the two vessels in the flynet characterization study would be equipped with a TED of the proper design. If NMFS determined that TEDs can not effectively be deployed in flynets, other measures (e.g., reduced tow time) would be used for the remainder of the study to reduce impacts on turtles and may be considered for implementation by all vessels using flynets. In any case, the study would be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the 1997 BO (that is, 10 or 1, in any one year).

Additional terms of the study proposal relate to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study would be terminated if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10 percent of the total catch for that month. If an annual cap of 175,000 lbs (79,380 kg) on landings of weakfish taken south of Cape Hatteras is reached, the study would end for that year.

The EFP application states that catches made by the vessel that tests TEDs south of Cape Hatteras would be counted towards this cap. However, based on a request by NCDMF, NMFS is reconsidering this condition of the EFP. The TED work is separate from the flynet characterization study and NCDMF does not want to compromise the continuation and completion of that study, if during development and testing, the TEDs result in large amounts of bycatch. Multiple tows made on a single trip would be spatially separated by at least one (1) nautical mile to insure maximum geographic coverage and prevent directing effort on one specific school of fish. The entire contents of each tow on an individual trip would be kept separate and processed separately at the dock. NMFS observers would be required on each trip to monitor fishing activity and to record global positioning system (GPS) coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers would also record net dimensions and design specifications to document successful designs, if a net is found to effectively avoid catches of undersized fish.

In order to determine the ability of these flynets to minimize bycatch of undersized fish, unculled catches would be sorted by tow for species composition and weight by market category, and sub-samples would be measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, would be sorted, weighed and a sub-sample would be taken for length frequency. These fish would be properly disposed of, and would not be sold. ESA and other protected species would be handled as required by law; observers would record and report all discarded red drum and striped bass.

Analysis of the study data would be coordinated by NCDMF and NMFS staff and the Commission would be briefed through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report would also summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report would also summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery.

The EFPs would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) Prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5 cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The draft EA prepared for the proposed flynet characterization study found that no significant environmental impacts would result from the proposed action.

Dated: November 22, 2002.

Richard W. Surdi,

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

[FR Doc. 02–30131 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Notice of Wetlands Involvement for the Transfer of Land at the Miamisburg Closure Project

AGENCY: Department of Energy (DOE), Ohio Field Office, Miamisburg Closure Project (MCP).

ACTION: Notice of wetlands involvement.

SUMMARY: This is to give notice of DOE's proposal to transfer ownership of approximately 57 acres of property of the MCP site, located approximately ten (10) miles southwest of Dayton, Ohio. The ownership of the subject property would be transferred to a non-Federal entity. A small portion (approximately 0.03 acre) of the property is classified as wetlands (*i.e.*, those areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction). In accordance with 10

CFR 1022.5(d), DOE would identify those uses of a wetland resource that are restricted under Federal, state and local wetlands regulations, and would make the future property owner aware of those restricted uses.

DATES: Written comments on the proposed action must be received by the DOE at the following address on or before December 12, 2002.

ADDRESSES: For further information on the proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Ms. Sue Smiley, U.S. Department of Energy, Miamisburg Closure Project, P.O. Box 66, Miamisburg, OH 45343–0066, Phone: 937–865–3984.

FURTHER INFORMATION: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Phone: 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed action would support ultimate disposition of the MCP site. The MCP site has been determined to be excess to DOE's long-term needs. This decision is supported by the Nonnuclear Consolidation Environmental Assessment (DOE/EA–0792) and associated Finding of No Significant Impact (FONSI) dated September 14, 1993, and the Memorandum of Understanding (MOU) between the DOE Defense Programs, Environmental Management, and Nuclear Energy Programs dated August 1, 1995. In order to meet the programmatic need to disposition land determined to be excess to DOE's needs, ownership of the MCP site will be transferred to a non-Federal entity. The MCP property will be transferred in phases, since certain parcels of land are still in use by DOE or are not yet suitable for transfer. This notice addresses that portion of the ''Phase I'' parcel of land at the MCP site which is classified as wetlands. The subject wetland covers approximately 0.03 acre of the Phase I parcel, and it is an isolated wetland contained entirely within the boundaries of the Phase I parcel.

Issued in Miamisburg, Ohio, on November 19, 2002.

Jack R. Craig,

Acting Manager, Ohio, Field Office.

[FR Doc. 02–30094 Filed 11–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–81–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2002.

Take notice that on November 19, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets listed in Appendix A to the filing, proposed an effective date of November 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS, respectively. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–30214 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–12–000]

Egan Hub Partners, L.P.; Notice of Application

November 21, 2002.

Take notice that on November 5, 2002, Egan Hub Partners, L.P. (Egan Hub), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and the Commission's regulations thereunder, for a certificate of public convenience and necessity authorizing the expansion of its existing storage facility at the Jennings Salt Dome in Acadia Parish, Louisiana (Egan Storage Facility Expansion). This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Currently, Egan Hub has three salt caverns at its storage facility. Egan Hub seeks authorization to expand its existing salt dome storage facility working gas capacity from 16.0 Bcf to 24.0 Bcf and its maximum aggregate operating capacity from 21.0 Bcf to 31.5 Bcf. No new surface facilities are proposed. In addition, Egan Hub states that the proposed increase in operating capacity will not affect Egan Hub's existing maximum deliverability capability of 1,500 MMcfd, nor will it change the existing maximum injection capability of 800 MMcfd.

Egan Hub also proposes to continue charging market-based rates. As a result, Egan Hub requests waivers of certain of the Commission's regulations that are

required when an applicant seeks cost-based rate authority.

Egan Hub states that it requests approval of its application on or before January 22, 2003, in order to meet the anticipated future market needs of its customers.

Any questions regarding this application should be directed to Steven E. Tillman, General Manager—Regulatory Affairs, Egan Hub Partners, L.P., P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–5113 or by fax at (713) 627–5947.

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 December 11, 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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. 02–30205 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–2–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 21, 2002.

Take notice that on November 15, 2002, Enogex Inc. (Enogex) submitted for filing a revised fuel factor for its Enogex System for Fuel Year 2003 as calculated under the terms of Enogex's filed fuel tracker. Enogex seeks an effective date of January 1, 2003.

Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before December 6, 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. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call FERC Online Support at *FERCOnLine@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30208 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–3–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 21, 2002.

Take notice that on November 15, 2002, Enogex Inc. (Enogex) submitted for filing a revised fuel factor for its Palo Duro System for Fuel Year 2003 as calculated under the terms of Enogex's filed fuel tracker.

Enogex seeks an effective date of January 1, 2003. Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Enogex petition, Enogex proposed maximum rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before December 6, 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. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call FERC Online Support at *FERCOnLine@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30209 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–80–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2002.

Take notice that on November 19, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective December 1, 2002:

Fifty-Fifth Revised Sheet No. 8A
Forty-Seventh Revised Sheet No. 8A.01
Forty-Seventh Revised Sheet No. 8A.02
Fifth Revised Sheet No. 8A.04
Fiftieth Revised Sheet No. 8B
Forty-Third Revised Sheet No. 8B.01
First Revised Sheet No. 8B.02

FGT states that in Docket No. RP02–513–000 filed on August 29, 2002, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (''Base FRCP'') of 3.01 % to become effective for the six-month Winter Period beginning October 1, 2002. In the instant filing, FGT is filing a flex adjustment of (0.26%) to be effective December 1, 2002, which, when combined with the Base FRCP of 3.01% results in an Effective Fuel Reimbursement Charge Percentage of 2.75%. FGT states that this filing is necessary because FGT is currently experiencing lower fuel usage than is being recovered in the currently effective FRCP of 3.01%. Decreasing the Effective FRCP will reduce FGT's overrecovery of fuel and reduce the Unit Fuel Surcharge in the next Winter Period.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. FGT states that the instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing. 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–30213 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–4–000]

Lee 8 Storage Partnership; Notice of Petition for Rate Approval

November 21, 2002.

Take notice that on November 15, 2002, Lee 8 Storage Partnership (Lee 8) pursuant to Section 284.123(b)(2) of the Commission's Regulations, filed a petition requesting that the Commission approve its rates pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978. Lee 8 proposes system-wide maximum rates of $4.8636 per Dt of

deliverability and $0.0486 per Dt of capacity. In addition, Lee 8 states that it will charge 0.59% of the injected volumes and 0.59% of the withdrawal volumes as an allowance for compressor fuel and lost-and-unaccounted-for gas on Lee 8's system.

Lee 8's petition states that Lee 8 is a Hinshaw pipeline exempt from Commission regulation under Section 1(c) of the NGA, with facilities located wholly within the state of Michigan.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Lee 8's petition, Lee 8's proposed maximum rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before December 6, 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. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistant, please call FERC Online Support at *FERCOnLine@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30210 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–25–000]

NSTAR Electric & Gas Corporation, et al. v. *New England Power Pool;* Notice of Complaint

November 21, 2002.

Take notice that on November 19, 2002, NSTAR Electric & Gas Corporation, Central Vermont Public Service Corporation, PPL EnergyPlus, LLC, The United Illuminating Company, UNITIL Power Corp., and Fitchburg Gas and Electric Light Company filed a Complaint against the New England Power Pool. The complaint alleges that the NEPOOL Participants Committee failed to restore credits relating to the capability on the Hydro Quebec Interconnection consistent with prior Commission Orders.

Copies of said filing have been served upon NEPOOL Participants and the ISO New England, Inc.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30206 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–32–001]

Stingray Pipeline Company, L.L.C.; Notice of Tariff Filing

November 21, 2002.

Take notice that on November 14, 2002, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective on December 1, 2002.

Substitute First Revised Sheet No. 186

Stingray states that this filing is being made to address the subject of an out-of-time protest filed by the Indicated Shippers in this proceeding on November 12, 2002.

Stingray states that a copy of this filing has been served upon its customers.

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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–30212 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–004]

Viking Gas Transmission Company; Notice of Compliance Filing

November 21, 2002.

Take notice that on November 18, 2002 Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to become effective July 1, 2002 and the tariff sheets listed on Appendix B to the filing to become effective October 1, 2002 subject to the conditions set forth in Viking's filing.

Viking states that the purpose of this filing is to comply with the November 8, 2002 Letter Order issued in Docket No. RP02–132–000.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–30211 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–18–000, et al.]

Athens Generating Company, L.P., et al.; Electric Rate and Corporate Filings

November 20, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Athens Generating Company, L.P.; Covert Generating Company, LLC; Harquahala Generating Company, LLC; Millennium Power Partners, L.P.

[Docket No. EC03–18–000]

Take notice that on November 15, 2002, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, and Millennium Power Partners, L.P., each of which is an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc. (PG&E NEG) (and which may be referred to hereafter individually as Applicant or jointly as Applicants) tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (2000), and part 33 of the Commission's regulations, 18 CFR part 33 (2002), an application for authorization to dispose of jurisdictional facilities. More specifically, PG&E NEG seeks approval to effectuate an internal corporate reorganization with respect to some or all of the Applicants and then transfer all of its ownership interests in the Applicants to one or more existing or to-be-formed companies that are direct or indirect wholly-owned subsidiaries of the lenders to the Applicants and/or to their upstream owners.

Comment Date: December 6, 2002.

2. Hermiston Generating Company, L.P.

[Docket No. ER01–2159–003]

Take notice that on November 18, 2002, Hermiston Generating Company, LP (Applicant), an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc. (PG&E NEG) tendered for filing, information that reflects a departure from the characteristics relied upon by the Commission in approving market-based pricing. Specifically, Applicant has submitted information concerning a potential sale of a portion of the direct or indirect upstream ownership of PG&E NEG to a direct or indirect wholly-owned subsidiary of Sumitomo Corporation.

Comment Date: December 9, 2002.

3. The Empire District Electric Company

[Docket No. ER03–167–000]

Take notice that on November 18, 2002, The Empire District Electric Company (Empire) submitted a revised attachment C to its proposal to cancel parts of its Open Access Transmission Tariff (OATT) and to substitute an Ancillary Services Form of Agreement, which was filed on November 6, 2002. The revised attachment C contains a list of entities to be served with the proposal and should replace the version of attachment C that was initially filed on November 6, 2002. As Empire no longer provides transmission under its existing OATT, its proposed termination of the Empire OATT will not impact any customers. Empire requests waiver to allow its proposal to take effect on January 6, 2003, as initially requested.

Comment Date: December 9, 2002.

4. California Independent System Operator Corporation

[Docket No. ER03–187–000]

Take notice that on November 18, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement between the ISO and Termoeleéctrica de Mexicali S. de R.L. de C.V. (TDM) for acceptance by the Commission.

The ISO states that this filing has been served on TDM and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective November 14, 2002.

Comment Date: December 9, 2002.

5. Aquila, Inc.

[Docket No. ER03–188–000]

Take notice that on November 18, 2002, Aquila, Inc. (Aquila), filed a notice of termination of the June 5, 2001, Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on September 30, 2002.

Comment Date: December 9, 2002.

6. Aquila, Inc.

[Docket No. ER03–189–000]

Take notice that on November 18, 2002, Aquila, Inc. (Aquila), filed a notice of termination of the April 17, 2000, Transmission Service Agreement for Short-Term Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on October 19, 2002.

Comment Date: December 9, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30079 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 477–024]

Notice of Applications for Amendment of License and Surrender of License and Settlement Agreement and Decommissioning Plan and Soliciting Comments, Motions to Intervene, and Protests

November 21, 2002.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a: *Application Type:* Amendment of License, Surrender of License, Settlement Agreement and Decommissioning Plan.

b: *Project No.:* 477–024.

c: *Date Filed:* November 12, 2002.

d: *Applicant:* Portland General Electric Company (PGE).

e: *Name of Project:* Bull Run Hydroelectric Project.

f: *Location:* On the Sandy, Little Sandy, and Bull Run Rivers, near the Town of Sandy, Clackamas County, Oregon. The project is located on lands administered by the Forest Service (Mt. Hood National Forest) and the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r); Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h: *Applicant Contact:* Julie A. Keil, Director, Hydro Licensing and Water Rights, PGE, 121 SW Salmon Street, Portland, Oregon 97204, 503–464–8864.

i. *FERC Contact:* Alan Mitchnick, 202–502–6074; *alan.mitchnick@ferc.gov*.

j. *Cooperating agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies wishing to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadline for filing comments, motions to intervene, and protests and requests for cooperating agency status:* 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.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor 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.

Comments, motions to intervene, and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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.

l. *Amendment Application:* PGE proposes to: (i) Extend the term of the license from November 16, 2004, to November 16, 2017; (ii) continue generation until removal of the Little Sandy dam in 2008; (iii) implement a program of geomorphological and water quality monitoring continuing until Marmot dam removal; (iv) continue operation of the fish ladder and sorting facility at Marmot dam until Marmot dam removal; and (v) modify the operation of the diversion canal at Marmot dam to provide protection of threatened fish species from November 2004 until November 2007.

Surrender Application: The Project works include: Marmot dam, located at River Mile (RM) 30 on the Sandy River; a 3.1-mile-long series of canals and tunnels leading from Marmot dam to the Little Sandy River just upstream of the Little Sandy diversion dam; the Little Sandy diversion dam, located at RM 1.7 on the Little Sandy River; a 2.8-mile-long box flume leading from the Little Sandy diversion dam to the manmade forebay, Roslyn Lake; two 1,200 foot penstocks; and a powerhouse containing four generators with a total capacity of 22 megawatts. The powerhouse discharges to the Bull Run River 1.5 miles above its confluence with the Sandy River at RM 18.4.

PGE proposes the complete removal of both Marmot and the Little Sandy diversion dams, starting in 2007, along with the dismantling of their associated water conveyance structures. In addition, Roslyn Lake would be drained, the powerhouse generating equipment would be disabled, and the powerhouse structure would be demolished. All PGE-owned lands within the existing project boundary would be conveyed to the Western Rivers Conservancy once the license is surrendered and the project is removed, and used to protect and conserve fish and wildlife habitat, public access, and recreation opportunities in the Sandy River Basin. Project water rights would be relinquished and would revert to instream use.

Settlement Agreement and Decommissioning Plan: PGE filed a settlement agreement concerning the removal of the project. The signatories include PGE, 10 federal, state, and local agencies, and 12 non-governmental organizations. The agreement includes a decommissioning plan consistent with the applications for amendment of license and surrender.

m. Copies of the applications and settlement agreement are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://*

www.ferc.gov using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''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.

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. 02–30207 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–3]

Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its fifth year of the Tribal Open Dump Cleanup Project (Cleanup Project). Since FY99, the Workgroup has funded approximately $8.8 million in projects. In FY02, the Interagency Workgroup made approximately $2.2 million available to fully or partially fund 27 selected projects, for an average of approximately $80,000 a proposal. A similar amount of funding is being projected for FY03. Each of these projects will result in the closure or upgrade of one or more open dumps located on tribal lands. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management. The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency (EPA); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Bureau of Land Management; the departments of Agriculture, Defense, and Housing and Urban Development.

Criteria: Eligible recipients of assistance under The Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Request for Proposals package.

DATES: For consideration, proposals must be received by close of business on January 31, 2003. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

FOR FURTHER INFORMATION CONTACT: Copies of the Request for Proposals package may be downloaded from the Internet at <www.epa.gov/tribalmsw> by clicking on ''Recent Additions.'' Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Charles Bearfighter Reddoor 703–308–8245, Christopher Dege, 703–308–2392, or Tonya Hawkins, 703–308–8278.

IHS—Steve Aoyama, 301–443–1046.

BIA—Debbie McBride, 202–208–3606.

Dated: November 4, 2002.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 02–30116 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0317; FRL–7281–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0317, must be received on or before December 27, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Geri McCann, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0716; e-mail address; mccann.geri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

Pesticide Manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether

you or your business may be affected by this action, you should carefully examine the applicability provisions in Section II of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0317. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legalholidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0317. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0317. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW.,

Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0317.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0317. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Products

File symbol: 56228–GU. *Applicant*: United States Department of Agriculture, Animal Plant and Health Inspection Service, 4700 River Road, Unit 152, Riverdale, MD 20737. *Product name*: Acetaminophen For Brown Treesnake Control. *Product type*: Pesticide. *Active ingredient*: Contains 72.7% of the new active ingredient acetaminophen. *Proposed classification/Use*: For control and reduction of brown treesnake abundance on Guam and the Northern Mariana Islands and to protect against brown treesnakes being exported to Hawaii or the Continental United States as hitchhikers in cargo.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 18, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–30122 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0310; FRL–7280–5]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Bromuconazole Technical containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0310. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number andspecify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of bromuconazole, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of bromuconazole when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of May 10, 1994 (59 FR 24151) (FRL–4770–4), which announced that Rhone-Poulenc Ag Company had submitted an application to register the pesticide product Bromuconazole Technical (EPA File Symbol 264–LUT), containing bromuconazole at 97.0%, an active ingredient not included in any previously registered product.

The application was approved on September 30, 2002, as Bromuconazole Technical, a manufacturing use product for manufacturing, formulating and repackaging use (EPA Registration Number 264–547).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–30124 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0313; FRL–7280–9]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period July 1, 2002 until September 30, 2002 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0313. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA

Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Arizona
Department of Agriculture
Specific: EPA authorized the use of metolachlor on spinach to control broadleaf weeds; September 6, 2002 to May 15, 2003. Contact: (Andrew Ertman)

Arkansas
State Plant Board
Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworms and tobacco budworms; July 12, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of spinosad on pastureland and rangeland to control fall armyworms and true armyworms; July 15, 2002 to December 31, 2002. Contact: (Andrew Ertman)

California
Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of fenhexamid on Bosc and Asian pears to control gray mold; July 16, 2002 to October 1, 2002. Contact: (Barbara Madden)
EPA authorized the use of imidacloprid on commercial stone fruit, almonds, and blueberries to control the glassy-winged sharpshooter; June 22, 2002 to June 22, 2003. Contact: (Andrew Ertman)
EPA authorized the use of carbofuran on cotton to control aphids; August 2, 2002 to October 30, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of zinc phosphide on alfalfa to control California and montane voles; September 9, 2002 to May 31, 2003. Contact: (Libby Pemberton)

Colorado
Department of Agriculture
Crisis: On June 4, 2002, for the use of sulfentrazone on potatoes to control broadleaf weeds. This program ended on July 1, 2002. Contact: (Andrew Ertman)
On June 20, 2002, for the use of metsulfuron-methyl on sorghum to control triazine-resistant broadleaf weeds. This program ended on August 25, 2002. Contact: (Andrew Ertman)
On June 6, 2002, for the use of permethrin on turnip greens to control flea beetles. This program ended on October 15, 2002. Contact: (Andrea Conrath)

Georgia
Department of Agriculture
Denial: On July 18, 2002, EPA denied the use of tebuconazole on cucurbits to control gummy stem blight disease. This request was denied because of the Agency's inability at this time to reach a ''reasonable certainty of no harm'' finding regarding health effects which may result if this use were to occur. Contact: (Barbara Madden).
Specific: EPA authorized the use of diuron on catfish ponds to control blue-green algae; September 10, 2002 to September 10, 2003. Contact: (Libby Pemberton)

Idaho
Department of Agriculture
Crisis: On June 21, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on September 30, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to September 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

Kansas
Department of Agriculture
Crisis: On July 8, 2002, for the use of fluroxypur on grain sorghum to control kochia. This program ended on July 23, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of bifenthrin on sorghum grown for seed to control banks grass mite; August 16, 2002 to September 30, 2002. Contact: (Andrea Conrath)

Louisiana
Department of Agriculture and Forestry
Crisis: On May 3, 2002, for the use of bifenthrin on sweet potatoes to control soil beetles and sweet potato weevils. This program is expected to end on November 30, 2002. Contact: (Andrea Conrath)
On May 6, 2002, for the use of sulfentrazone on sugarcane to control morning glories. This program is expected to end on December 31, 2002. Contact: (Andrew Ertman)
On May 31, 2002, for the use of methoxyfenozide on field corn to control Southwestern corn borer and Sugarcane borer. This program ended on August 15, 2002. Contact: (Barbara Madden)
Denial: On July 18, 2002, EPA denied the use of flumioxazin on cotton to control weeds. This request was denied because it did not meet the criteria of an urgent, non-routine situation based on

the availability of registered alternatives. Contact: (Libby Pemberton).
Specific: EPA authorized the use of sulfentrazone on sugarcane to control morning glories; May 6, 2002 to December 31, 2002. Contact: (Andrew Ertman)
EPA authorized the use of carbofuran on rice to control rice weeil; June 19, 2002 to July 31, 2002. This request was originally granted due to reported failures of the registered alternative in controlling rice weevils. However, on July 24, 2002 this specific emergency exemption was revoked after additional information submitted to the Agency indicated the registered alternative had not failed. Additionally, EPA received compelling feedback from the public in response to the solicitation of comments about this program from the public in a June 27, 2002, **Federal Register** notice. The public, governmental organizations, and non- governmental organizations, overwhelmingly expressed their opposition to any ongoing use of granular carbofuran under this section 18. Contact: (Daniel Rosenblatt).
EPA authorized the use of methoxyfenozide on field corn to control Southwestern corn borer and Sugarcane borer; July 5, 2002 to August 15, 2002. Contact: (Barbara Madden)
EPA authorized the use of lambda-cyhalothrin on sugarcane to control sugarcane borers; July 12, 2002 to September 15, 2002. Contact: (Andrew Ertman)
EPA authorized the use of bifenthrin on sweet potatoes to control soil beetles and sweet potato weevils; July 19, 2002 to November 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms; July 25, 2002 to October 31, 2002. Contact: (Andrew Ertman)

Maryland
Department of Agriculture
Crisis: On August 6, 2002, for the use of diquat on private ponds to control weeds associated with the invasive snakehead fish. This program ended on October 31, 2002. Contact: (Andrea Conrath)
Specific: EPA authorized the use of metolachlor on spinach to control broadleaf weeds; September 6, 2002 to April 30, 2003. Contact: (Andrew Ertman)

Massachusetts
Massachusetts Department of Food and Agriculture
Crisis: On June 7, 2002, for the use of indoxacarb on cranberry to control weevils. This program ended on October 1, 2002. Contact: (Andrea Conrath)
Specific: EPA authorized the use of imidacloprid on blueberries to control oriental beetles; June 24, 2002 to August 15, 2002. Contact: (Andrew Ertman)
EPA authorized the use of imidacloprid on strawberries to control white grubs; July 1, 2002 to August 7, 2002. Contact: (Andrew Ertman)

Michigan
Michigan Department of Agriculture
Specific: EPA authorized the use of imidacloprid on blueberries to control Japanese beetle grubs and adults; June 11, 2002 to September 30, 2002. Contact: (Andrew Ertman)

Minnesota
Department of Agriculture
Specific: EPA authorized the use of lambda-cyhalothrin on wild rice to control rice worms; July 25, 2002 to September 10, 2002. Contact: (Andrew Ertman)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

Mississippi
Department of Agriculture and Commerce
Denial: On July 18, 2002 EPA denied the use of flumioxazin on cotton to control weeds. This request was denied because it did not meet the criteria of an urgent, non-routine situation based on the availability of registered alternatives. Contact: (Libby Pemberton).
Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworms and tobacco budworms; July 12, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of bifenthrin on sweet potatoes to control soil beetles; July 19, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms; August 29, 2002 to October 15, 2002. Contact: (Andrew Ertman)

Montana
Department of Agriculture
Crisis: On June 26, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on August 15, 2002. Contact: (Libby Pemberton)
On July 8, 2002, for the use of azoxystrobin on safflower to control *Alternaria* leaf spot. This program ended on August 15, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid and the cereal leaf beetle; June 24, 2002 to July 30, 2002. Contact: (Andrew Ertman)
EPA authorize the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to August 31, 2002. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)

Nebraska
Department of Agriculture
Crisis: On May 21, 2002, for the use of sulfentrazone on potatoes to control broadleaf weeds. This program ended on July 1, 2002. Contact: (Andrew Ertman)
On July 19, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on August 2, 2002. Contact: (Libby Pemberton)

Nevada
Department of Agriculture
Specific: EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 10, 2002 to August 31, 2003. Contact: (Andrew Ertman)

New Jersey
Department of Environmental Protection
Crisis: On June 3, 2002, for the use of propyzamide on cranberries to control dodder. This program is expected to end on December 15, 2002. Contact: (Andrew Ertman)
Specific: EPA authorized the use of metolachlor on spinach to control broadleaf weeds; June 3, 2002 to May 1, 2003. Contact: (Andrew Ertman)
EPA authorized the use of halosulfuron-methyl on asparagus to control yellow nutsedge; July 5, 2002 to December 1, 2002. Contact: (Barbara Madden)
EPA authorized the use of propyzamide on cranberries to control dodder; July 18, 2002 to December 15, 2002. Contact: (Andrew Ertman)

North Carolina
Department of Agriculture
Crisis: On August 12, 2002, for the use of tebufenozide on sweet potatoes to control beet armyworms. This program is expected to end on November 15, 2002. Contact: (Andrew Ertman)
Specific: EPA authorized the use of diuron on catfish ponds to control blue-green algae; July 12, 2002 to November 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms; August 12, 2002 to November 15, 2003. Contact: (Andrew Ertman)

North Dakota
Department of Agriculture
Crisis: On July 10, 2002, for the use of azoxystrobin on safflower to control *Alternaria* leaf spot. This program

ended on August 15, 2002. Contact: (Libby Pemberton)
On July 30, 2002, for the use of zeta-cypermethrin on flax to control grasshoppers. This program ended on September 15, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to August 31, 2002. Contact: (Libby Pemberton)
Oregon
Department of Agriculture
Specific: EPA authorized the use of fludioxonil on peaches to control brown rot, gray mold, and *Rhizopus* rot; July 2, 2002 to September 30, 2002. Contact: (Andrew Ertman)
EPA authorized the use of fludioxonil on cherries to control brown rot, gray mold, and *Rhizopus* rot; July 2, 2002 to August 15, 2002. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of ethoprop on baby mint to control garden symphylan; August 19, 2002 to September 15, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)
Pennsylvania
Department of Agriculture
Specific: EPA authorized the use of sulfentrazone on strawberries to control common groundsel; June 26, 2002 to December 15, 2002. Contact: (Andrew Ertman)
South Dakota
Department of Agriculture
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to August 31, 2002. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on stored grains to control the lesser grain borer; July 24, 2002 to July 17, 2003. Contact: (Andrew Ertman)
Tennessee
Department of Agriculture
Specific: EPA authorized the use of carbofuran on cotton to control aphids; August 2, 2002 to October 30, 2002. Contact: (Dan Rosenblatt)
Texas
Department of Agriculture
Specific: EPA authorized the use of fenbuconazole on grapefruit to control greasy spot disease; August 9, 2002 to August 9, 2003. Contact: (Andrea Conrath)
EPA authorized the use of bifenthrin on sorghum grown for seed to control banks grass mite; August 16, 2002 to August 16, 2003. Contact: (Andrea Conrath)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of diuron on catfish ponds to control blue-green algae; September 10, 2002 to September 10, 2003. Contact: (Libby Pemberton)
Utah
Department of Agriculture
Crisis: On May 14, 2002, for the use of diflubenzuron on alfalfa to control grasshoppers and crickets. This program ended on October 31, 2002. Contact: (Andrea Conrath)
Specific: EPA authorized the use of diflubenzuron on alfalfa to control grasshoppers and crickets; September 13, 2002 to October 31, 2002. Contact: (Andrea Conrath)
Virginia
Department of Agriculture and Consumer Services
Specific: EPA authorized the use of tebufenozide on grapes to control Grape berry moth; July 5, 2002 to October 1, 2002. Contact: (Barbara Madden)
Washington
Department of Agriculture
Crisis: On June 21, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on September 30, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to September 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of zinc phosphide on timothy and timothy legume mixtures to control vole complex; July 25, 2002 to May 1, 2003. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)
Wisconsin
Department of Agriculture, Trade, and Consumer Protection
Specific: EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

B. Federal Departments and Agencies

Agriculture Department
Animal and Plant Health Inspector Service
Quarantine: EPA authorized the use of acetominophen in Guam and the Commonwealth of Northern Mariana Islands to control the invasive brown tree snake; July 17, 2002, to July 17, 2005. Contact: (Andrea Conrath)
Defense Department
Quarantine: EPA authorized the use of paraformaldehyde on United States Army, Medical Research Institute of Infectious Diseases (USAMRIID) facility to control infectious microorganisms from containment areas; July 24, 2002, to July 24, 2005. Contact: (Libby Pemberton)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

FR Doc. 02–30123 Filed 11–26–02; 8:45 am
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–1]

The QTRACER2 Program for Tracer-Breakthrough Curve Analysis for Tracer Tests in Karst Aquifers and Other Hydrologic Systems; and A Lexicon of Cave and Karst Terminology With Special Reference to Environmental Karst Hydrology

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of two final reports and CD–ROMs.

SUMMARY: This notice announces the availability of two final reports, The QTRACER2 Program for Tracer-Breakthrough Curve Analysis for Tracer Tests in Karst Aquifers and Other Hydrologic Systems (EPA/600/R–02/001, May 2002, which supercedes EPA/600/R–98/156a and 156b, February 1999), and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology (EPA/600/R–02/003, February 2002, which supercedes EPA/600/R–99/006). These reports were prepared by the U.S.

Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

The QTRACER2 Program for Tracer-Breakthrough Curve Analysis for Tracer Tests in Karstic Aquifers and Other Hydrologic Systems is a detailed users manual with a CD–ROM. QTRACER2 takes basic input data obtained at the start and finish of a hydrologic tracer test and performs the basic calculations (*e.g.*, numerical integrations necessary for extracting critical hydraulic and geometric information about the flow system under investigation). The executable code, source code, additional related programs, and several example data files are all contained on a CD–ROM. QTRACER2 is an update of the previously released QTRACER to run under Windows with considerable mouse support, including some minor bug fixes and expanded analysis capabilities. For example, short- and long-term pulse tracer releases and continuous tracer releases can now be adequately addressed by QTRACER2.

A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology is a substantial listing and cross-referencing of major and minor karst-related terminology. This updated version contains some corrections to the previous version and includes numerous biological and ecological terms that were not included in the original release. It includes numerous foreign terms because so much of the literature is developed in other countries and often published in somewhat unknown journals.

DATES: These documents will be available November 27, 2002.

ADDRESSES: These documents are available electronically through the NCEA Web site at (www.epa.gov/ncea). A limited number of paper copies and CDs will be available 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; or via the Internet at *http://www.epa.gov/NCEPIhome/orderpub.html*). Please provide your name, mailing address, the title, and EPA number of the requested publication when ordering from NSCEP. Copies may also be purchased from the National Technical Information Service (NTIS) in Springfield, Virginia; telephone: 1–800–553–NTIS[6847] or 703–605–6000; facsimile: 703–321–8547. When ordering from NTIS please provide the following numbers: PB2002–107662 (for QTRACER2) and PB2002–107663 (Lexicon).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Malcolm Field (202–564–3279) mailing address: National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; facsimile: 202–565–0079; e-mail: *field.malcolm@epa.gov.*

Dated: November 17, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–30119 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7392–9]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of CSS International Corporation (''Settling Party'') for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania, relating to the Malvern TCE Superfund Site (''Site'').

DATES: Comments must be provided by December 27, 2002.

ADDRESSES: Comments should be addressed to Suzanne Canning, Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joan A. Johnson (3RC41), 215/814–2619, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice.

The Settling Party has agreed to pay $100 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. This amount to be paid by the Settling Party was based upon EPA's review of financial information relating to the Settling Party and a determination by EPA that the Settling Party has a limited ability to pay monies to settle EPA's claims. Monies collected from the Settling Party will be applied towards past and future response costs incurred by EPA or PRPs performing work at or in connection with the Site.

EPA is entering into this agreement under the authority of sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with Settling Party in connection with the Site, based upon a determination that Settling Party is responsible for 0.75 percent or less of the volume of hazardous substance sent to the Site.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from Joan A. Johnson (3RC41), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, or by contacting Joan A. Johnson at (215) 814–2619.

Dated: September 23, 2002.

James W. Newsom,

Acting Regional Administrator, Environmental Protection Agency Region III.

[FR Doc. 02–30120 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 12, 2002 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Friday, December 20, 2002. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 25, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–30339 Filed 11–25–02; 3:04 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011527–007.

Title: Independent Carriers Alliance.

Parties: CMA CGM, S.A., Hanjin Shipping Co., Ltd., Montemar Maritima S.A., Zim Israel Navigation Company Ltd.

Synopsis: The subject modifications provide for the resignation of Senator Lines and the assumption of its rights and obligations under the Agreement by Hanjin Shipping Co., Ltd.

Agreement No.: 011695–005.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., Norasia Container Lines Ltd.

Synopsis: The proposed amendment reduces the number of vessels to be deployed under the agreement from 12 to 5 and revises the slot allocations accordingly, includes a reference to available space under another agreement, extends the earliest date for notice of withdrawal, and revises the notice period for and the earliest termination date of the agreement The parties request expedited review.

Agreement No.: 011712–003.

Title: CMA CGM/CSG Slot Exchange, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., China Shipping Container Lines Co., Ltd.

Synopsis: The proposed amendment reduces the number of vessels to be deployed under the agreement from 22 to 10. The parties request expedited review.

Agreement No.: 011737–009.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica LTDA; A.P. Moller-Maersk Sealand; Antillean Marine Shipping Corporation; CMA CGM, S.A.; Companhia Libra De Navegacao; Compania Sud Americana De Vapores S.A.; CP Ships (UK) Limited, d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Hamburg-Sud; Dole Ocean Cargo Express, Inc.; Great White Fleet (US) Ltd.; Hapag-Lloyd Container Linie GmbH; King Ocean Central America S.A.; King Ocean Service De Colombia S.A.; King Ocean Service De Venezuela S.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Network Shipping Ltd.; Nippon Yusen Kaisha; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; and Wallenius Wilhelmsen Lines AS.

Synopsis: The subject modifications adds Great White Fleet and Network Shipping as members and deletes Tecmarine as a member. It also adds a provision for the payment of annual dues.

Agreement No.: 011833.

Title: Contship/WWL Space Charter Agreement.

Parties: Contship Containerlines, Wallenius Wilhelmsen Lines AS.

Synopsis: The agreement authorizes Contship to charter space to WWL on vessels utilized by Contship in the trade from United States Atlantic and Gulf Coasts to Australia and New Zealand.

By Order of the Federal Maritime Commission.

Dated: November 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–30150 Filed 11–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Safe Ocean Line, Inc., 8555 NW. 20 Street, Miami, FL 33122. Officers: Gloria Gil, President (Qualifying Individual), Manuel Taracon, Export Manager.

Zircon (USA) Logistics, Inc., 504 Royal Palm Beach Blvd., Royal Palm Beach, FL 33411. Officers: Warren Jeffery, President (Qualifying Individual), David Thorpe, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Sea Air Systems, Inc., Foreign Trade Zone #61, Rd. 165, Km 2.4, Bldg. 1 Warehouse 10, Pueblo Viejo, Guaynabo, PR 00965. Officers: Jose F. Blazquez, Managing (Qualifying Individual).

Landstar Logistics, Inc., 13410 Sutton Park Drive, South, Jacksonville, FL 32224. Officers: Jim Handoush, Vice President (Qualifying Individual), James R. Hertwig, President.

Africa 2000 Inc., 57–52 W. Little York, Houston, TX 77091. Officers: Ndiaga Lo, President (Qualifying Individual), Name Bity Seye, Assistant Director.

FYT, Inc., 17588 E. Rowland St., Suite A216, City of Industry, CA 91748. Officer: Hong Jian Yao, Owner (Qualifying Individual).

OEC Freight Companies, 18900 8th Avenue, South #900, Seatac, WA 98148. Officers: Peter M. Ku, Station Manager (Qualifying Individual), Steven Fong, President.

PMJ International Inc., 516 Mountainview Drive, North Plainfield, NJ 07063. Officer: Pelham Hicks, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Honor Truck & Transfer, Inc., 1100 DeForest Avenue, Long Beach, CA 90813. Officers: Ali Behruz Nikkhoo, President (Qualifying Individual), Robert J. Livingston, Vice President.

JVL International Corporation, 2200 Broening Highway, Suite 277, Baltimore, MD 21224. Officer: Jorge Luiz Vieira Lima, Managing Director (Qualifying Individual).

Lukini Shipping Inc., Cargo Building 80, Rm. 203, JFK International Airport, Jamaica, NY 11430. Officer: Miriam Y. Chen, Gen. Manager/Director (Qualifying Individual).

Dated: November 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–30151 Filed 11–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. George H. and Mary Ethel Eicher, Homestead, Florida, and George P. Eicher, Monticello, Kentucky; to retain voting shares of Community Bank of South Florida, Inc., Homestead, Florida, and thereby indirectly retain voting shares of Community Bank of Florida, Homestead, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. The Magers Family Control Group consisting of William G. Magers, Springfield, Missouri; William Bryan Magers, Springfield, Missouri; Randall Wood Magers, Springfield, Missouri; Magers Enterprises II, LLLP (''Partnership''), W. Bryan and Randall W. Magers, General Partners, Springfield, Missouri; Magers Family Irrevocable Trust (''Trust''); W. Bryan and Randall W. Magers, Trustees, Springfield, Missouri, to gain control of Marshfield Investment Company, Springfield, Missouri (''Company''), and thereby acquire voting shares of Bank of Kimberling City, Kimberling City, Missouri; First National Bank, LaMar, Missouri; and Metropolitan National Bank, Springfield, Missouri. In connection with this application, William Bryan Magers and Randall Wood Magers, both of Springfield, Missouri, individually and as general partners of Partnership and Trustees of Trust, will increase their aggregate voting control of Company's voting stock.

Board of Governors of the Federal Reserve System, November 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30147 Filed 11–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Merchants Corporation, Muncie, Indiana; to acquire 100 percent of the voting shares of CNBC Bancorp, Columbus, Ohio, and thereby indirectly acquire voting shares of Commerce National Bank, Columbus, Ohio.

Board of Governors of the Federal Reserve System, November 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30148 Filed 11–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 021 0090]

Wal-Mart Stores, Inc. and Supermercados Amigo, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Barbara Anthony or Michael Bloom, FTC Northeast Regional Office, One Bowling Green, Suite 318, New York, NY 10004. (212) 607–2828 or (212) 607–2801.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 21, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of the Complaint and Proposed Decision and Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Wal-Mart Stores, Inc. (''Wal-Mart'') and Supermercados Amigo, Inc. (''Amigo'') (collectively, ''the Proposed Respondents'') an Agreement Containing Consent Orders (''the proposed consent order''). The Proposed Respondents have also reviewed the complaint issued by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Wal-Mart's proposed acquisition of all of the outstanding voting stock of Amigo.

II. Description of the Parties and the Proposed Acquisition

Wal-Mart is a global food and general merchandise retailer headquartered in Arkansas. The company operates or services approximately 4,200 stores in the United States, Europe, Latin America, and Asia and had sales of over $191 billion in 2001. In the Commonwealth of Puerto Rico, Wal-Mart, through its subsidiary Wal-Mart Puerto Rico, Inc., operates nine traditional Wal-Mart Stores, one Wal-Mart Supercenter, and eight SAM's Clubs.

Amigo, headquartered in San Juan, Puerto Rico, is the largest supermarket chain in Puerto Rico in terms of dollar sales. With annual sales in 2001 of approximately $542 million, Amigo operates 36 supermarkets under the Amigo trade name in Puerto Rico.

On February 5, 2002, Wal-Mart and Amigo signed an agreement whereby Wal-Mart will purchase all of the outstanding voting securities of Amigo through the merger of W–M Puerto Rico Acquisition Corp., an indirect wholly owned subsidiary of Wal-Mart, with and into Amigo. Amigo will continue as the surviving corporation. As a result of the merger, Wal-Mart will hold 100% of the voting securities of Amigo.

III. The Complaint

The complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition is the retail sale of food and grocery products in stores that carry a wide selection and deep inventory of food and grocery products in a variety of brands and sizes, enabling consumers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit. Thus, stores in the relevant line of commerce have substantial offerings in each of the following product categories: bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

Unlike prior supermarket investigations by the Commission, this investigation involves geographic markets in Puerto Rico. The evidence obtained in our investigation indicated that the markets at issue here have characteristics that support a broader relevant product market than those identified in past supermarket investigations by the Commission. There are approximately 250 supermarkets across Puerto Rico, with the majority located in the San Juan metropolitan area. There are numerous small and mid-sized supermarket chains throughout the island, and in general, competition appears robust. In Puerto Rico, full-service supermarkets, ''supercenters'' (which are co-located full-service supermarkets and mass merchandise outlets), and ''club stores'' (which are stores that offer a wide selection and deep inventory of food and grocery products and general merchandise-often in large-sized packages or in packages of two or more conventional-sized items—to businesses and individuals that have purchased club memberships) offer a distinct set of products and services that enables them to compete in the relevant line of commerce described above. Information provided by several club store and supermarket operators in Puerto Rico indicates that many Puerto Rico consumers regard club stores as apt substitutes for supermarkets. A substantial portion of retail purchasers in Puerto Rico regard full-service supermarkets, supercenters, and club stores as reasonably interchangeable for the purpose of purchasing substantially all of their weekly food and grocery shopping requirements in a single shopping visit.

In Puerto Rico, full-service supermarkets, supercenters, and club stores compete primarily with each other. Supermarkets in Puerto Rico compete with club stores in a variety of ways. Operators of Puerto Rico full-service supermarkets, supercenters, and club stores often price-check and modify the prices of their food and grocery products based on the prices of food and grocery products at nearby full-service supermarkets, supercenters, and club stores. They do not often price-check and modify the prices of food and grocery products based on the prices at other types of stores, such as limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), military commissaries, and mass merchandise outlets (including those with pantries not offering a wide selection and deep inventory of food and grocery products). In Puerto Rico, most consumers shopping for food and grocery products at full-service supermarkets,

supercenters, and club stores are not likely to shop at other types of stores in response to a small price increase by full-service supermarkets, supercenters, and club stores.

Many supermarket operators lose substantial sales when club stores open near to their own stores, and some engage in aggressive promotions in the weeks before and following the opening of a club store to blunt that sales loss. Some have remodeled stores in advance of their plans so as to ward off defections to club stores. Some have reacted to competition from club stores by adding additional multi-packs to their product offering and enhancing customer service. At the same time, club stores in Puerto Rico have introduced increased numbers of conventional package configurations. Ordinary-course-of-business documents of supermarket operators often refer to club stores as substantial competitors.

Studies also provide support for the inclusion of club stores in the relevant product market. For example, a 2001 study, based on ''extensive in-home interviews among female heads of household * * * throughout the island,'' found that 37% of the subjects spontaneously mentioned SAM's Club when asked to identify a supermarket or food retailer that operates in Puerto Rico. The ''brand awareness'' of the four leading supermarket operators (and especially Amigo (with 72%) and Pueblo (with 58%)), was substantially greater than that of SAM's Club (with 37%), but the smaller Puerto Rico supermarket chains such as Ralph's (with 6%), Supermercado Del Este (5%), and Plaza Gigante (5%) had significantly less brand awareness among Puerto Rico consumers. That same study found that 5% of interviewees reported that SAM's Club was their ''regular store'' for their ''large grocery shopping of the month.'' That is comparable to or greater than the numbers reported for Mr. Special (6%), Supermercado Del Este (3%), and Ralph's (4%). These findings are consistent with those of a recurring consumer survey conducted by the Puerto Rico food retailing trade association. The 2001 study found that 13% of consumers identified club stores as the place where they make their main food purchases.

In Puerto Rico, retail stores other than full-service supermarkets, supercenters, and club stores, such as limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), military commissaries, and mass merchandise outlets (including those with pantries not offering a wide selection and deep inventory of food and grocery products), do not effectively constrain prices in the relevant line of commerce as described above. In Puerto Rico, none of these stores offers a full-service supermarket's, supercenter's, or club store's distinct set of products and services that enables a retail customer to engage in one-stop shopping for food and grocery products.

Ample testimonial and documentary evidence indicates that a significant portion of Puerto Rico consumers use full-service supermarkets and club stores interchangeably. Accordingly, the relevant product market within which to assess the effects in Puerto Rico of the proposed transaction is a market consisting of full-service supermarkets, supercenters, and retail sales of supermarket-type items at club stores, or in general, stores that carry and offer at retail a wide selection and deep inventory of food and grocery products in a variety of brands and sizes, enabling consumers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit. The determination that club stores are included in the relevant product market in this proceeding does not, of course, determine what the relevant product market will be in future supermarket investigations by the Commission.

The complaint alleges that the relevant sections of the United States (*i.e.*, the geographic markets) in which there are competitive problems related to the acquisition are the areas of Puerto Rico in and near Cayey and Cidra (the ''Cayey'' market), Ponce and Juana Diaz (the ''Ponce'' market), and Barceloneta, Manati, and Vega Baja (the ''Manati'' market). The Cayey, Ponce, and Manati markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as the ''HHI'') or by two-firm and four-firm concentration ratios.[1] The post-acquisition HHI in the Cayey market would increase 1,056 points, from 2,500 to 3,556; in the Ponce market it would increase 603 points, from 1,912 to 2,515; and in the Manati market, taking into account a Wal-Mart supercenter that will open shortly, it would increase 1,782 points, from 2,173 to 3,955. In the Cayey market, Wal-Mart and Amigo would have a combined market share greater than 47%; in the Ponce market, the parties' combined market share would exceed 38%; and in the Manati market, the combined market share would be greater than 59%.

The complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The complaint also alleges that Wal-Mart's acquisition of all of the outstanding voting securities of Amigo, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supercenters and club stores owned or controlled by Wal-Mart and supermarkets owned and controlled by Amigo; by increasing the likelihood that Wal-Mart will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction, each of which increases the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries or services will decrease, in the relevant geographic markets of Puerto Rico.

IV. The Terms of the Agreement Containing Consent Orders

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Proposed Respondents must divest four Amigo supermarkets, in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico. In each region, Wal-Mart owns or plans to open at least one supercenter or club store. The divestitures are to an up-front newly-formed entity founded by experienced supermarket owners which would be a new entrant in the relevant geographic markets and which the Commission has evaluated for competitive and financial viability. The Commission's evaluation process consisted of analyzing the financial condition of the proposed acquirer to determine that it is well qualified to operate the divested stores.

Proposed Respondents will sell the four Amigo stores to Supermercados Maximo, Inc. (''Purchaser''), which is headquartered in Hato Rey, Puerto Rico. Purchaser includes as its founders and management two former long-time members of Amigo's board of directors. All of the managers at the four stores are expected to remain in place (and each store is headed by management teams that have worked together for over three years).

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

The proposed consent order requires that the divestitures occur no later than ten business days after the acquisition is consummated. However, if Proposed Respondents consummate the divestitures to Purchaser during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Proposed Respondents that Purchaser is not an acceptable acquirer or that the asset purchase agreement with Purchaser is not an acceptable manner of divestiture, then Proposed Respondents must immediately rescind the transaction in question and divest those assets to another buyer within three months of the date the order becomes final. At that time, Proposed Respondents must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Proposed Respondents have not divested to satisfy the requirements of the order. In addition, the order enables the Commission to seek civil penalties against Proposed Respondents for non-compliance with the order.

The proposed consent order further requires Proposed Respondents to maintain the viability of the supermarkets identified for divestitures. Among other requirements related to maintaining operations at these supermarkets, the proposed consent order specifically requires Proposed Respondents to: (1) Maintain the viability, competitiveness, and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair the supermarkets' marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve the supermarkets' existing relationships with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain the inventory at levels consistent with past practices.

The proposed consent order prohibits Proposed Respondents from acquiring, without providing the Commission with prior notice, any supermarket, supercenter, or club store, or any interest in any supermarket, supercenter, or club store located in the municipalities that include Cayey, Cidra, Ponce, Juana Diaz, Barceloneta, Manati, and Vega Baja for ten years. These are the areas from which the supermarkets to be divested draw customers. The provisions regarding prior notice are consistent with the terms used in prior Orders. The proposed consent order does not restrict the Proposed Respondents from constructing new supermarkets, supercenters, or club stores in the above areas; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets, supercenters, or club stores within the previous six months.

The proposed consent order further prohibits Proposed Respondents, for a period of ten years, from entering into or enforcing any agreement that restricts the ability of any person acquiring any location or interest in any location used as a supermarket, supercenter, or club store in Puerto Rico, to operate a supermarket, supercenter, or club store at that site, if that site is or was formerly owned or operated by Proposed Respondents in any of the above areas.

The Proposed Respondents are required to file compliance reports with the Commission, the first of which is due within thirty days of the date on which Proposed Respondents signed the proposed consent order, and every thirty days thereafter until the divestitures are completed, and annually for ten years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of the supermarkets to Purchaser, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission, Commissioner Anthony recused.

Donald S. Clark,

Secretary.

[FR Doc. 02–30084 Filed 11–26–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on December 12–13, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its eighth meeting, at which it will discuss, among other things, current and future prospects for genetic enhancements (presentation by Dr. Francis Collins of the National Human Genome Research Institute [NHGRI]). Other topics will include: Technologies to increase the human lifespan (presentations by Dr. Steven Austad, University of Idaho, and Dr. S. Jay Olshansky, University of Chicago), and the possibility of overmedicating children with stimulants such as Ritalin (presentation by Dr. Lawrence H. Diller, University of California-San Francisco). The Council may also touch on issues relating to organ donation and procurement. Subjects discussed by the Council at past meetings include: Human cloning; embryonic stem cells; the patentability of human organisms; enhancements of human mood, memory, and muscles; choosing the sex of children; and international models of biotech regulation.

DATES: The meeting will take place Thursday, December 12, 2002, from 9 am to 5:15 pm ET; and Friday, December 13, 2002, from 8:30 am to 1 pm ET.

ADDRESSES: Hotel Monaco, 700 F Street, NW., Washington, DC 20004.

PUBLIC COMMENTS: The meeting agenda will be posted at *http://www.bioethics.gov.* Members of the public may submit written statements for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications (tel. 202/296–4669 or e-mail *info@bioethics.gov*). The public may also express comments during the time set aside for this purpose, beginning at noon ET, on Friday, December 13, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone

number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov.*

Dated: November 20, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–30045 Filed 11–26–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

The Advisory Committee on Minority Health will meet on Thursday, December 12, 2002 from 9 a.m. to 5 p.m., and Friday, December 13, 2002 from 8:30 a.m.–12 Noon. The meeting will be held at the Hyatt Regency Bethesda, Lalique Room, One Bethesda Metro Center (Wisconsin Avenue at Old Georgetown Road), Washington, DC, 20814.

The Advisory Committee will discuss racial and ethnic disparities in health, as well as, other related issues.

The meeting is open to the public. There will be an opportunity for public comment, which will be limited to five minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least two business days prior to the meeting.

For further information, please contact Ms. Sheila P. Merriweather, Rockwall II Building, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852. Phone: 301–443–9923; Fax: 301–443–8280.

Dated: November 15, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–30149 Filed 11–26–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

An Evaluation of Targeted Health Communication Message: Folic Acid and Neural Tube Defects (OMB No. 0920–0461)—Extension—The National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background

The Division of Birth Defects and Developmental Disabilities, within NCBDDD launched a national education campaign in January 1999 to increase women's knowledge about neural tube birth defects (NTDs) and the beneficial role folic acid, a B vitamin, plays in the prevention of NTDs. Studies show that a 50 to 70 percent reduction in the risk of neural tube birth defects is possible if all women capable of becoming pregnant consume 400 micrograms of folic acid daily both prior to and during early pregnancy. Studies also indicate that Hispanic women have a greater risk for NTD-affected pregnancies than women in the general population. Specific, culturally sensitive, targeted media messages need to be directed at this population.

CDC and the March of Dimes Birth Defects Foundation developed health communication media messages and educational materials targeted to health care providers and English and Spanish-speaking women. These media messages and educational materials consist of television and radio public service announcements (PSA), brochures and resource manuals. The Spanish-language folic acid communication evaluation survey examines the impact of Spanish-language media messages on the levels of awareness, knowledge, and vitamin use among Hispanic women of childbearing age.

Hispanic women's exposure to Spanish-language media messages and educational materials on folic acid information will be collected and measured to determine whether these exposures influenced the women's knowledge and usage of folic acid. The number and frequency of women's exposures to the media messages such as television and radio PSAs will be collected from media channels and compared to information collected from survey data, National Council on Folic Acid organizations and the National Clearinghouse on Folic Acid activities. The cost to participants will be $0.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Telephone Interview	1,000	1	20/60	333

Dated: November 22, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–30218 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–19]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project:

Exposure to Aerosolized Brevetoxins During Red Tide Events (OMB No. 0920–0494)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Gymnodinium breve is the marine dinoflagellate responsible for extensive blooms (called ''red tides'') that form in the gulf of Mexico. G. breve produces potent toxins, called brevetoxins, that have been responsible for killing millions of fish and other marine organisms. The biochemical activity of brevetoxins is not completely understood and there is very little information regarding human health effects from environmental exposures, such as inhaling brevetoxin that has been aerosolized and swept onto the coast by offshore winds. The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) is planning to recruit 100 people who work along the coast of Florida and who potentially will be occupationally exposed to aerosolized red tide toxins some time during the year following recruitment. We plan to administer a base-line respiratory health questionnaire and conduct pre- and post-shift pulmonary function tests during a time when there is no red tide reported near the area. When a red tide develops, we plan to administer a symptom survey and conduct pulmonary function testing (PFT) on a group of study participants who are working in the area where the red tide is near shore and on a control group of study participants who are not working in an area where the red tide is near shore (*i.e.*, are not exposed to the red tide). We will then compare (1) symptom reports before and during the red tide and (2) the changes in baseline PFT values during the work shift (differences between pre- and post-shift PFT results without exposure to red tide) with the changes in PFT values during the work shift when individuals are exposed to red tide.

In addition, we plan to assist in collecting biological specimens (inflammatory cells from nose and throat swabs) to assess whether they can be used to verify exposure and to demonstrate a biological effect (*i.e.*, inflammatory response) from exposure to red tide. We have collected part of the data, but, because we are dealing with natural phenomena and are subject literally to the tides, we must extend our data collection time for an additional two years. There is no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pulmonary History Questionnaire	100	1	20/60	33
Symptoms Questionnaire	100	20	5/60	167
Nasal and Throat Swabs	100	20	5/60	167
Pulmonary Function Tests	100	20	20/60	667
Total				1,034

Dated: November 22, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–30219 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–17]

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. CDC is requesting an emergency clearance from OMB to conduct this data collection. Written comments should be received within 14 days of this notice. Send written comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, Georgia 30333. OMB is expected to act on this request within 7 days of the close of the comment period.

Proposed Project: Work-Related Assaults Treated in Hospital Emergency Departments—New—National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Workplace violence, both fatal and nonfatal, is recognized as an important occupational safety and health issue. Various data systems have provided fairly detailed information on fatal workplace violence, but much less is known about the circumstances and risk factors for nonfatal workplace violence. As well, a number of strategies have been suggested for reducing the incidence and severity of workplace violence in various settings (e.g., taxicabs, health care, law enforcement, social services), but again, little empirical knowledge exists about what has been implemented and what impact such strategies may have. The report, Workplace Violence: A Report to the Nation, published by the University of Iowa based on recommendations from a workshop of experts, states, ''* * * research focused on a much broader understanding of the scope and impact of workplace violence is urgently needed to reduce the human and financial burden of this significant public health problem.'' In 2000, there were 677 workplace homicides in the U.S. From 1993–1999, there were an estimated 1.7 million nonfatal victimizations ''while at work or on duty'' every year, accounting for 18% of all violent crime during the 7-year period. In December 2001, Congress directed NIOSH to develop an intramural and extramural prevention research program that will target all aspects of workplace violence.

The Consumer Product Safety Commission (CPSC) maintains a database of injuries treated in a nationally representative sample of U.S. hospital emergency departments (Eds) called the National Electronic Injury Surveillance System (NEISS). Data routinely collected through NEISS include a brief narrative description of the injury event and basic demographic information such as intent and mechanism of injury, work-relatedness, principal diagnosis, part of the body affected, location where the injury occurred, involvement of consumer products, and disposition at ED discharge. For assaults, summary data are also being collected in the relationship of the perpetrator to the injured person and the context (i.e., altercation, robbery, sexual assault, etc.). For work-related cases, occupation and industry information is collected. The data system does not include any information on issues such as the specific workplace circumstances and risk factors for workplace violence; security measures in the workplace and whether they were utilized/used appropriately; training-in-workplace violence risk factors and prevention strategies; previous incidents of workplace violence; return-to-work after assault; and, other specific workplace violence information.

For the last 10 years, NIOSH has been collaborating with CPSC to collect surveillance data on work-related injuries treated in the NEISS Eds. In addition, NIOSH has utilized the capacity of NEISS to incorporate follow-back surveys. Follow-back surveys allow collection of first-hand, detailed knowledge that does not exist in administrative or other records. CPSC routinely uses this mechanism to collect information of various types of injuries (e.g., fireworks-related injuries, injuries to children in baby walkers, etc.). NIOSH has used this mechanism to collect information on the circumstances of the injury, training, protective equipment (if appropriate), and other issues important to more fully understand the risk factors for work-related injuries and to make appropriate recommendations for preventing other such injuries in the future.

The current proposed study will consist of a telephone interview survey of workers treated in NEISS hospital Eds for injuries sustained during a work-related assault. The data collection will occur over a one year period. CPSC will hire a contractor to conduct the actual telephone interviews. NIOSH will review potential cases to identify those cases that should be forwarded to the contractor for interview. The survey includes an extended narrative description of the injury incident as well as items regarding general workplace organization; personal characteristics of the worker; work tasks at the time of the assault; training on workplace violence risk factors and prevention strategies; security measures in place and how they impacted the outcome of the incident; and return to work after the assault. This study will provide critical information for understanding the nature and impact of nonfatal assault among U.S. workers. In combination with data collected from other sources, this information will ultimately contribute to the prevention of violence in the workplace. The only cost to respondents is their time to participate in the data collection.

Survey	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (hours)
Work-related assaults treated in hospital Eds	1,600	1	20/60	533
Total				533

Dated: November 20, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–30220 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–16]

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: National Vital Statistics Report Forms (OMB No. 0920–0213)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background

The National Vital Statistics Report Forms (0920–0213) is an approved collection of the compilation of national vital statistics. This collection dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form (CDC 64.146) are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. The data are routinely available in each reporting office as a by-product of ongoing activities. This form is designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence. There are no costs to respondents.

Respondents to the form: Monthly Vital Statistics Report (CDC 64.146)	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
State and Territory registration officials	57	12	12/60	137
New Mexico County officials	60	12	6/60	72
Total				209

The Annual Marriage and Divorce Statistical Report Form (CDC 64.147) collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete and final counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution.

Respondents for the Annual Marriage and Divorce Statistical Report Form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. In addition, counts of marriages will be collected from individual counties in New Mexico, and counts of divorces will be collected from individual counties in California, Colorado, Indiana, Louisiana, New Mexico, and the boroughs of New York City due to a lack of centralized complete collections in these registration areas. The data are routinely available in each reporting office as a by-product of ongoing activities.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
State/Territory/City registration officials	56	1	30/60	28
County/Borough officials	348	1	30/60	174
Total	.....	.....	.....	202

Dated: November 20, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–30221 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–10]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit for the Community Outreach Partnership Center (COPC) Program

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date January 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability and Application Kit for the Community Outreach Partnership Center Program. *OMB Control Number:* 2528–0180 (exp. 02/28/03).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD–424–M, HUD–424–B, HUD–424D, HUD–424–CB, HUD–2880, HUD–2990, HUD–2991, HUD–2992, HUD2993, HUD–2994, HUD–3001, HUD–3002, HUD–30011, HUD–30012, HUD–50070, HUD–50071.

Members of the Affected Public: Community colleges, four-year colleges, and universities.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	135	135	40	5400
Semi-Annual Reports	25	50	6	300
Final Reports	25	25	8	200
Recordkeeping	25	25	5	125
Total			59	6025

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 14, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–30014 Filed 11–26–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–72]

Notice of Submission of Proposed Information Collection to OMB: Mortgagee's Request for Extension of Time

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2502–0436) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and

Urban Development, 451 7th, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov,* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time.

OMB Approval Number: 2502–0436.

Form Numbers: HUD–50012.

Description of the Need for the Information and its Proposed Use: Information is used as a ''turnaround'' document by mortgage lenders to request an extension of time and for HUD to provide a response. Mortgagee's maintain copies of the information collection with related claim documents to verify that HUD has authorized extensions of time on specific cases.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	2,000	6		0.25		3,000

Total Estimated Burden Hours: 3,000.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 21, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–30013 Filed 11–26–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–053987

Applicant: The Phoenix Zoo, Phoenix, AZ

The applicant requests a permit to export one ocelot (*Leopardus pardalis mitis*) to the Granby Zoo, Granby, Quebec, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

PRT–064861

Applicant: Donald D. Gasaway, Marion, IL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–065002

Applicant: Harry M. Morley, Rockledge, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 15, 2002.

Lisa J. Lierheimer,

Permits Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30125 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–064033

Applicant: Charles D. Lein, Lafayette, LA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–063767 Through 063773

Applicant: Feld Entertainment, Vienna, VA

The applicant requests permits to export, re-export, and re-import Asian elephants (*Elephas maximus*) to and from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period. The elephants are: Bonnie—063767, Juliette—063768, Kelly Ann—063769, Angelica—063770, Doc—063771, Nichole—063772, Osgood—063773. Some of these elephants were previously authorized under PRT–007873.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: October 25, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30128 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–064354

Applicant: John L. Wathen, Leonardtown, MD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–064887

Applicant: John W. Salevurakis, Mountainaire, AZ

The applicant requests a permit to import the sport-hunted trophy of one male wood bison (*Bison bison athabascae*) taken from the Yukon (Nisling river) population, Yukon territory, Canada, for the purpose of enhancement of the survival of the species through support of the Canadian recovery program.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–063596

Applicant: William J. Schagel, Prescott, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

PRT–063898

Applicant: Larry Seiler, Guilford, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

PRT–064723

Applicant: David M. McNeil, Buhl, AL

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern

Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 8, 2002.

Lisa J. Lierheimer,

Permits Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30126 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On September 10, 2002, a notice was published in the **Federal Register** (67 FR 57445), that an application had been filed with the Fish and Wildlife Service by Hobson Reynolds for a permit (PRT–061098) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on November 6, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On August 20, 2002, a notice was published in the **Federal Register** (67 FR 53960), that an application had been filed with the Fish and Wildlife Service by Lawrence P. Rudolph for a permit (PRT–058229) to import one polar bear (*Ursus maritimus*) taken from the Viscount Melville Sound polar bear population, Canada, for personal use.

Notice is hereby given that on November 4, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: November 8, 2002.

Lisa J. Lierheimer,

Permits Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30127 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Northeast Regional Panel will meet from 12 p.m. to 5:30 p.m. on Monday, December 16, 2002, and 8:30 a.m. to 3 p.m., Tuesday, December 17, 2002.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Northeast Regional Office of the U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589. Phone 413–253–8404.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Northeast Regional Panel was established on July 25, 2001, to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: Updates from provinces and states; review of reports from subcommittees on Communication, Education, and Outreach, Policy and Legislation, and Science Technology; discussion on the development of a rapid response system, a ballast water regional management plan, and data management; updates from the Aquatic Nuisance Species Task Force and National Invasive Species Council on national issues, reauthorization of the National Aquatic Invasive Species Act; updates on the development of State ANS Management Plans; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: November 15, 2002.

William E. Knapp,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Deputy Assistant Director-Fisheries & Habitat Conservation.

[FR Doc. 02–30010 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, the Department of the Interior is seeking extension of an Information Collection Request (ICR) for grantees participating in the Public Law 102–477 program, OMB Control No. 1076–0135. The Department invites public comments on the subject proposal described below.

DATES: Submit written comments regarding this proposal on or before January 27, 2003.

ADDRESSES: Mail comments to George Gover, Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4640–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instructions should be directed to Lynn Forcia, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4640–MIB, Washington, DC 20240, at (202)–219–5270 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to document satisfactory compliance with statutory requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally funded employment, training and related services programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor and the Department of Health and Human Services. The Bureau of Indian Affairs is statutorily required to serve as the lead agency. Section 11 of this Act requires that the Secretary of the Interior make available a single universal report format which shall be used by a tribal government to report on integrated activities and expenditures undertaken. The Bureau of Indian Affairs shares the information collected from these reports with the Department of Labor and Department of Health and Human Services.

II. Method of Collection

Public Law 102–477 grantees are required to complete a single universal report format including the annual submission of two single page, one-sided report forms and one narrative report, using five pages of instructions. This reporting format was initially developed in 1993 and replaced 166 pages of instructions and forms representing three different agencies with related employment, training, education and welfare reform programs.

Federal partners have now further reduced their reporting requirements for the separate programs and now require approximately 142 pages of instructions and forms total each year. The Public Law 102–477 initiative requires five pages per year of forms and instructions. All tribes must also review instructions and complete annually approximately 62 pages of Department of Health and Human Services, Temporary Assistance to Needy Families (TANF), program forms and instructions. We have not been able to successfully integrate TANF reporting with Public Law 102–477 reporting. In addition, four pages of reports and instructions must be completed by tribes annually for the Bureau of Indian Affairs General Assistance program for determination of allocation of funds. Therefore, tribes participating in Public Law 102–477 currently experience a 50 percent reduction in reporting forms and instructions than if they implemented all programs separately. This reduction is consistent with the Paperwork Reduction Act and goals of the National Performance Review.

The statistical report and narrative report will be used to demonstrate how well a plan was executed in comparison to its proposed goals. This one page, universal report plus narrative satisfies requirements of the Department of Health and Human Services, Department of Labor and the Department of the Interior.

The financial status report will be used to track cash flow, and will allow an analysis of activities versus expenditures and expenditures to approved budget. It is a slightly modified SF–269–A (short form).

These two report forms and the narrative satisfy requirements of the Department of Health and Human Services, Department of Labor and the Department of the Interior. The revised forms reduce the burden on tribal governments by consolidating data collection for employment, training, education, child care and related service programs. The reports are due annually. These forms, developed within a partnership between participating tribes and representatives of all three Federal agencies, standardize terms and definitions, eliminate duplication and reduce frequency of collection.

III. Data

Title: A Reporting System for Public Law 102–477 Demonstration Project.

OMB Control Number: 1076–0135.

Respondents: Tribes participating in Public Law 102–477 will report annually. As of October 1, 2002, we anticipate there will be 48 grantees representing approximately 220 federally-recognized tribes participating in the program.

Burden: We estimate that completion of the reporting requirements will require 16 hours per year to complete for each grantee. The total hour burden will be 768 hours.

IV. Request for Comments

The existing reporting procedure was initially developed in 1993 with the active participation from Department of Labor, Department of Health and Human Services and tribal representatives. Since that time, the forms were modified once to accommodate the Department of Labor's Welfare-to-Work program.

Comments may include:

(a) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(b) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) The quality, utility, and clarity of the information to be collected; and

(d) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Lynn Forcia, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240. Tribal consultation will be also be sought in January at the next regularly scheduled Public Law 102–477 Tribal Work Group meeting to be held in Washington, DC.

All written comments, names and addresses of commentators will be available for public inspection in Room 4644 of the Main Interior Building, 1849 C Street, NW., Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. If you want us to withhold your name and address you must state that prominently at the beginning of your comment. We will honor your request to the extent allowable by law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request that does not have a currently valid expiration date.

Dated: November 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30019 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Self-Governance Program Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Agency Information Collection Activities; Comment Request.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from potential Self-Governance Tribes, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number, 1076–0143, will be used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding grants, and to meet reporting requirements of the Self-Governance Act.

DATES: Submit comments on or before January 27, 2003.

ADDRESSES: Written comments can be sent to William Sinclair, Office of Self-Governance, 1849 C Street, NW., Mail Stop 2548 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: William Sinclair, (202) 219–0244.

SUPPLEMENTARY INFORMATION: You are advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, this collection is listed by OMB as 1076–0143, and it expires 03/31/2003. The response is voluntary to obtain or retain a benefit.

We are requesting comments about the proposed collection to evaluate:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made,

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility,

(c) The quality, utility, and clarity of the information to be collected,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during (regular business hours). If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Type of review: Renewal.

Title: Tribal Self-Governance Program, 25 CFR 1000.

Affected Entities: Tribes and tribal consortiums wishing to enter into a self-governance compact.

Size of Respondent Pool: 257.

Number of Annual Responses 257.

Hours per response: 42.

Total Annual Hours: 10,766.

Dated: November 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30092 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New Methamphetamine Project Status Update Report (SUR).

The Department of Justice (DOJ), Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume 67, Number 177, page 57851 on September 12, 2002, allowing for a 60 day comment period

The purpose of this notice is to allow for an additional 30 days for public comment until December 27, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Office, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Types of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Project Status Update Report (SUR).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agencies. Other: Universities and Private Non-Profit Agencies. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses for grantees. The estimated amount of time required for the average respondent to respond is 3.0 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 325 hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 21, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–30152 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new methamphetamine project, final update report (FUR).

The Department of Justice (DOJ), Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 191, page 61922 on October 12, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 27, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Project, Final Update Report (FUR).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agency. Other: Universities and Private Non-Profit Agencies. *Abstract:* The information collection will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses from grantees. The estimated amount of time required for the average respondent to respond is 3.0 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 21, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–30153 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *James R. Chaplin, et al.*, C.A. No. 5:00–CV–118, were lodged on November 8, 2002, with the United States District Court for the Northern District of West Virginia.

The consent decrees resolve the United States' claims against James R. Chaplin and other defendants named in the complaint, pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d). At the time the complaint was filed, the defendants owned and operated five apartment complexes and previously constructed two single family housing subdivisions, all located in the northern part of West Virginia. Defendants operated a wastewater treatment and disposal facility (''facility'' or ''facilities'') at each apartment complex and subdivision.

One consent decree with the defendants resolves the United States' claims that the defendants (a) discharged wastewater containing pollutants above limitations in applicable permits, (a) failed to properly operate and maintain the facilities, and (c) discharged pollutants from one facility without a proper permit. Under this consent decree, the defendants will pay a civil penalty of $175,000 and obtain a permit for the facility without a permit. Defendants will also implement injunctive relief, which includes having each facility inspected by a qualified contractor, making necessary repairs to each facility which the defendants continue to own and operate, and maintaining service contracts on the facilities.

In July 2000, Belmont Properties, Inc. (''Belmont'') purchased four of the apartment complexes and became managing and controlling partner of four defendant partnerships, through which defendants James R. Chaplin and Anna Chaplin owned and operated these four complexes. Under a second consent decree, Belmont has agreed to implement the same injunctive relief measures described above for the facilities at the complexes it now owns.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *James R. Chaplin, et al.* and DOJ Reference No. 90–5–1–06425.

The proposed consent decrees may be examined at the Office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania

19103. Copies of the proposed decrees may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting copies of the two consent decrees exclusive of exhibits, please enclose a check in the amount of $18.00 (.25 cents per page production costs), payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30155 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 31, 2002, a proposed amendment to a consent decree entered on April 28, 1992 in *United States and State of Arizona* v. *Motorola, Inc., Siemens Corporation, Salt River Valley Water Users' Association and GlaxoSmithKline,* Civil Action No. CV–91–1835–PHX–WPC, was lodged with the United States District Court for the District of Arizona.

In this action the United States sought the performance of response actions and the recovery of response costs incurred and to be incurred by the United States with respect to releases of hazardous substances at the Indian Bend Wash, North, Superfund Site in Scottsdale, Arizona (''Site''). The consent decree entered by the Court on April 28, 1992 required the performance of certain work by the Defendants Motorola, Inc., Siemens Corporation, the Salt River Valley Water Users' Association and GlaxoSmithKline (collectively ''Defendants''), with participation by the City of Scottsdale pursuant to Rule 19 of the Federal Rules of Civil Procedure.

One provision of the April 28, 1992 consent decree specified that, if EPA determined that additional work was necessary to remediate contamination at the Site, the parties would negotiate informally to incorporate a requirement for the performance of that work into the April 28, 1992 consent decree. The Amended Consent Decree would incorporate certain additional work to be performed at the Site by the Defendants and the City that EPA has deemed necessary. This work includes, but is not limited to, the continued operation and maintenance of three groundwater treatment facilities and related extraction and monitoring well systems.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Arizona* v. *Motorola, Inc., Siemens Corporation, Salt River Valley Water Users' Association and GlaxoSmithKline,* D.J. Ref. 90–11–2–413.

Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003 (d) of RCRA, 42 U.S.C. 6973(d).

The Amended Consent Decree may be examined at the Office of the United States Attorney, Two Renaissance Square, 40 N. Central Avenue, Suite 1200, Phoenix, Arizona 85004–4408, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $69.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $23.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30154 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 298–2002]

Privacy Act of 1974: System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of Professional Responsibility (OPR), proposes to modify the following system of records previously published in full text in the **Federal Register** on December 10, 1998 (63 FR 68299 (1998)): Office of Professional Responsibility Record Index, JUSTICE/OPR–001.

OPR is adding three new routine uses to this system of records. The first routine use allows the disclosure of information to contractors and others working on behalf of OPR when necessary to accomplish an OPR function related to this system of records. The second routine use allows the disclosure of information to former employees of the Department for the purpose of responding to official inquiries by government entities or professional licensing authorities in accordance with applicable Department regulations. This routine use also allows disclosure to former employees where the Department requires information and consultation assistance from the former employee that is necessary for personnel-related or other official purposes. The third routine use will allow the disclosure of information to members of the judicial branch of the Federal government in response to a written request where disclosures are relevant to the authorized function of the recipient judicial office or court system.

Title 5 U.S.C. 552a(e)(4)(11) provides that the public be given a 30-day period in which to comment on the proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period in which to conclude its review of any proposal to add new routine use disclosures or make other major modifications.

You may submit any comments by December 27, 2002. The public, OMB and the Congress are invited to send comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Room 1400 National Place Building, Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed new routine uses.

Dated: November 15, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/OPR–001

SYSTEM NAME:

Office of Professional Responsibility Record Index.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

* * * (10) information may be furnished to professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.

[Following this sentence insert the three paragraphs below.]

(11) Relevant information contained in this system of records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(12) Relevant and necessary information may be disclosed to former employees of the Department of Justice for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(13) Relevant information contained in this system of records may be disclosed to a member of the judicial branch of Federal Government in response to a written request where disclosures are relevant to the authorized function of the recipient judicial office or court system.

* * * * *

[FR Doc. 02–29879 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–28–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James F. Graves, M.D.; Revocation of Registration

On April 8, 2002, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration, to James F. Graves, M.D. (Dr. Graves) of Milton, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AG3101235 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Graves is not currently authorized to handle controlled substances in Florida, the state in which he practices, and had been convicted of a felony involving controlled substances. The order also notified Dr. Graves that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

By letter dated April 16, 2002, Dr. Graves requested an administrative hearing. On May 7, 2002, DEA filed Government's Motion for Summary Disposition and Request for Stay of the Filings of Prehearing Statement. The Motion was based upon the argument that no facts were at issue: DEA cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts business. Dr. Graves did not respond to the Motion. On July 10, 2002, Administrative Law Judge Mary Ellen Bittner certified and transmitted the record in the matter to the Deputy Administrator along with her Opinion and Recommended Decision. In her Decision, the Administrative Law Judge granted DEA's Motion for Summary Disposition and recommended that Dr. Graves' DEA registration be revoked.

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final order as prescribed by 1301.46, based upon the following findings and conclusions. The Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law. The Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Graves possesses DEA Certificate of Registration AG3101235. On January 29, 2002, the Florida Department of Health ordered an emergency suspension of Dr. Graves' medical license. Loss of state authority to engage in the practice of medicine is an independent ground to revoke a practioner's registration under 21 U.S.C. 824(a)(3). This agency has consistently held that a person may not maintain a DEA registration if he is without appropriate authority under the laws of the State in which he does business. *See* Anne Lazar Thorn, M.D., 62 FR 12847 (DEA 1997); Bobby Watts, M.D., 53 FR 11919 (DEA 1988).

Dr. Graves has not denied that he is currently not licensed to practice medicine in Florida, the jurisdiction in which he is registered. Accordingly, he is not entitled to a DEA registration. As the Administrative Law Judge stated, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceedings is not required. *See* Jesus R. Juarez, M.D., 62 FR 14945 (DEA 1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him be 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, grants the agency's Motion for Summary Disposition and hereby orders that DEA Certificate of Registration AG3101235 issued to James F. Graves, M.D. be, and hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 27, 2002.

Dated: November 4, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30022 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

K.V.M. Enterprises; Denial of Registration

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to K.V.M. Enterprises (KVM) of Detroit, Michigan, notifying it of an opportunity to show cause as to why DEA should not deny its application for DEA registration as a distributor of list 1 chemicals. As a basis for the denial, the Order to Show Cause alleged that KVM's registration would not be in the public interest. The order also notified KVM that should not a request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to KVM to the address included on the application for registration. DEA received a signed receipt indicating that the Order to Show Cause was received on KVM's behalf on March 4, 2002. DEA has not received a request for hearing or any

other reply from KVM or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that KVM is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on January 23, 2001, KVM submitted an application for DEA registration as a distributor of the list I chemical ephedrine (DEA chemical code number 8113). The application was submitted by Kwana McBurrows (Ms. McBurrows), owner of KVM.

Ephedrine is a legitimately imported and distributed product used in the production of bronchial dilators and asthma relief medication. Ephedrine is also a precursor chemical used in the illicit manufacture of methamphetamine. DEA has developed information which demonstrates a recent increase in the use of ephedrine in the illicit manufacture of methamphetamine: in 1998, DEA was directly involved in the seizure of 1,626 clandestine methamphetamine laboratories. Of these laboratories, there were 135 instances where ephedrine was positively identified as a precursor chemical for methamphetamine (8.3 percent of total clandestine laboratory seizures). In 1999, DEA was directly involved in the seizure of 2,025 clandestine methamphetamine laboratories. Of these laboratory seizures, there were 269 instances where ephedrine was positively identified as a precursor chemical for methamphetamine (13.3 percent of total clandestine laboratory seizures). In 2000, the number of total DEA clandestine seizures dropped to 1,815, however, those involving ephedrine products (249) remained consistent.

During a March 16, 2001, pre-registration investigation, DEA learned that KVM is a distributor of products containing Ginseng. DEA also learned that prior to submitting an application for DEA registration, Ms. McBurrows worked as a beauty consultant, and sold ''Mary Kay'' health and beauty products. DEA's investigation further revealed that Ms. McBurrows had no prior experience in handling list I chemicals.

DEA's investigation also revealed that KVM does not presently have any customers, but proposes to sell its products exclusively to gas stations. DEA has developed information that certain list I chemicals such as pseudoephedrine and ephedrine are often purchased in large quantities by non-traditional retail outlets such as gas station retailers who are not typically engaged in the sale of these products. These establishments in turn have sold these listed chemicals to individuals engaged in the illicit manufacture of methamphetamine.

DEA also requested information regarding proposed suppliers of list I chemicals to KVM. Ms. McBurrows informed DEA that the Hammer Corporation (Hammer) of Atlanta, Georgia is one of its potential suppliers. Hammer has been the recipient of 16 Warning Letters from DEA between October 1997 and January 2001. These letters notified Hammer that list I chemicals distributed by the firm have been associated with the illicit manufacture of methamphetamine.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that KVM's application for DEA registration be denied, on the ground that registration of KVM would not be in the public interest. 21 U.S.C. 824(a)(4). This order is effective December 27, 2002.

Dated: November 4, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30021 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; application for certificate of citizenship in behalf of an adopted child.

The Department of Justice, Immigration and Naturalization Service (NS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 30, 2002. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until January 27, 2003. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection allows United States citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,159 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,159 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 21, 2002

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–30020 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility; To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,420; Cawood Manufacturing Co., Inc.

TA–W–42,165; Wirtz Manufacturing Co., Port Huron, MI

TA–W–41,495; Arkwright, Inc., OCE USA Holding Co., Fiskville, RI

TA–W–41,655; BTA–Perfex, Butler, WI

TA–W–41,982; Kato Engineering, Inc., North Mankato, MN

TA–W–42,013; Baker Enterprises, Inc., Alpena, MI

TA–W–42,102; Northern Engraving Corp., Lansing Div., Lansing, IA

TA–W–42,189; Baker Electrical Products, Memphis, MI

TA–W–42,205; Sutherland Sheet Metal and Welding Co., Woonsocket, RI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,292; MacNeill Worldwide, a Subsidiary of MacNeill Engineering Co., Laconia, NH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–42,238; Eichleay Engineers and Constructors, Inc., Pittsburgh, PA

TA–W–42,175; Hilti, Inc., New Castle, PA

TA–W–42,183; IKA Logistics, Inc., Packaging Div., a Subsidiary of Inabata America Corp., El Paso, TX

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–42,273; General Mills, Bakeries and Food Service, Hillside, MI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,070; Athens Products, Athens, TN: August 9, 2001.

TA–W–42,248; Kasper Machine Co., Inc., Madison Heights, MI: September 18, 2001.

TA–W–42,302; Trends Clothing Corp., a/k/a/ Trends International, Miami, FL: October 9, 2001.

TA–W–42,305; Unison Industries, a Subsidiary of G.E. Fort Worth, TX: October 8, 2001

TA–W–42,329; International Hosiery Network, LLC, Hickory, NC: October 21, 2001.

TA–W–50,020; DMI–Arkansas, Inc., d/b/a/ Arkansas General Industries, Bald Knob, AR: November 5, 2001.

TA–W–42,280; Covington Industries, Inc., High Point, NC: October 9, 2001.

TA–W–42,061; Metropolitan Steel Industries, Inc., d/b/a Steelco, Sinking Springs, PA: August 20, 2001.

TA–W–50,024; Hudson Respiratory Care, Inc., Argyle, NY: November 4, 2001.

TA–W–42,257; Arnold Engineering Co., Marengo, IL: October 1, 2001.

TA–W–42,240; RBX Industries, Inc., Colt, AR: October 1, 2001.

TA–W–42,168; Gulfstream Aerospace Technologies, Bethany, OK: September 6, 2001.

TA–W–42,153; Wells Lamont Corp., Packing and Sewing Department, Waynesboro, MS: September 4, 2001.

TA–W–42,150 &A; Wyman-Gordon Forgings, a Div. of Precision Castparts Corp., North Graft, MA, Worcester, MA: September 4, 2001.

TA–W–42,139; Fabry Industries, Green Bay, WI: August 27, 2001.

TA–W–42,045; Regal Manufacturing, Inc., New York, NY: August 21, 2001.

TA–W–42,022; Molded Container Corp., Portland, OR: August 8, 2001.

TA–W–41,144; Dawson Furniture Co., Webb City, MO: February 20, 2001.

TA–W–40,505; Tee Tease, LLC., Commerce, CA: October 31, 2000.

TA–W–42,744; Angelica Image Apparel, St. Louis, MO: June 12, 2001.

TA–W–41,623; Decrane Aircraft Seating Co., Inc., E.R.D.A. Medical Div., Marinette, WI: May 24, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182)

concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05901; Dawson Furniture Co., Webb City, MO

NAFTA–TAA–06220; BTA–Perfex, Div. of Thermal Engineering International, Butler, WI

NAFTA–TAA–06342; Louisiana-Pacific Corp., Plywood Div., Bon Wier, TX

NAFTA–TAA–06463; Baker Enterprises, Inc., Alpena, MI

NAFTA–TAA–06510; Northern Engraving Corp., Lansing Div., Lansing, IA

NAFTA–TAA–07565; Baker Electrical Products, Inc., Memphis, MI

NAFTA–TAA–07644; Fedder's Appliances, Effingham, IL

NAFTA–TAA–06471; Wisconsin Pattern Co., Racine, WI

NAFTA–TAA–07607; RBX Industries, Inc., Colt, AR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07581; IKA Logistics, Inc., Packaging Div., A Subsidiary of Inabata America Corp., El Paso, TX

NAFTA–TAA–06378; Willamette Industries, a Weyerhaueser Co., Albany BMG Div., Albany, OR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–07526; State of Alaska Commercial Fisheries Entry Commission Permit #65826E, Togiak, AK

NAFTA–TAA–07315; State of Alaska Commercial Fisheries Entry Commission Permit #64750K, Manokotak, AK

NAFTA–TAA–07102; State of Alaska Commercial Fisheries Entry Commission Permit #64914G, Dillingham, AK

NAFTA–TAA–07059; State of Alaska Commercial Fisheries Entry Commission Permit #60161A, Togiak, AK

NAFTA–TAA–07046; State of Alaska Commercial Fisheries Entry Commission Permit #57876J, Togiak, AK

NAFTA–TAA–07041; State of Alaska Commercial Fisheries Entry Commission Permit #58078X, Anchorage, AK

NAFTA–TAA–07042; Permit #61508S, Anchorage, AK

NAFTA–TAA–06937; State of Alaska Commercial Fisheries Entry Commission Permit #56498G, New Stuyahok, AK

NAFTA–TAA–06875; State of Alaska Commercial Fisheries Entry Commission Permit #57767U, Naknek, AK

NAFTA–TAA–06803; State of Alaska Commercial Fisheries Entry Commission Permit #64822I, Koliganek, AK

NAFTA–TAA–07546; Permit #60018B, Ugashik, AK

NAFTA–TAA–07205; Permit #59859P, Dillingham, AK

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07394; Permit #65838L, Naknek, AK

NAFTA–TAA–07393; Permit #57957Q, Naknek, AK

NAFTA–TAA–07064; State of Alaska Commercial Fisheries Entry Commission Permit #57453B, Togiak, AK

NAFTA–TAA–06995; State of Alaska Commercial Fisheries Entry Commission, Permit #61962L, South Naknek, AK

NAFTA–TAA–06735; State of Alaska Commercial Fisheries Entry Commission Permit #55224K, Egegik, AK

NAFTA–TAA–06619; State of Alaska Commercial Fisheries Entry Commission Permit #59338H, Dillingham, AK

NAFTA–TAA–06578; State of Alaska Commercial Fisheries Entry Commission Permit #64128B, Dillingham, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05848; Tee Tease, LLC, Commerce, CA: October 31, 2000.

NAFTA–TAA–06517; Metropolitan Steel Industries, Inc., d/b/a Steelco, Sinking Springs, PA: August 22, 2001.

NAFTA–TAA–06600; State of Alaska Commercial Fisheries Entry Commission Permit #58874X, Dillingham, AK: September 5, 2001.

NAFTA–TAA–06923; Permit #64808Q, New Stuyahok, AK: September 5, 2001.

NAFTA–TAA–07291; State of Alaska Commercial Fisheries Entry Permit #606910, Manokotak, AK:

NAFTA–TAA–07301; State of Alaska Commercial Fisheries Entry Commission Permit #65405G, Manokotak, AK: September 5, 2001.

NAFTA–TAA–07511; State of Alaska Commercial Fisheries Entry Commission Permit #64734J, Togiak, AK: September 5, 2001.

NAFTA–TAA–07611; Unison Industries, A Subsidiary of G.E., Fort Worth, TX: October 10, 2001.

NAFTA–TAA–07612; SMTC Manufacturing Corp., Austin, TX: August 16, 2001.

NAFTA–TAA–06228; Decrane Aircraft Seating Co., Inc., E.R.D.A. Medical Div., Marinette, WI: May 28, 2001.

NAFTA–TAA–07286; State of Alaska Commercial Fisheries Entry

Commission Permit #65874I, Monokotak, AK: September 5, 2001.
NAFTA–TAA–06298; Angelica Image Apparel, St. Louis, MO: June 21, 2001.
NAFTA–TAA–06771; State of Alaska Commercial Fisheries Entry Commission Permit #68181M, Iliamna, AK: September 5, 2001.
NAFTA–TAA–06808; State of Alaska Commercial Fisheries Entry Commission Permit #56834J, Koliganek, AK: September 5, 2001.
NAFTA–TAA–06826; State of Alaska Commercial Fisheries Entry Commission Permit #60843A, Levelock, AK: September 5, 2001.
NAFTA–TAA–07079; State of Alaska Commercial Fisheries Entry Commission Permit #67875V, Twin Hills, AK: September 5, 2001.
NAFTA–TAA–07280; Permit #64911E, Manokotak, AK: September 3, 2001.
NAFTA–TAA–07568; Molded Container Corp., Portland, OR: August 8, 2001.

I hereby certify that the aforementioned determinations were issued during the months of November, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–30068 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40, 687 & NAFTA–05749]

Goodyear Dunlop Tires, N.A. Ltd, Huntsville, AL; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determinations in *United Steel Workers of America, Local 915L, District 9, AFL–CIO* v. *Elaine L. Chao, U.S. Secretary of Labor* (Court No. 02–00457).

The Department's initial denial of the Trade Adjustment Assistance (TAA) petition for employees of Goodyear Dunlop, N.A. LTD, Huntsville (TA–W–40, 687), was issued on May 3, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35140). The denial was based on the fact that criterion (3) of the Group Eligibility Requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations at the subject firm.

The Department's initial denial of the NAFTA-Transitional Adjustment Assistance (NAFTA) petition for employees of Goodyear Dunlop, N.A. LTD, Huntsville, Alabama (NAFTA–05749) was issued on May 3, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35142). The denial was based on the fact that criteria (3) and (4) of the Group Eligibility Requirements of Section 250 of the Trade Act of 1974 were not met. Imports from Canada or Mexico did not contribute importantly to worker separations nor was there a shift in production from the subject firm to Canada or Mexico during the relevant period.

On remand, the Department requested additional information from the company. Based on the data supplied by the company the Department made a decision to survey the major declining customers of the subject firm regarding their purchases of passenger and light truck radial tires during 1999, 2000 and 2001. The survey revealed that a major declining customer increased their imports (primarily from Mexico and/or Canada) of passenger and light truck radial tires, while decreasing their purchases of passenger and light truck radial tires from the subject firm during the relevant period

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports (primarily from Canada or Mexico) of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Goodyear Dunlop, N.A. LTD, Huntsville, Alabama (TA–W–40, 687) who became totally or partially separated from employment on or after November 28, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and

All workers of Goodyear Dunlop, N.A. LTD, Huntsville, Alabama (NAFTA–05749) who became totally or partially separated from employment on or after December 11, 2000, through two years from the issuance of this revised determination, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of November 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–30063 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,269]

Acterna Corporation Indianapolis, Indiana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 21, 2002 in response to petition filed by the company on behalf of workers at Acterna Corporation, Indianapolis, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30072 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,160]

Altadis U.S.A. Inc. McAdoo, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 23, 2002, in response to a worker petition which was filed by the Teamsters Local Union No. 401 on behalf of workers at Altadis U.S.A., Inc., McAdoo, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30069 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,253]

Fleming Lumber Company, Inc., Milligan, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 21, 2002, in response to a worker petition filed on the same date by a company official on behalf of workers at Fleming Lumber Company, Inc., Milligan, FL.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 14th day of November 2002

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30070 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,356]

Hynix Semiconductor America, Inc., San Jose, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to petition filed by the company on behalf of workers at Hynix Semiconductor America, Inc., San Jose, California.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30074 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,338]

Kane Handle Company, a Division of Ames True Temper, Kane, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a petition filed by the United Steelworkers of America on behalf of workers at Kane Handle Company, a Division of Ames True Temper, Kane, Pennsylvania.

A negative determination applicable to the petitioning group of workers was issued on October 8, 2002 (TA–W–42,093). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 19th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30065 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,279]

LaGrange Foundry, LaGrange, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002, in response to a petition filed on behalf of workers at LaGrange Foundry, LaGrange, Missouri.

The investigation revealed that there is an existing petition (TA–42,245) for the subject firm workers which was instituted on October 15, 2002.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of November 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30064 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 10/21/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,252	Leslie Fay Marketing, Inc (UNITE)	New York, NY	10/11/2002	dresses.
42,253	Fleming Lumber Co., Inc. (Comp)	Milligan, FL	10/09/2002	kiln dried lumber.
42,254	American Fibers and Yarns (Wkrs)	Rocky Mount, NC	09/30/2002	yarn, upholstery material, rayon.
42,255	Waltec Forgings, Inc. (Comp)	Port Huron, MI	09/30/2002	non-ferrous forgings, valve.
42,256	Jackson Sewing Center (Wkrs)	Madisonville, TN	10/02/2002	sewed upholstery fabric.
42,257	Arnold Engineering Co. (IAM)	Marengo, IL	10/01/2002	torroidal cores.
42,258	Joan Fabrics Corporation (Wkrs)	Hickory, NC	09/18/2002	textiles for furniture manufacturers.
42,259	Colabria Fashions, Inc. (UNITE)	New Rochelle, NY	10/11/2002	ladies' apparel.
42,260	Miss Dorby (UNITE)	New York, NY	10/09/2002	women's dresses.
42,261	Eybl Cartex, Inc. (Comp)	Fountain Inn, SC	10/02/2002	knitted velour fabric.
42,262	Pollak (Comp)	Boston, MA	10/02/2002	door lock actuators.
42,263	Arkansas Metal Castings (Comp)	Ft. Smith, AR	10/04/2002	grey and ductile iron castings.
42,264	ASCG Inspection, Inc. (Comp)	Anchorage, AK	10/02/2002	testing inspection services.
42,265	Streamline Fashions (Comp)	Philipsburg, PA	10/02/2002	men's suit jackets.
42,266	Presto Manufacturing Co. (IBEW)	Jackson, MS	10/03/2002	non-commercial small kitchen appliances.
42,267	Simula Automotive Safety (Comp)	Tempe, AZ	09/20/2002	side impact head airbag.
42,268	Frazer and Jones Co. (LWAIUE)	Syracuse, NY	10/02/2002	mine anchors, contract castings.
42,269	Acterna (Comp)	Indianapolis, IN	10/04/2002	test equipment for telecommunications.
42,270	Dixon Ticonderoga Co. (Comp)	Sandusky, OH	10/07/2002	crayons.
42,271	Uniek Inc. (Comp)	Greenwood, MS	09/30/2002	wooden picture frames.
42,272	Mountain Fir Chip Co (Comp)	The Dalles, OR	10/01/2002	wood chips.
42,273	General Mills Bakeries (Comp)	Hillsdale, MI	09/30/2002	prepared bakery mixes.
42,274	Angelica Image Apparel (Wrks)	Alamo, TN	10/04/2002	garment distribution.
42,275	ESAB Group (The) (Wkrs)	Niagara Falls, NY	10/02/2002	bonded and flux for welding products.
42,276	Koei America, Inc (Wkrs)	Hillsboro, OR	10/02/2002	electronic components for semiconductors.

[FR Doc. 02–30058 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitioners filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 1st day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 11/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
42,314	NCS Pearson (Comp)	Mesa, AZ	10/21/2002	software development.
42,315	Alcatel USA, Inc. (Wkrs)	Plano, TX	10/18/2002	wireless telephone switches.
42,316	Augusta Mills (Comp)	Elkton, VA	10/15/2002	bed sheets and pillow cases.
42,317	Boise Cascade (PACE)	Jackson, AL	10/15/2002	pine lumber.
42,318	Eagle Clothing Co. (Wkrs)	Los Angeles, CA	10/15/2002	clothing.
42,319	Spicer Driveshaft Manufacturing, Inc. (Wkrs).	Atkins, VA	10/17/2002	automotive drivetrain components.
42,320	Apache Corporation (Wkrs)	Houston, TX	10/14/2002	oil and gas.
42,321	Boxboard Packaging Co. (Wkrs)	Norwalk, OH	09/30/2002	printed folding cartons.
42,322	Kelly Services, Inc (Wkrs)	San Diego, CA	10/17/2002	stuffing services..
42,323	Armstone Div., PermaGrain Products (Comp).	Newtown Square, PA	10/15/2002	artificial marble (tile).

APPENDIX—Continued

[Petitions Instituted on 11/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
42,324	United Plastics Group (Comp)	Bensenville, IL	10/16/2002	plastic molded parts.
42,325	U.S. Repeating Arms Co. (IAM)	New Haven, CT	10/17/2002	rifles and shotguns.
42,326	Micro C Technologies, Inc (Comp)	Grand Rapids, MI	10/22/2002	semiconductor capitol equipment.
42,327	Aspen International (Wkrs)	Salem, OR	10/15/2002	cable TV maps.
42,328	Stratex Networks, Inc. (Comp)	San Jose, CA	10/09/2002	telecommunications equipment.
42,329	International Hosiery Network, LLC (Wkrs)	Hickory, NC	10/21/2002	cotton socks—men and women.
42,330	Alcoa Inc. (UAW)	Cleveland, OH	11/01/2002	aluminum wheels.
42,331	PHB Die Casting (USWA)	Fairview, PA	10/15/2002	die casting parts.
42,332	Parker Hannifin Corp. (Wkrs)	Andover, OH	10/22/2002	gas turbine engine fuel nozzles.
42,333	Dunbrooke Sportswear (Wkrs)	El Dorado Spgs, MO	10/21/2002	jackets.
42,334	Pine State Knitwear Co. (Wkrs)	Mount Airy, NC	10/21/2002	yarn.
42,335	Trans World Connections, Ltd (Comp)	Lynchburg, VA	10/21/2002	cable harnesses.
42,336	Power-One (Wkrs)	Andover, MA	10/15/2002	DE power converters.
42,337	Corning Cable Systems (Wkrs)	Hickory, NC	10/21/2002	connectorized cables.
42,338	Kane Handle Co. (USWA)	Kane, PA	10/14/2002	wood handles for garden tools.
42,339	Doyle Shirt Manufacturing (Wkrs)	Doyle, TN	10/24/2002	career uniforms.
42,340	Titan Wheel Corp. of Va (Comp)	Saltville, VA	10/25/2002	wheel and tire assemblies, mining wheels.
42,341	Pomona Paper Company (AWPPW)	Pomona, CA	10/24/2002	linerboard.
42,342	Auburn Hosiery Mills, Inc. (Comp)	Auburn, KY	10/17/2002	athletic socks.
42,343	Frolic Footwear (Wkrs)	Monette, AR	10/23/2002	shoes.
42,344	Hitachi High Technologies America, Inc. (Comp).	San Jose, CA	09/27/2002	uv spectrophotometers, blood analyzers.
42,345	General Electric Industrial Systems (Comp)	Plainville, CT	10/07/2002	fabrication load centers and switches.
42,346	Haemer-Wright Tool and Die, Inc. (Wkrs)	Saegertown, PA	07/22/2002	dies and molds.
42,347	Shur-Line (Comp)	Johnson City, TN	10/08/2002	paint brushes.
42,348	Lexington Home Brands (Comp)	Mocksville, NC	10/30/2002	furniture.
42,349	Peak Storage Solutions (Wkrs)	Louisville, CO	10/23/2002	data storage.
42,350	Partex Apparel Mfg., Inc (Comp)	Medley, FL	10/24/2002	private label, sports apparel.
42,351	Johnstown Corporation (USWA)	Johnstown, PA	10/31/2002	steel castings.
42,352	Pacific Electricord (Wkrs)	Gardana, CA	10/10/2002	cord sets, extension cords.
42,353	Cerf Brothers Bag Company (Wkrs)	New London, MO	10/29/2002	nylon duffle bags, canvas duffle bags.
42,354	Kalmar Industries Corp. (Wkrs)	White Oak, TX	10/25/2002	terminal tractors.
42,355	Ferro Corporation (GMPPAW)	East Liverpool, OH	10/23/2002	ceramic grinding media. .
42,356	Hynix Semiconductor America, Inc. (Comp)	San Jose, Ca	10/08/2002	flash memory products.
42,357	ConsolEnergy (Wkrs)	Sesser, IL	10/28/2002	coal.
42,358	Pratt and Whitney (Comp)	Claremore, Ok	10/30/2001	jet engine, components.
42,359	Allegheny Ludlum Washington Plate (USWA).	Washington, PA	11/01/2002	steel plate, products.

[FR Doc. 02–30062 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 15th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON OCTOBER 15, 2002

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,228	Pent Products, Inc. (Comp)	Ashley, AL	09/23/2002	Electrical harnesses.
42,229	Dana Corp. (UAW)	Syracuse, IN	09/25/2002	Machining of cases and carriers.
42,230	Flowserve US, Inc. (Wkrs)	Williamsport, PA	09/27/2002	Nuclear valves.
42,231	Doe Run Resources Corp. (Comp)	Viburnum, MO	09/25/2002	Zinc and lead concentrates.
42,232	Nilfisk—Advance, Inc. (Wkrs)	Plymouth, MN	09/26/2002	Parts for vacuums, industrial sweepers.
42,233	M J Soffe (Wkrs)	Wallace, NC	08/21/2002	Military T-shirts.
42,234	Joy Mining Machinery (Wkrs)	Mt. Vernon, IL	09/23/2002	Frame gathering heads and traction.
42,235	Cattiva, Inc. (Comp)	New York, NY	10/02/2002	Women's dresses.
42,236	Consolidated Freightways (Wkrs)	York, PA	09/26/2002	Trucking services.
42,237	Penn American Coal Co. (Wkrs)	Black Lick, PA	09/24/2002	Coal.
42,238	Eichleay Engineers (Comp)	Pittsburgh, PA	09/30/2002	Construction and engineering service.
42,239	Aerovox, Inc. (Comp)	Huntsville, AL	09/26/2002	Aluminum foil.
42,240	RBX Industries, Inc. (Comp)	Colt, AR	10/01/2002	Cell foam rubber insulation.
42,241	Siemens Medical Solutions (Comp)	Issaquah, WA	09/16//2002	Arrays and transducers.
42,242	Super Shrimp, Inc. (Wkrs)	Yuma, AZ	09/19/2002	Pack and distribute shrimp.
42,243	Consolidated Freight Ways (Wkrs)	El Paso, TX	09/23/2002	Transporting of products.
42,244	X-Cell Tool and Mold, Inc (Comp)	Erie, PA	09/23//2002	Plastic injection molds and components.
42,245	La Grange Foundry (GMP)	La Grange, MO	09/18//2002	Gray iron and ductile casings.
42,246	Radiall/Larsen Antenna (Comp)	Vancouver, WA	09/23/2002	Base station antennas.
42,247	Tecmotiv Corporation (Comp)	Tonawanda, NY	08/30/2002	Automobile steering gear boxes.
42,248	Kasper Machine Company (Comp)	Madison Heights, MI	09/18/2002	Precision turning and boring machines.
42,249	Enviro Systems Furniture (Comp)	Grand Rapids, MI	09/23/2002	Office furniture.
42,250	E.J. Snyder and Co., Inc. (Comp)	Albermarle, NC	09/04/2002	Dye and finish cotton knit cloth.
42,251	Southwestern Glass Co. (Comp)	Van Buren, AR	10/01/2002	Hand glass.

[FR Doc. 02–30059 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment, and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 7th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON OCTOBER 7, 2002

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,210	Presto Products (Wrks)	Alamogordo, NM	09/19/2002	Small appliances.
42,211	Motorola—SPS–BMC (Wrks)	Mesa, AZ	09/04/2002	Pressure sensor.
42,212	Deluxe Craft Photo Albums (Wrks)	Chicago, IL	09/17/2002	Photo albums.
42,213	John Boyle and Assoc., LLC (Comp)	Easton, PA	09/16/2002	Bearing housing, castings and machining.
42,214	SPX Valves and Controls (IAM)	Sartell, MN	09/16/2002	Valves and controls.
42,215	Agilent Technologies, FSC (Wrks)	Colorado Spring, Co	09/03/2002	Financial service.
42,216	Alba-Waldensian, Inc. (Comp)	Valdese, NC	08/23/2002	Knitted apparel—undergarments, hosiery.
42,217	Microelectronic Module (Wrks)	New Berlin, WI	09/23/2002	Circuit boards.
42,218	Kent Inc. (Comp)	Ft. Kent, ME	09/27/2002	Infant sleepwear.
42,219	Celestica Corporation (Comp)	Foothill Ranch, CA	09/12/2002	Computer and server products.
42,220	Bo-Jan Garment, Inc. (Comp)	Schuylkill Have, PA	09/19/2002	Men and women sportswear, t-shirts, pant.
42,221	Marconi Communications (Wrks)	Lorain, OH	09/03/2002	Power supplies—transformers, pc boards.
42,222	WicorAmerica/EHV-Weidmann (Comp)	St. Johnsbury, VT	09/07/2002	Insulation for electrical transformers.
42,223	Nash Garment Co. (UNITE)	Bailey, NC	07/11/2002	Girls' dresses.
42,224	Radio Frequency Systems (Wrks)	Corvallis, OR	09/16/2002	Amplifiers, duplexers and multicouplers.

APPENDIX—PETITIONS INSTITUTED ON OCTOBER 7, 2002—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,225	Ametek Aerospace Products (IUE)	Wilmington, MA	09/20/2002	Aircraft cables, thermocouples, machine.
42,226	RLA Investments, LC (Wrks)	Hialeah, FL	08/29/2002	Micro-chips for computer systems.
42,227	Jabil Circuit, Inc. (Wrks)	Meridian, ID	09/23/2002	Circuit board assemblies.

[FR Doc. 02–30060 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 8th day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED BETWEEN NOVEMBER 4, 2002 AND NOVEMBER 8, 2002

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,001	Reliant Bolt, Inc (USS)	Bedford Park, IL	11/04/2002	11/04/2002
50,002	Longview Fibre Leavenworth Wood Products (CIW).	Leavenworth, WA	11/04/2002	11/04/2002
50,003	Weyerhaeuser Longview Lumber (IAM)	Longview, WA	11/04/2002	11/04/2002
50,004	Spang and Company (IBEW)	East Butler, PA	11/04/2002	11/04/2002
50,005	Bottoms Group, Inc. (Comp)	Auburn, ME	11/05/2002	11/04/2002
50,006	Sherman Lumber Company (Wkrs)	Sherman Station, ME	11/05/2002	11/04/2002
50,007	Newell Rubbermaid (Wkrs)	Freeport, IL	11/05/2002	11/04/2002
50,008	Storage Technology Corp. (Wkrs)	Brooklyn Park, MN	11/05/2002	11/04/2002
50,009	Dodger Industries, Inc. (Comp)	Eagle Grove, IA	11/05/2002	11/04/2002
50,010	Vulcan Chemicals (Wkrs)	Wichita, KS	11/05/2002	11/04/2002
50,011	Cooper Power Systems (Comp)	E. Stroudsburg, PA	11/05/2002	11/04/2002
50,012	PD Wire and Cable (Comp)	Laurinburg, NC	11/06/2002	11/05/2002
50,013	Georgia Pacific Corp., OSB Plant (PACE)	Baileyville, ME	11/06/2002	11/04/2002
50,014	KWIKSET, Subsidiary of Black and Decker (Comp).	Waynesboro, GA	11/06/2002	11/05/2002
50,015	Houlton International Corp. (Comp)	Houlton, ME	11/06/2002	11/05/2002
50,016	Laird Technologies (Wkrs)	Del. Watergap, PA	11/06/2002	11/05/2002
50,017	Blue bird Midwest (Wkrs)	Mt. Pleasant, IA	11/06/2002	11/05/2002
50,018	Value Finishing Company (Comp)	Mentor, OH	11/06/2002	11/05/2002
50,019	Domtar AW, WI Operations (PACE)	Port Edwards, WI	11/06/2002	11/05/2002
50,020	DMI-Arkansas, Inc. (Wkrs)	Bald Knob, AR	11/06/2002	11/05/2002
50,021	Buehler Motor, Inc. (Comp)	Kinston, NC	11/06/2002	11/05/2002
50,022	Andrew Corporation (Comp)	Richardson, TX	11/06/2002	11/04/2002
50,023	Andrew Corporation (Comp)	Burlington, IA	11/06/2002	11/04/2002
50,024	Hudson Respitory Care, Inc. (Comp)	Argyle, NY	11/06/2002	11/04/2002
50,025	Andrew Corporation (Comp)	Orland Park, IL	11/07/2002	11/04/2002
50,026	Andrew Corporation (Comp)	Addison, IL	11/07/2002	11/04/2002
50,027	Stimson Lumber Company (Comp)	Libby, MT	11/07/2002	11/06/2002
50,028	Tyco Electronics (Comp)	Winston-Salem, NC	11/07/2002	11/05/2002
50,029	Half Moon Bay Fisheries (Comp)	Kodiak, AK	11/07/2002	11/05/2002
50,030	Fishing Vessel Kiavak (Comp)	Kodiak, AK	11/07/2002	11/05/2002
50,031	Saunders Brothers, Inc. (Wkrs)	Westbrook, ME	11/07/2002	11/07/2002
50,032	Kent, Inc. (Comp)	Fort Kent, ME	11/07/2002	11/05/2002
50,033	Carolina Circuits, a/k/a CMAC of America (Comp)	Greenville, SC	11/07/2002	11/06/2002
50,034	Plastic Products Co. (Comp)	Moline, IL	11/08/2002	11/05/2002
50,035	Strong Wood Products, Inc. (Comp)	Strong, ME	11/08/2002	11/04/2002

APPENDIX—PETITIONS INSTITUTED BETWEEN NOVEMBER 4, 2002 AND NOVEMBER 8, 2002—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,036	Nortel Network (Wkrs)	RTP, NC	11/08/2002	11/05/2002
50,037	Hubbard Company (The) (Comp)	Breman GA	11/08/2002	11/06/2002
50,038	Hi Specialty America (Wkrs)	Irwin, PA	11/08/2002	11/05/2002
50,039	Vista Wood Products (Comp)	Lafayette, TN	11/08/2002	11/07/2002
50,040	Vista Wood Products (Comp)	Greensburg, KY	11/08/2002	11/07/2002
50,041	Woods Industries (Comp)	Carmel, IN	11/08/2002	11/06/2002
50,042	Chamco Equipment (Comp)	Vancouver, WA	11/08/2002	11/05/2002
50,043	Dynagear, Inc. (Comp)	York, PA	11/08/2002	11/05/2002

[FR Doc. 02–30061 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,241]

Siemens Medical Solutions, Inc., Ultrasound Division Issaquah, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2002 in response to petition filed by the company on behalf of workers at Siemens Medical Solutions, Inc., Ultrasound Division, Issaquah, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30071 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,325]

U.S. Repeating Arms Co. New Haven, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a petition filed by the International Association of Machinists and Aerospace Workers Union (IAMAW), District Lodge 26 on behalf of workers at U.S. Repeating Arms Company, New Haven, Connecticut.

The union official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 14th day of November 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30073 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6788]

State of Alaska Commercial Fisheries Entries Commision Permit # 56319H, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #56319H, King Salmon, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30066 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6568]

State of Alaska Commercial Fisheries Entries Commission Permit #503T65655K King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #503T65655K, King Salmon, Alaska.

The workers stopped fishing in July of 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30075 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6632]

State of Alaska Commercial Fisheries Entries Commission Permit # 61155V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #61155V, Dillingham, Alaska.

The workers stopped fishing in July 10, 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30076 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6687]

State of Alaska Commercial Fisheries Entries Commission Permit #50216C, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #61155V, Dillingham, Alaska.

The workers stopped fishing in August of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30077 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6282]

Glen Oaks Industries, Inc., Dallas, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 21, 2002, applicable to workers of Glen Oaks Industries, Marietta Sportswear Manufacturing Company, Inc., Dallas, Texas. The certification was amended on September 25, 2002, to include workers formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company official shows that wages for the six workers engaged in the production of men's slacks at the Dallas, Texas, location were reported to the Unemployment Insurance (UI) tax account for Glen Oaks Industries in Oklahoma. The company official also reports that Marietta Sportswear Manufacturing Co., Inc., is no longer an entity of Glen Oaks Industries, and thus, not applicable to this worker group.

Also, the Department has learned from the State that all six workers have been separated from employment and there is no need to have the certification in effect for two years from the date of issuance.

Based on this new information, the Department is again amending the certification to limit coverage to workers producing men's slacks at Marietta Sportswear Manufacturing Co., Inc., Dallas, Texas, whose wages were reported to the State of Oklahoma under the UI tax account for Glen Oaks Industries. Furthermore, the certification will expire October 4, 2002.

The amended notice applicable to NAFTA–6282 is hereby issued as follows:

Workers producing men's slacks at Glen Oaks Industries, Dallas, Texas, whose wages were reported to Glen Oaks Industries in Marietta, Oklahoma, who became totally or partially separated from employment on or after June 13, 2001 through October 4, 2002, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 4th day of October 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30067 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 02–144]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). The information obtained in this collection will assist NASA in assessing the effectiveness of aviation safety programs.

DATES: All comments should be submitted on or before December 27, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA;

Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: National Aviation Operations Monitoring Service: General Aviation Pilots.

OMB Number: 2700–0102.

Type of review: Extension.

Need and Uses: The information collected will be analyzed and used by NASA Aviation Safety Program managers to evaluate their progress in improving aviation over the next decade.

Affected Public: Individuals or households.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Annual Responses: 10,000.

Hours Per Request: Approx. ½ hour.

Annual Burden Hours: 6,280.

Frequency of Report: Quarterly; Annually.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–30135 Filed 11–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 9, 2002, from 10 a.m. to 11 a.m.

ADDRESSES: Whittall Pavilion, Library of Congress, Thomas Jefferson Building, Ground Floor.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Overview of Committee's activities.
House services to departing Members concerning the disposition of their papers.
Summary of NIST report on irradiated records.
Legislative records outside of official custody.
Follow-up discussion.
Activities report of the Center for Legislative Archives.
Other current issues and new business.

The meeting is open to the public.

Dated: November 21, 2002.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 02–30012 Filed 11–26–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01176]

Environmental Assessment and Finding of No Significant Impact; Materials License No. 49–09955–10, University of Wyoming, Laramie, WY

The U.S. Nuclear Regulatory Commission (NRC) is considering the approval of the University of Wyoming's revised decommissioning plan for two former burial sites located near Laramie, Wyoming, and amending NRC Materials License 49–09955–10 to remove the two sites from the license.

Environmental Assessment

Background

The University of Wyoming (licensee) submitted a decommissioning plan to the NRC by letter dated October 21, 1998. The licensee subsequently submitted a revised decommissioning plan to the NRC by letter dated May 30, 2001. The licensee requested that two former radioactive material burial sites located near Laramie, Wyoming, be released for unrestricted use. The NRC is considering the issuance of an amendment to Materials License 49–09955–10 to release these two burial sites for unrestricted use. The purpose of this Environmental Assessment (EA) is to assess the environmental consequences of this license amendment request.

Proposed Action

The proposed action is to amend NRC Materials License 49–09955–10 to release for unrestricted use the two former burial sites located near Laramie, Wyoming. The licensee would not be required to remediate the two sites if the NRC approves the license amendment request.

Purpose and Need for Proposed Action

NRC regulation 10 CFR 30.36 (the Timeliness Rule) requires licensees to decommission their facilities when licensed activities cease, and to request termination of their radioactive materials licenses. The purpose of the Timeliness Rule is to reduce the potential risk to the public and environment that may result from delayed decommissioning of inactive facilities and sites. The purpose of the proposed action is to remove the two former burial sites from the University of Wyoming's radioactive materials license because the licensee no longer uses the two burial sites. The licensee would continue to possess radioactive material under its NRC license at other locations specifically listed in the license. If removed from the license, the two burial sites would no longer be subject to NRC regulatory oversight, and the licensee would be in compliance with Timeliness Rule requirements.

History/Facility Description

The University of Wyoming has used radioactive material since about 1950. The licensee disposed of radioactive waste material at two separate burials sites from about 1952 until 1985. The licensee was authorized to dispose of radioactive material by burial in accordance with 10 CFR 20.304 between 1959–1981. Prior to 1959, burial of radioactive material was not authorized by § 20.304 but may have been conducted under a specific U.S. Atomic Energy Commission authorization or license condition at that time. During 1981, § 20.304 was rescinded by the NRC. The licensee then conducted burials in accordance with § 20.302 until 1985. During 1985, the NRC rejected the licensee's request to continue to dispose of radioactive material by burial in accordance with § 20.302. As a result, burial of radioactive material was permanently discontinued during March 1985.

The first burial site was known as the Quarry site. This disposal site was a dry borehole located at a University-owned sandstone quarry. The quarry is situated approximately 7.5 miles (12 kilometers) to the northeast of Laramie. The University believes that the Quarry site was used during 1952–1957. The licensee cannot pinpoint the exact location of the 100-foot (30.48 meters) borehole but is aware of the general location of the borehole.

The airport site is located on University-owned land situated approximately 2 miles (3.2 kilometers) west of Laramie. This site is located near the Laramie Municipal Airport and consists of approximately 40,000 square feet (3716 square meters) of land. This second site was used from 1959 until 1985.

Radiological Status

Based on a records review, the licensee determined that it most likely disposed of only microcurie or millicurie quantities of short-lived radioisotopes in the Quarry site borehole, including phosphorus-32, sulfur-35, iron-59, zinc-65, and iodine-131. Carbon-14, a long-lived beta-emitting radionuclide, apparently was also buried at this site. The licensee's request to release the two former burial sites for unrestricted use is based on dose modeling calculations using the NRC-approved DandD computer code. The licensee chose the drinking water scenario from DandD Version 1.0 for the Quarry site because this site cannot be farmed. The licensee calculated a resident dose of up to 2.74 millirems per year using DandD, a value well below the 25-millirem limit specified in 10 CFR 20.1402.

The licensee disposed of a number of radionuclides at the airport site. The radionuclides of concern at the airport site are hydrogen-3 and carbon-14. At this site, the licensee chose the resident farmer scenario using DandD Version 2.1.0. Using several NRC-approved variations to the DandD default parameters (the default parameters that were adjusted for the airport site were the diet-fruit, number of unsaturated layers, unsaturated zone thickness, and crop yield parameters), the licensee calculated that the resident farmer dose would be less than or equal to 22.5 millirems per year. This calculated value is also below the 25-millirem limit specified in 10 CFR 20.1402.

Alternatives

The licensee asks that the NRC approve the license amendment request as submitted. The alternatives available to the NRC to the proposed action are:

1. Deny the amendment request by taking no action; or

2. Approve the license amendment request but require the licensee to take some additional action not specified in the revised decommissioning plan such as remediation of the two sites.

The Timeliness Rule requirements do not allow the NRC to implement the no action alternative; therefore, Alternative 1 is not a viable option and will be eliminated from further study and consideration in this EA.

Affected Environment

The Quarry site is situated approximately 8 miles (13 kilometers) to the northeast of Laramie. The exact location of the borehole is not known by the licensee. According to the documentation provided by the licensee, the Quarry site is unoccupied and is occasionally used for livestock grazing. There are no ponds on the property. The area is sparsely covered by vegetation that consists mostly of prairie grasses with some interspersed shrubs and sagebrush. The site is roughly 750 square feet (70 square meters) in size and is located in NW¼ of NW¼ of Section 5, Range 72 West, Township 16 North. The licensee installed a monitoring well down-gradient of the borehole during 1994 in order to obtain groundwater samples for analyses. During well installation, a continuous flow of groundwater was established at about 236 feet (72 meters) below the surface. Previously licensed radioactive material was not detected in the water samples that were collected during late-1994.

The airport site consists of approximately 40,000 square feet (3716 square meters) of land. This burial site is located in an 861-acre (348 hectares) tract of University-owned land bounded by Highway 130 to the north, near Highway 230 to the south, the airport to the west, and West Laramie to the east. This site is located in NE¼ of NW¼ of Section 35, Range 74 West, Township 16 North. The site is in a ''steppe'' climate zone, typical of semi-arid grassland prairies. The vegetation is well suited for livestock grazing and consists of grasses, sedges, some forbs, and a few scattered shrubs. According to information provided by the licensee, the nearest aquifer is located at least 700 feet (213 meters) below the surface. Further, the shallow groundwater is unfit for human and livestock consumption. As such, city water is the predominate water source and is piped to residents and businesses near the airport.

Environmental Impacts of the Proposed Action on Occupational and Public Health

The licensee's request to release the two burial sites for unrestricted use is based, in part, on dose modeling calculations conducted using the NRC-approved DandD computer code. The licensee concluded that the annual dose to members of the public for the Quarry site would be no more than 2.74 millirems per year, while the annual dose for the airport site would be no more than 22.5 millirems per year. Both calculated doses are below the 25 millirem per year dose limit specified in 10 CFR 20.1402.

The NRC conducted a technical review of the licensee's DandD calculations. This review is documented in an internal NRC Memorandum dated December 31, 2001. In summary, the staff concluded that the doses from exposure to residual radioactive material currently situated at both locations are sufficiently low to allow for the unrestricted release of the sites in accordance with 10 CFR 20.1402.

Environmental Impacts of Alternative 2 on Occupational and Public Health

If the licensee were required to remediate the two burial sites, the individuals conducting reclamation would be subjected to exposure to radioactive material. The radionuclides of concern are hydrogen-3 and carbon-14. Both of these radionuclides emit low energy beta particles. From an occupational health and safety standpoint, the worst case scenario is the intentional exhumation of the buried wastes without any radiological controls in place. This scenario is unlikely because the licensee would be expected to have a radiation protection program in place during remediation. Even without any radiological controls, it is highly unlikely that any worker would receive a dose during reclamation that would exceed the occupational dose limits specified in 10 CFR 20.1201 because of the quantities and types of radionuclides present in the waste material. Therefore, if reclamation were to occur, it is probable that occupational exposures would be within the dose limits specified in the NRC's regulations.

If remediation were to occur, the potential harm to the public from exposure to radioactive material would be bounded by the DandD calculations. The DandD scenario used by the licensee assumed that the waste material volume was evenly distributed in the top 6 inches (15 centimeters) of soil. Therefore, the remediation of the two sites would most likely have a minimal radiological impact on members of the public.

Remediation of the sites may have short-term health and safety consequences caused by the excavation, packaging, and shipping of the residual radioactive material. These non-radiological impacts would include the normal risks of exhuming the wastes with earth-moving equipment and transportation of the material to an out-of-state disposal facility. The risks include death or injury from a construction or transportation accident.

There would be minimal risk to members of the public from exposure to radioactive wastes during transport because the radionuclides of concern are low energy beta emitters. The beta particles would not be able to penetrate the walls of the shipping container. The only radiological risks associated with

the transport of the wastes would involve the cleanup of any spilled material. In the unlikely event that a spill were to occur during transport, radiological controls would most likely be implemented during the cleanup of the spilled waste material. Therefore, the risks associated with the transport of the waste material is minimal.

If remediated, the material would be transported to an out-of-state disposal facility.

Environmental Impacts of Proposed Action on Effluent Releases, Environmental Monitoring, Water Resources, Noise, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources, and Visual/Scenic Quality

The NRC staff considered the potential impacts of the leaching of radioactive and non-radioactive material into the groundwater. The shallow surface groundwater in the vicinity of the two sites is not used as a drinking water supply and is unfit for human consumption. Local members of the public obtain water from the city. The impacts that potentially contaminated groundwater would have on members of the public was considered as part of the DandD modeling scenarios. In summary, the NRC believes that, if left undisturbed, the two sites would have a minimal impact on the environs of the sites, including groundwater.

The NRC contacted both the U.S. Fish and Wildlife Service and the Wyoming State Historic Preservation Office for their respective assessments. The Fish and Wildlife Service concluded that it was unlikely that the Proposed Action would adversely affect any threatened or endangered species. The Wyoming State Historic Preservation Officer determined that no historic properties would be affected by the Proposed Action.

Environmental Impacts of Alternative 2 on Effluent Releases, Environmental Monitoring, Water Resources, Noise, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources, and Visual/Scenic Quality

The remediation of the two former burial sites would cause some environmental harm. The waste material would have to be excavated, packaged, and transported to an out-of-state disposal facility. The excavation process would be accomplished by heavy equipment and trucks that would disturb the general area. The prevailing winds will most likely disperse some of the excavated material offsite. The resulting surface void would have to be refilled with clean soil and contoured or fenced to prevent inadvertent intrusion. Vegetation in the vicinity of the reclaimed site would be temporarily disturbed.

Mitigation measures that could reduce the adverse impacts or enhance beneficial impacts were considered by the NRC. The licensee conducted an As Low As Reasonably Achievable (ALARA) analysis to compare the benefit from averted dose achieved by remediation with the costs of cleanup and waste disposal. The licensee calculated the benefit from the collective averted dose using the guidance provided in (draft) Regulatory Guide DG–4006, *Demonstrating Compliance with the Radiological Criteria for License Termination*, dated August 1998. The licensee calculated a total benefit of $8398 from the averted dose for the airport burial site, assuming a monetary value of $2,000 per rem.

The licensee also calculated the remediation costs for decommissioning the airport burial site. The estimated cost of excavating, transporting and disposing of the material at an offsite low-level waste disposal facility was about $7.6 million. The majority of the cost involves waste disposal at an offsite location. The licensee also points out that the public would be economically harmed since the University is a publicly funded school and the $7.6 million would have to come from the state general fund or diverted from the University's budget.

In summary, the NRC agrees that the cost of remediation would exceed the financial benefit from the averted dose that would be saved if the airport site were to be remediated.

The licensee did not conduct an ALARA analysis of the Quarry site, in part, because the exact location of the former borehole is not known.

The NRC has found no other activities in the areas that could result in cumulative impacts.

Agencies and Persons Contacted

The NRC contacted both the U.S. Department of Interior, Fish and Wildlife Service, and the Wyoming State Historic Preservation Office during the development of this EA. The Fish and Wildlife Services concluded that it was unlikely that the Proposed Action would adversely affect any threatened or endangered species. Also, according to the Wyoming State Historic Preservation Office, the Proposed Action would not affect any historic properties. The Wyoming Emergency Management Agency has reviewed the proposed action and had no additional comments.

Conclusion

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant; and therefore, do not warrant denial of the license amendment request. The NRC staff believes that the proposed action will result in minimal environmental impacts. The staff has determined that the proposed action, approval of the license amendment request to release the two former burial sites for unrestricted use, is the appropriate alternative for selection.

List of Preparers

This EA was prepared by Robert Evans, Senior Health Physicist, Fuel Cycle & Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, and reviewed by Dr. D. Blair Spitzberg, Chief, Fuel Cycle & Decommissioning Branch.

List of References

Documents pertaining to this EA are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). ADAMS accession numbers are located in parentheses following the reference.

1. NRC Inspection Report 030–01176/95–01 dated May 9, 1995 (not available in ADAMS).

2. University of Wyoming letter to NRC dated October 21, 1998 (not available in ADAMS).

3. University of Wyoming letter to NRC dated May 30, 2001 (ML011580440).

4. NRC Memorandum, ''Review of Dose Modeling Supporting the Revised Decommissioning Plan for the Quarry and Airport Burial Sites,'' dated December 31, 2001 (ML013540074).

5. NRC Letter to U.S. Fish and Wildlife Service dated April 24, 2002 (ML021140673).

6. NRC Letter to Wyoming State Historic Preservation Office dated April 24, 2002 (ML021140684).

7. U.S. Fish and Wildlife Service letter to NRC dated May 20, 2002 (ML021500264).

8. Wyoming State Historic Preservation Office letter to NRC dated June 17, 2002 (ML 021830731).

9. Wyoming Emergency Management Agency letter to NRC dated September 10, 2002 (ML022690527).

Finding of No Significant Impact

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the Commission has determined that there will not be a significant effect on the quality of the environment resulting from the approval of the revised decommissioning plan and release of the two former burial sites for unrestricted use. Accordingly, the preparation of an Environmental Impact Statement is not required for the proposed amendment to Materials License 49–09955–10, which will remove the Quarry and airport sites from the license. This determination is based on the foregoing EA performed in accordance with the procedures and criteria in 10 CFR part 51.

This EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room in NRC's One White Flint North Headquarters building, located at 11555 Rockville Pike (first floor), Rockville, Maryland. The documents may also be viewed in the Agency-wide Documents Access and Management System (ADAMS) Public Electronic Reading Room at Web address *http://www.nrc.gov/reading-rm/adams.html*.

Dated in Arlington, Texas, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 02–30098 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

The agenda for the 498th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on December 5–7, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been revised to Close the following session on Thursday, December 5, 2002.

1:30 P.M.—2:15 P.M.: Meeting with Mr. Lawrence Williams, Her Majesty's Chief Inspector, Nuclear Installations Inspectorate (NII), United Kingdom (U.K.) (Closed)—The Committee will hold discussions with Mr. Williams, NII, U.K., regarding several items of mutual interest, including pre-decisional plans to expand the nuclear program in U.K. [**Note:** This session will be closed to protect information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b(c)(4).]

The agenda for December 6 and 7, 2002, remains the same as previously published in the **Federal Register** on Wednesday, November 20, 2002 (67 FR 70094).

For further information, contact: Dr. Sher Bahadur, Associate Director for Technical Support, ACRS, (Telephone: 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

Dated: November 21, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–30100 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25828; File No. 812–12899]

AIG Life Insurance Company, et al.

November 20, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

APPLICANTS: AIG Life Insurance Company (''AIG Life'') and its Variable Account I (the ''Variable Account''), American International Life Insurance Company of New York (''AIL''), AIG SunAmerica Life Assurance Company (''AIG SunAmerica'') and its separate account Variable Annuity Account Nine (''Variable Account Nine''), First SunAmerica Life Insurance Company (''FSLIC'') and its separate account FS Variable Separate Account (''FS Separate Account''), The Variable Annuity Life Insurance Company (''VALIC'') and its separate account VALIC Separate Account (''VALIC Separate Account''), and AIG Equity Sales Corp. (''AIGESC'') (collectively, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to amend an existing order (Investment Company Act Release No. 24748, dated November 22, 2000, File No. 812–11982) (''Existing Order'') to:

a. Extend the Existing Order to AIG SunAmerica, Variable Account Nine, FSLIC, FS Separate Account, VALIC and VALIC Separate Account (collectively ''Additional Applicants'') (AIG SunAmerica, FSLIC and VALIC are collectively referred to herein as ''Additional Life Company Applicants'') (Variable Account Nine, FS Separate Account and VALIC Separate Account are collectively referred to herein as ''Accounts'');

b. Permit, under specific circumstances, the recapture of certain credits applied to premium payments made under the flexible premium deferred variable annuity contracts (''Contracts'') to be issued by Additional Applicants;

c. Extend the relief granted by the Existing Order to any National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, any Additional Life Company Applicant, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered by Additional Applicants (collectively ''Affiliated Broker-Dealers'');

d. Expand the definition of ''Future Contracts'' to include contracts to be issued by any Additional Life Company Applicants that are substantially similar in all material respects to the deferred variable annuity contracts covered by the Existing Order; and

e. Expand the definition of ''Other Accounts'' to include any existing or future separate accounts of Additional Life Company Applicants.

FILING DATE: The application was filed on October 28, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 16, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549–0609. Applicants: Christine A. Nixon, Esq., AIG SunAmerica Life Assurance Company, 1 SunAmerica Center, Los Angeles, California 90067–6002.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance

Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. On November 22, 2000, the Commission issued the Existing Order exempting certain transactions of AIG Life, AIL, Variable Account, AIGESC (''Original Applicants'') and certain future accounts of AIG Life and AIL from the provisions of Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit AIG Life and AIL to recapture under specified circumstances, certain credits (''Credits'') applied to premium payments made under a flexible deferred variable annuity contract that AIG Life issues through the Variable Account (the ''AIG Contract'') as well as other contracts that AIG Life or AIL may issue in the future through their existing or future separate accounts that are substantially similar in all material respects to the AIG Contract described in the application for the Existing Order (''Initial Application'').

2. AIG SunAmerica was formerly known as Anchor National Life Insurance Company and is in the process of changing its name to AIG SunAmerica Life Assurance Company. Like AIG Life and AIL, AIG SunAmerica is an indirect, wholly owned subsidiary of American International Group, Inc. (''AIG''), a Delaware corporation. AIG SunAmerica is the depositor for Variable Account Nine, which was established pursuant to Arizona law on February 4, 2002. AIG SunAmerica may establish one or more additional Other Accounts for which it will serve as depositor.

3. Variable Account Nine is a segregated asset account of AIG SunAmerica. Variable Account Nine is registered with the Commission under the Act as a unit investment trust. Variable Account Nine will fund the variable benefits available under the AIG SunAmerica contracts. Units of interest of Variable Account Nine under the AIG SunAmerica Contracts will be registered under the Securities Act of 1933 (''1933 Act''). AIG SunAmerica may issue Future Contracts through Variable Account Nine.

4. FSLIC is a stock life insurance company organized under the laws of the state of New York on December 5, 1928. FSLIC conducts a life insurance and annuity business in the state of New York. It is an indirect, wholly owned subsidiary of AIG. FSLIC may establish one or more additional Other Accounts for which it will serve as depositor.

5. FS Variable Separate Account is a segregated asset account of FSLIC. FS Variable Separate Account is registered with the Commission under the Act as a unit investment trust. FS Variable Separate Account will fund the variable benefits available under the AIG SunAmerica contract. Units of interest of Variable Account Nine under the AIG SunAmerica Contracts will be registered under the 1933 Act. FSLIC may issue Future Contracts through FS Variable Separate Account.

6. VALIC is a stock life insurance company originally organized as The Variable Annuity Life Insurance Company of America, located in Washington, DC, and reorganized under the laws of the state of Texas on August 20, 1968. It is also an indirect, wholly owned subsidiary of AIG. VALIC may establish one or more additional Other Accounts for which it will serve as depositor.

7. VALIC Separate Account is a segregated asset account of VALIC. VALIC Separate Account will fund the variable benefits available under the VALIC contracts. Units of interest of VALIC Separate Account under the VALIC contracts will be registered under the 1933 Act. VALIC may issue Future Contracts through VALIC Separate Account.

8. That portion of the assets of Variable Account Nine, FS Variable Separate Account and VALIC Separate Account (''Additional Separate Account Applicants'') that are equal to the reserves and other contract liabilities with respect to the respective separate accounts are not chargeable with liabilities arising out of any other business of the respective life insurance company. Any income, gains or losses, realized or unrealized, from assets allocated to the respective separate accounts are, in accordance with the contract, credited to or charged against the separate account without regard to other income, gains or losses of the life insurance company. The same will be true for any other Future Account of any Additional Life Company Applicant.

9. Each of the Additional Separate Account Applicants and any Other Accounts established by the Additional Life Company Applicants will be registered with the Commission under the Act as a unit investment trust. Units of interest in the separate accounts they fund will be registered under the 1933 Act. That portion of the assets of each of the respective Accounts that is equal to the reserves and other contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of the life insurance company. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the contract, credited to or charged against the Account, without regard to other income, gains or losses of the life company. The same will be true for any Other Account.

10. But for the depositor and issuing separate account, the Contracts to be issued by Additional Life Company Applicants are substantially similar in all material respects to the AIG Contract described in the Initial Application. Future Contracts will be substantially similar in all material respects to the contracts covered in the Existing Order.

11. Additional Applicants will recapture Credits under the Contracts under the same circumstances covered by the Existing Order. The Existing Order grants exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the recapture of Credits in the following instances:

(i) When an owner exercises the contract's free look provision;

(ii) when a death benefit is payable within twenty-four months after receipt of a Credit; and

(iii) when a surrender is requested within twenty-four months after receipt of a Credit. If the surrender is a partial surrender during the twenty-four month period following receipt of a Credit, except as part of the contract's systematic withdrawal program, Additional Life Company Applicants will reduce the Credit in the same proportion as the partial surrender bears to the value of the contract, less the Credit, and deduct it from the value of the contract.

Regardless of whether or not the Credit is vested, all gains or losses attributable to such Credit are part of the owner's contract value and are vested immediately. Applicants represent that the Credit and the applicable provisions relating to the Credit are substantially similar in all material respects as for Original Applicants.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provision of the Act and the rules promulgated thereunder, if and to the extent that such 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 request that the Commission, pursuant to Section 6(c) of the Act, grant exemptions summarized above with respect to Additional Applicants and any Other Accounts that the Additional Life Company Applicants have established or may establish in the future, in connection with the issuance of contracts that are substantially similar in all material respects to the AIG Contract described in the Initial Application. Applicants believe that the requested exemptions are 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.

2. Applicants submit that the recapture of the Credits by Additional Applicants will not raise concerns under Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder for the same reasons given in support of the Existing Order. The Credits will be recapturable under the same circumstances and on the same basis as described in the Initial Application.

Based on the grounds summarized above, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30037 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (67 FR 70470, November 22, 2002).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, November 25, 2002, at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the closed meeting scheduled for Monday, November 25, 2002, at 2:30 p.m.: Formal order of investigation.

Commissioner Campos, 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: November 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30250 Filed 11–25–02; 11:53 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Global Vision Holdings, Inc.; Order of Suspension of Trading

November 25, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Vision Holdings, Inc. (''GVHI'') because of questions regarding the accuracy and adequacy of information concerning the business background of an officer of GVHI, the business prospects of GVHI, and the market for the securities of GVHI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on Monday, November 25, 2002 through 11:59 p.m. EST, on Monday, December 9, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30251 Filed 11–25–02; 12:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46850; File No. SR–Amex–2002–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Transaction Charges for Exchange-Traded Funds

November 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 4, 2002, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. 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

Amex proposes to add Treasury 10 FITR ETF, Treasury 5 FITR ETF, Treasury 2 FITR ETF, and Treasury 1 FITR ETF to the list of Exchange-Traded Funds (''ETFs'') for which the Exchange pays non-reimbursed fees to third parties (included in Note 4 to the Amex Equity Fee Schedule). The Exchange is also amending Item 9 and Note 4 to the Equity Fee Schedule to add reference to Portfolio Depositary Receipts.

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has included in Note 4 to the Amex Equity Fee Schedule a list of ETFs that are subject to transaction charges set forth in Item 9 to the Equity Fee Schedule relating to ETFs for which the Exchange pays unreimbursed fees to a third party.[3] The Exchange is adding to this list Treasury 10 FITR ETF, Treasury 5 FITR ETF, Treasury 2 FITR ETF, and Treasury 1 FITR ETF.

The Exchange is also amending Item 9 and Note 4 to the Equity Fee Schedule, as filed in SR–Amex–2002–81, to add reference to Portfolio Depositary Receipts, which was inadvertently omitted from Item 9 and Note 4. As noted in SR–Amex–2002–81, the fees that are the subject of that filing include ETFs, Portfolio Depositary Receipts and Index Fund Shares, for which Amex pays a non-reimbursed fee.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of November 4, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR–Amex–2002–90 and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30039 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Exchange Act Release No. 46764 (November 1, 2002), 67 FR 68704 (November 12, 2002) (SR–Amex–2002–81).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46861; File No. SR–CHX–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Establish an OTC Access and Connection Charge for CHX OTC Specialist Firms

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] 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 to amend its membership dues and fees schedule (''Schedule'') to incorporate an ''OTC Access and Connection Charge'' that will apportion among CHX over-the-counter (''OTC'') specialist firms the incremental technology costs associated with accessing OTC market participants. The text of the proposed rule change is below. Proposed new language is in italics.

Membership Dues and Fees

* * * * *

H. Equipment, Information Services and Technology Charges

* * * * *

OTC Access and Connection Charges

Each specialist firm shall be billed, on a monthly basis, for actual access charges and other amounts that become due in accordance with the Exchange's contractual arrangements to access OTC market participants.

Amounts billed to the specialist firm will be based on the number of OTC/UTP co-specialists at each firm using products licensed or otherwise procured by the Exchange, adjusted on a monthly basis to reflect changes in the firm's number of OTC/UTP co-specialists; provided, however, that (i) the minimum monthly amount that will be billed to a specialist firm will be based on the firm's number of OTC/UTP co-specialists as of the date an agreement is executed; and (ii) if the firm elects to deregister from all OTC/UTP issues, the firm must continue to pay the minimum monthly amount referenced above, for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

the remaining initial term of the Exchange's contractual commitment.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by incorporating an OTC Access and Connection Charge that will apportion among CHX OTC specialist firms the incremental technology costs associated with accessing OTC market participants.

As the OTC market prepares for full implementation of Nasdaq's SuperMontage system and the NASD's Alternative Display Facility (which will not be accessible by CHX specialists), many CHX OTC specialists consider it imperative that the CHX enter into access arrangements with various OTC market participants and procure certain proprietary technological enhancements that will permit CHX OTC specialists to obtain ready access to various pools of liquidity in the OTC market. Given the substantial technology costs that the CHX has incurred and continues to incur relating to the transitions in the OTC market, including development costs associated with the independent securities information processor that will be operational next year, the CHX believes it is appropriate for CHX OTC specialists to bear a proportionate share of the technology costs associated with accessing the OTC market.

Accordingly, the CHX Finance Committee and Board of Governors approved institution of the proposed OTC Access and Connection Charge, as what the CHX believes is a reasonable means of allocating such technology costs among the CHX OTC specialist firms that benefit from such CHX expenditures. The Exchange believes that its OTC specialist firms are in agreement with this proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of rule 19b–4 thereunder,[6] because it involves a due, fee, or other charge. 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.

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 Exchange. All submissions should refer to file number SR–CHX–2002–35, and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30044 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46855; File No. SR–GSCC–2002–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Government Securities Clearing Corporation Relating to the Schedule of Timeframes for Submitting Repo Collateral Substitution Notifications

November 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on October 22, 2002, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to amend its schedule of timeframes to extend its repo collateral substitution deadline by one hour on days that GSCC determines to be high volume days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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

[1] 15 U.S.C. 78s(b)(1).

in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC's Schedule of Timeframes (''Schedule'') contains two deadlines that are applicable to requests for repo collateral substitutions: (i) A deadline of noon (12:00 p.m.) after which a member that initiated the substitution will be subject to a late fee of five hundred dollars ($500.00) per substitution imposed and (ii) an absolute deadline of 12:30 p.m. after which GSCC will reject the substitution request.[2] The Schedule provides that GSCC may extend these deadlines by one hour on days that The Bond Market Association (''BMA'') announces in advance will be ''high volume days.''[3]

Given the unpredictable occurrence of days on which a large number of collateral substitution requests occur, the BMA recently supplemented its guidelines to provide a process for the same-day designation of high volume days and extension of repo collateral substitution deadlines.[4] Specifically, the BMA has recommended that prior to 10:05 a.m. on each day on which the markets are open for trading, GSCC's inter-dealer broker netting members should notify GSCC of the number of collateral substitution requests they have received for that trading day. If the number of such collateral substitution requests exceeds 150 in the aggregate, GSCC will extend its repo collateral substitution deadlines by one hour and will notify the BMA which will issue a notice to market participants.[5] In effect, under the new trading practice guidelines, it will be GSCC that determines when a trading day is a high volume day.

The Schedule currently permits GSCC to extend its repo collateral substitution deadlines only after the BMA has designated a high volume day. The proposed rule change would permit GSCC to determine when a trading day is a high volume day and therefore to institute a same-day extension of its deadlines without having the BMA designation.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will provide members with additional time to submit their repo collateral notification requests on days that develop into high volume days.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comment received by GSCC.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposal, which allows GSCC to react in a timely manner to volume increases by extending submission deadlines for repo collateral substitution requests by GSCC members, is consistent with Section 17A(b)(3)(F) because it should help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Allowing GSCC to designate high volume days independently of the BMA will enable GSCC to better serve its members because GSCC will be able to respond in real-time to market conditions affecting its clearance and settlement of repos.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because approval prior to the thirtieth day of publication will give GSCC the ability to immediately handle any high volume day that might occur.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2002–12 and should be submitted by December 18, 2002.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30038 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[2] All times in GSCC's rules are New York time. GSCC's repo substitution notification deadlines were based upon guidelines issued by The Bond Market Association (''BMA'') that provide that on each business day market participants should notify their inter-dealer broker of any collateral substitutions by 9:55 a.m. and should provide such brokers with the description of the substituted collateral by 11:00 a.m. GSCC provides members with an additional hour in which to send the request to GSCC.

[3] Pursuant to BMA's trading practices guidelines, high volume days are the first and last business day of each calendar quarter on which markets are open for trading and such other days as the BMA may announce no later than 24 hours prior to the occurrence of such day.

[4] The BMA issued this supplement on an interim basis pending the approval of this rule change.

[5] GSCC, the BMA, and industry representatives have established 150 as the number of requests that will trigger GSCC's determination that a trading day is a high volume day. This will be incorporated into the BMA's trading practice guidelines. Should this change, GSCC will file a proposed rule change under Section 19(b)(3)(A) with the Commission.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46860; File No. SR–ISE–2001–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to a Pilot Program for Quotation Spreads

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the ISE. 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 ISE proposes to amend Supplementary Material .01 to ISE Rule 803, ''Obligations of Market Makers,'' to establish a six-month pilot program in which the allowable quotation spread for options on up to 50 underlying securities will be $5, regardless of the price of the bid.

The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to establish a six-month pilot program to substantially relax the quotation spread requirements on the ISE in options on up to 50 underlying securities. Currently, the ISE's rules contain maximum quotation spread requirements that vary from $.25 to $1, depending on the price of the option. Each ISE market maker independently is subject to these requirements. According to the ISE, although the primary purpose of the spread requirements is to help to maintain narrow spreads, the spread requirements also result in individual market makers sometimes quoting at prices that they believe are unnecessarily narrow, potentially exposing them to greater risk if markets move quickly. The ISE believes that, due to its unique electronic competitive market making system, the quotation spread requirements may not be necessary to ensure tight and competitive quotations on the ISE.

In this regard, the ISE states that its market structure creates strong incentives for competing market makers and other market participants to disseminate competitive prices. In the ISE's trading system, each market maker quotes independently and customers and professional traders can enter limit orders on the ISE's book. The ISE automatically collects this trading interest, calculates an ISE best bid and offer (''BBO''), and disseminates the BBO to the investing public. Furthermore, the ISE allocates trading interest based upon the price and size of trading interest. Under the ISE's trading algorithm, the ISE allocates volume to trading interest at the best price. The larger the size of a person's quote or order at the best price, the more trading interest that person receives. The ISE believes that this provides strong incentives for market makers and other market participants to enter quotes and orders that improve the price and depth of the market. The ISE believes that in this model, market forces provide sufficient discipline to maintain narrow and competitive quotation spreads.

Accordingly, the ISE proposes to expand the allowable spread in a pilot group of up to 50 options (up to five per each of the ISE's ten groups of options) to $5.[3] The ISE states that it will monitor the quotation quality of the selected options for a six-month pilot period and, based on the results, recommend either relaxing the spread requirements for all options, ending the pilot, or adjusting the spread requirements.

(2) Basis

The ISE believes that the proposed rule change is consistent with the requirement under section 6(b)(5)[4] of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for 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 ISE believes that the proposed rule change does not 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 ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

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) 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 Exchange consents, the Commission will:

(A) By order approve such 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 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 ISE. All submissions should refer to file number SR–ISE–2001–15 and should be submitted by December 18, 2002.

[3] At this point, the ISE does not propose to eliminate the spread requirements entirely to avoid perception issues about extremely wide spreads.

[4] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30042 Filed 11–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46859; File No. SR–NASD–2002–162]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Supervisory Control Amendments

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 4, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to adopt new NASD Rule 3012 and amend other rules regarding the supervisory and supervisory control procedures of member firms. Specifically, new NASD Rule 3012 would require members to develop general and specific supervisory control procedures that independently test and verify and modify, where necessary, the members' supervisory procedures. In addition, proposed amendments to (1) NASD Rule 3010(c) would require that office inspections be conducted by independent persons and include, at a minimum, the testing and verification of certain supervisory procedures; (2) NASD Rule 3110 would expand upon a member's supervisory and recordkeeping requirements with respect to changes in customer account name or designation in connection with order executions; (3) NASD IM–3110 would provide guidance as to when a member may hold mail for a customer who will be absent for a period of time; (4) NASD Rule 2510(d) would clarify the time limit on time-and-price discretionary authority; and (5) NASD Rule 9610 would incorporate into NASD Procedural Rules the ability of members to request an exemption from amended NASD Rule 3010(c). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2510. Discretionary Accounts

(a) through (c) No Change.

(d) Exceptions

This Rule shall not apply to:

(1) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified shall be executed, *except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer;*

(2) No Change.

Any exercise of time and price discretion must be reflected on the customer order ticket.

* * * * *

3010. Supervision

(a) through (b) No Change.

(c) Internal Inspections

(*1*) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with *applicable NASD* rules [the Rules of this Association]. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and at least an annual inspection of each office of supervisory jurisdiction. Each branch office of the member shall be inspected according to a cycle which shall be set forth in the firm's written supervisory and inspection procedures. In establishing such cycle, the firm shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location. Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) Office inspections by members pursuant to paragraph (c)(1) must be conducted by a person who is independent from the activities being performed at the office and those persons providing supervision to that office. The independence requirements in connection with office inspections may be satisfied by reasonable means based on the size and resources of the firm and the scope and nature of its activities. Written reports of these inspections are to be kept on file by the member for a minimum of three years.

An office inspection and review must include, but is not limited to, testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(A) Safeguarding of customer funds and securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

(3) Pursuant to the Rule 9600 Series, NASD may exempt any member unconditionally or on specified terms and conditions from the independence requirement in the inspection of a member's offices as set forth in paragraph (c)(2) upon a satisfactory showing that complying with the requirements would be unduly burdensome on the member and that the member's internal inspection procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable NASD rules.

* * * * *

3012. Supervisory Controls

(a) General Requirements

(1) Each member shall establish and maintain a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The member's supervisory controls must be performed by persons who are

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

independent from those activities being tested and verified and the persons who directly supervise those activities. The independence requirements in connection with testing and verification may be satisfied by reasonable means based on the size and resources of the firm and the scope and nature of its activities. A report detailing each member's systems of supervisory controls, including a summary of the test results and significant identified exceptions, must be submitted no less than annually to the member's senior management.

(2) The independence requirement in the verification and testing of the member's supervisory procedures shall not apply to members that do not conduct a public business, or that have a capital requirement of $5,000 or less, or that employ 10 or fewer registered representatives.

(b) Managers' Activities

Each member shall establish, maintain, and enforce written policies and procedures to administer the supervisory controls established pursuant to paragraph (a) reasonably designed to independently review and monitor the servicing of customer accounts by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(c) Customers' Activities

Each member shall establish, maintain, and enforce written policies and procedures to administer the supervisory controls established pursuant to paragraph (a), specifically with respect to the following activities:

(1) Transmittals of funds (e.g., wires or checks, etc.) or securities:

(A) from customer accounts to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership);

(B) from customer accounts to outside entities (e.g., banks, investment companies, etc.);

(C) from customer accounts to locations other than a customer's primary residence (e.g., post office, ''in care of'' accounts, alternate address, etc.); and

(D) between customers and registered representatives, including the hand-delivery of checks.

(2) Customer changes of address.

(3) Customer changes of investment objectives.

The policies and procedures established pursuant to paragraph (c) must include a means or method of customer confirmation, notification, or follow-up that can be documented.

(d) Dual Member

Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.

* * * * *

3110. Books and Records

(a) through (c) No change.

(d) Changes in Account Name or Designation.

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and maintained in a central location.

For purposes of this paragraph (d), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

* * * * *

IM–3110. Customer Account Information

(a) through (h) No Change.

(i) Holding of Customer Mail

Upon the written instructions of a customer, a member may hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but (A) not to exceed two months if the member is advised that such customer will be on vacation or traveling or (B) not to exceed three months if the customer is going abroad.

* * * * *

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), *3010(c),* 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of *NASD* [the Association] and provide a copy of the application to the Office of General Counsel of NASD [Regulation], *Regulatory Policy and Oversight.*

(b) through (c) 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 NASD 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 NASD 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

Adequate supervisory systems play an important role in assuring investor protection and the integrity of the markets. Operational and sales practice abuses can stem from ineffective supervisory and supervisory control procedures. The recent Gruttadauria case, which involved the misappropriation of customer funds, has brought tremendous attention to the ongoing problem of operational and sales practice abuses at firms and the importance of ensuring that firms effectively monitor the activities of their employees.

NASD rules contain extensive supervisory requirements. NASD Rule 3010 generally requires each member to establish and maintain a supervisory system, including the development of written procedures. Beyond this broad general requirement, NASD Rule 2110 requires members to observe high standards of commercial honor and just and equitable principles of trade, and NASD Rule 3110 sets forth extensive books and records obligations. In addition, the NASD recently established comprehensive examination procedures for supervisory controls. The examination procedures focus on supervisory controls as they relate to several areas of a firm, including senior

management, internal audit and trading risk controls.

In light of the concerns raised by the Guttadauria case with respect to inadequate supervisory systems, the NASD is proposing a new rule and amendments to existing rules to enhance the NASD's current rules and examination efforts by specifically requiring members to establish adequate supervisory control systems. In general, proposed new NASD Rule 3012 sets forth general and specific supervisory control requirements while amendments to certain other rules complement NASD's efforts with new NASD Rule 3012. The New York Stock Exchange, Inc. (''NYSE'') also recently filed with the SEC a series of amendments aimed at improving a firm's supervisory and internal (or supervisory) control systems.[3] The NASD states that its proposed rule change is substantially similar to the NYSE's proposed amendments.

The obligation to establish supervisory and supervisory control procedures is not a ''one-size-fits-all'' requirement. The NASD recognizes that there is no single set of procedures that will be appropriate for all firms and each firm must tailor such procedures to fit its business. In developing appropriate supervisory and supervisory control procedures, each firm must consider factors such as its size, location, and nature of business activities.

Supervisory Controls—General Requirement

Under NASD Rule 3010, a member's supervisory system is required to encompass the activities in which the member engages as well as the activities of the member's registered representatives and associated persons in order to achieve compliance with applicable securities laws and regulations and NASD rules. Not only must supervisory procedures be established, but such procedures must also be independently tested and verified through a system of supervisory control procedures to ensure appropriate application and effectiveness. The proposed rule change would require firms to develop and maintain a system of adequate supervisory control procedures that (1) test and verify that the member's supervisory procedures are reasonably designed, with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with the applicable securities laws and regulations, and with the applicable NASD rules and (2) create additional or amend supervisory procedures where the need is identified by such testing and verification.

The proposed rule change would require that a member's control procedures be performed by persons who are independent of the activities being tested and verified and the persons who directly supervise those activities. The independence requirement may be achieved by reasonable means in light of the member firm's size and resources and nature and scope of its activities. In practice, the NASD would expect that, unless a member could establish it was impractical, the system of supervisory controls will be deployed by persons who (1) are not connected in function to, or receive direct remuneration from, the activities which are the subject of the supervisory control procedures and (2) do not report to persons who supervise those activities. In the situation where the size and resources of the firm and the scope and nature of its activities make it impracticable for the firm to achieve independence in this fashion, the firm may satisfy the independence requirement by alternative means such as establishing additional policies and procedures to create a sufficient level of separation. Members would be required to report the testing and verification results to the firm's senior management annually.

Recognizing that the independence requirement in connection with testing and verification may not be practical for smaller members, the proposed rule change would allow an exemption from this independence requirement for firms that do not conduct a public business, or have a capital requirement of $5,000 or less, or employ 10 or fewer registered representatives.

Supervisory Controls—Customers' Activities

The NASD believes that certain customer activities, such as the transmittal of customer funds or changes in customer address or investment objectives, require additional monitoring to help prevent fraud and theft of customer funds. Changes in customer investor objectives would require additional protections because of the importance of maintaining accurate books and records in the course of the member's business and potential for sales practice abuse in connection with the recording of inaccurate investment objectives for customers. The monitoring of customer address changes would guard against the improper delivery of customer-related documentation. As such, the proposed rule change would require firms to establish written supervisory control procedures specifically with respect to the transmittal of customer funds and changes in customer address and investment objectives. Members would be required to follow-up with customers after the occurrence of any of these activities and to document the method of follow-up.

Supervisory Controls—Sales Managers' Activities

The proposed amendments would require firms to develop and implement written policies to independently review and monitor the servicing of customer accounts by branch office managers, sales managers, regional/district sales managers, and other supervisory personnel. The NASD expects that all sales-related activities will be reviewed. The NASD believes that the sales activities of branch managers and other sales managers should be subject to independent oversight to ensure that supervisors do not perform the final review of their own sales activity.

Dual Members

Proposed NASD Rule 3012 provides that a member that is in compliance with substantially similar requirements of the NYSE shall be deemed to be in compliance with the supervisory control requirements set forth in NASD Rule 3012.

Office Inspection

NASD Rule 3010(c) requires members to inspect and review the activities of each office.[4] To ensure that the inspections are objective and not subject to conflicts of interests, the proposed rule change would require that office inspections be conducted, by a person who is independent from the activities being performed at the office and the persons providing supervision to the office. Similar to the general supervisory controls amendments discussed earlier, the independence requirements may be satisfied by reasonable means based on the size and resources of the firm and the scope and nature of its activities. Office inspection programs would be required to include, at a minimum, testing and verification of a member's

[3] *See* Securities Exchange Act Release No. 46858 (November 20, 2002) (SR–NYSE–2002–36).

[4] NASD Rule 3010(c) requires an inspection at least annually of each office of supervisory jurisdiction and cycle examinations of branch offices. Although the rule does not specify the frequency of inspections for unregistered offices, NASD, Notice to Members 98–38 (May 1998) states that in order to fulfill the general obligation to supervise, such inspections should be conducted according to a regular schedule.

policies and procedures with respect to: (1) Safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of customer accounts serviced by branch office managers; (4) transmittal of customer funds; (5) validation of customer address changes; and (6) validation of changes in customer account information.

The NASD recognizes that it may not be practical for members with small offices to conduct an independent inspection. In this regard, the proposed rule change would allow the NASD to exempt members pursuant to the NASD Rule 9600 Series from the independence requirement in the inspection of a member's office.

Discretionary Authority

NASD Rule 2510(d)(1) allows members to exercise time-and-price discretion on orders for the purchase or sale of a definite amount of a specified security without prior written authorization from the customer or prior written approval by the member, but does not specify the duration of such discretionary authority. The proposed rule change would clarify that a firm's authority to exercise time and price discretion terminates at the end of the business day on which the customer granted such discretion, unless a signed authorization from the customer shows otherwise. The proposed rule change would further require any exercise of time or price discretion to be reflected on the order ticket.

Changes in Customer Account Name or Designation

Because changes in account names or designations in connection with order executions can be subject to abuse, the NASD believes that such changes should be approved by a qualified person and the basis for the change should be adequately documented. The proposed rule change would specify that no changes to the account name(s) or designation(s), including related accounts or error accounts may be made unless previously authorized by the person designated to approve such changes. Such designated person would be required to pass a qualifying principal examination appropriate to the business of the firm, such as the General Securities Sales Supervisor (Series 9/10) or General Securities Principal (Series 24). The designated person must document the essential facts relied upon in approving the changes and maintain the record in a central location.

Customer Mail

To prevent improper mail delivery if a customer is away from his or her regular address for an extended period of time, the proposed rule change would allow members to hold mail for a customer upon receiving written instructions from the customer, not to exceed two months if the customer is on vacation or traveling or three months if the customer is going abroad.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is designed to accomplish these ends by requiring members to establish more extensive supervisory and supervisory control procedures to monitor customer account activities of its employees and thereby reduce the potential for customer fraud and theft.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[5] 15 U.S.C. 78*o*–1(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 NASD. All submissions should refer to the File No. SR–NASD–2002–162 and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30041 Filed 11–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46862; File No. SR–NASD–2002–129]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement

November 20, 2002.

On September 25, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change relating to the Security Futures Risk Disclosure Statement. The proposed rule change was published for comment in the **Federal Register** on October 17, 2002.[3]

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46614 (October 7, 2002), 67 FR 64162.

Commission received no comments on the proposal.

In addition, on September 25, 2002, NASD submitted a separate proposed rule change relating to the Security Futures Risk Disclosure Statement (File No. SR–NASD–2001–28). At NASD's request, the Commission put that proposed rule change into effect summarily pursuant to section 19(b)(3) of the Act,[4] so that the Security Futures Risk Disclosure Statement would be in effect prior to the start of trading in security futures.[5] Section 19(b)(3) of the Act[6] requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.[7] Accordingly, NASD filed this proposed rule change to gain final approval of the Security Futures Risk Disclosure Statement.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Under NASD's rules, the Security Futures Risk Disclosure Statement must be provided to customers at or prior to the time the customer's account is approved for trading security futures. Among other things, the statement describes the risks of security futures, how they trade, margin, effects of leverage, settlement procedures, customer account protections, and the tax consequences of trading security futures. Accordingly, the Commission believes that the Security Futures Risk Disclosure Statement should inform customers that trade security futures of the characteristics of security futures and the risks associated with trading them.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[10], that the proposed rule change (File No. SR–NASD–2002–129) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30043 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3).

[5] *See* Securities Exchange Act Release No. 46612 (October 7, 2002), 67 FR 64151.

[6] 15 U.S.C. 78s(b)(3).

[7] 15 U.S.C. 78(s)(b)(1).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46858; File No. SR–NYSE–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 (''Offices—Approval, Supervision and Control'') and its Interpretation, Rule 401 (''Business Conduct''), Rule 408 (''Discretionary Power in Customers' Accounts''), and Rule 410 (''Records of Orders'')

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization.[3] On November 20, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

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 proposed rule change is intended to address several issues involving the establishment, maintenance, and testing of Internal Controls as well as several supervisory issues. Included are amendments to Rule 342 (''Offices—Approval, Supervision and Control'') and its Interpretation, 401 (''Business Conduct''), 408 (''Discretionary Power in Customers' Accounts''), and 410 (''Records of Orders''). Additions are in italics; deletions are in brackets.

* * * * *

Offices—Approval, Supervision and Control

Rule 342. (a) Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility.

The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and regulations.

(b) The general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' laws and regulations. This person shall:

(1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control.

(2) establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.

(c) The prior consent of the Exchange shall be obtained for each office established by a member or member organization, other than a main office.

(d) Qualified persons acceptable to the Exchange shall be in charge of:

(1) any office of a member or member organization,

(2) any regional or other group of offices,

(3) any sales department or activity.

(e) The amounts and types of credit extended by a member organization shall be supervised by members or allied members qualified by experience for such control in the types of business

[1] 15 U.S.C. 78s(b)(2).

[2] 17 CFR 240.19b–4.

[3] The NASD submitted a proposed rule change addressing internal controls and supervisory issues (SR–NASD–2002–162), which the Commission is publishing in the **Federal Register** for public comment simultaneously with the instant proposed rule change. *See* Securities Exchange Act Release No. 46859 (November 20, 2002).

[4] *See* letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Darla Stuckey, Corporate Secretary, NYSE, dated November 18, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange added ''customer changes of investment objectives'' to the list of enumerated activities with regard to which Exchange members must maintain written policies and procedures.

in which the member organization extends credit.

Supplementary Material:

.10 through .18 unchanged.

.19 Supervision of Managers.—Members and member organizations whose Branch Office Managers, Sales Managers, Regional/District Sales Managers, or any person performing a similar supervisory function, service customer accounts must develop and implement written policies and procedures reasonably designed to independently supervise each such person's customer account activity.

.20 through .22 unchanged.

.23 Internal Controls—Pursuant to paragraphs (a) and (b) of this Rule, members and member organizations must develop and maintain adequate controls over each of its business activities. Such controls must provide for the establishment of procedures for independent verification and testing of those business activities separate and apart from the day-to-day supervision of such functions. A review of each member's or member organization's efforts with respect to internal controls, including a summary of tests conducted and significant exceptions identified, must be included in the Annual Report required by .30 of this Rule. The independent verification and testing procedures shall not apply to members and member organizations that do not conduct a public business, or that have a capital requirement of $5,000 or less, or that employ 10 or fewer registered representatives.

(See also Rule 401(b))

.30 Annual Report.—By April 1 of each year, each member not associated with a member organization and each member organization shall prepare, and each member organization shall submit to its chief executive officer or managing partner, a report on the member*'s* or member organization's supervision and compliance effort during the preceding year. The report shall include:

(a) A tabulation of the reports pertaining to customer complaints and internal investigations made to the Exchange during the preceding year pursuant to Rules 351(d) and (e)(ii),

(b) Identification and analysis of significant compliance problems, plans for future systems or procedures to prevent and detect violations and problems, and an assessment of the preceding year's efforts of this nature, and

(c) Discussion of the preceding year's compliance efforts, new procedures, educational programs, etc. in each of the following areas:

(i) Antifraud and trading practices,

(ii) Investment banking activities,

(iii) Sales practices,

(iv) Books and records,

(v) Finance and operations, [and]

(vi) Supervision[.], *and*

(vii) Internal Controls.

If any of these areas do not apply to the member or member organization, the report should so state.

Business Conduct

Rule 401. *(a)* Every member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs.

(b) *Each member and member organization shall maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under Rule 342.23, specifically with respect to the following activities:*

(1) Transmittals of funds (e.g., wires, checks, etc.) or securities:

(i) *from customer accounts to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership.);*

(ii) *from customer accounts to outside entities (e.g., banks, investment companies, etc.);*

(iii) *from customer accounts to locations other than a customer's primary residence (e.g., post office box, ''in care of'' accounts, alternate address, etc.); and*

(iv) *between customers and registered representatives (including the hand-delivery of checks).*

(2) Customer changes of address.

(3) Customer changes of investment objectives. The policies and procedures required under (b)(1) and (b)(2) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.

Discretionary Power in Customers' Accounts

Rule 408 (a) No member, allied member or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer.

(b) No member, allied member or employee of a member organization shall exercise any discretionary power in any customer's account, without first notifying and obtaining the approval of another person delegated under Rule 342(b)(1) with authority to approve the handling of such accounts. Every order entered on a discretionary basis by a member, allied member or employee of a member organization must be identified as discretionary on the order at the time of entry. Such discretionary accounts shall receive frequent appropriate supervisory review by a person delegated such responsibility under Rule 342(b)(1), who is not exercising the discretionary authority. A written statement of the supervisory procedures governing such accounts must be maintained.

(c) No member or allied member or employee of a member organization exercising discretionary power in any customer's account shall (and no member organization shall permit any member, allied member, or employee thereof exercising discretionary power in any customer's account to) effect purchases or sales of securities which are excessive in size or frequency in view of the financial resources of such customer.

(d) The provisions of this rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed. *The authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer. Any exercise of time and price discretion must be reflected on the order ticket.*

Records of Orders

Rule 410. (a) Every member or [his] *member* organization *must* [shall] preserve for at least three years the first two years in an easily accessible place, a record of:

[Transmitted to Floor

(1) Every order transmitted directly or indirectly by such member or organization to the Floor, which record shall include the name and amount of the security, the terms of the order, the time when it was so transmitted, and the time at which a report of execution was received. Carried to the Floor]

[(2)] *(1)* every order received by such member *or member organization*, either orally or in writing, [and carried by such member to the Floor,] which record *must* [shall] include the name and amount of the security, the terms of the order, the time when it was so received and the time *at* [as] which a report of execution was received.

[Entered Off Hours]

[(3)] *(2)* every order entered by such member or *member* organization into the Off-Hours Trading Facility (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), which record *must* [shall] include the name and amount of the security, the

terms of the order, the time when it was so entered, and the time at which a report of execution was received. [Cancellation]

[(4)] *(3)* the time of the entry of every cancellation of an order covered by (1)[,] *and* (2) [and (3)] above.

[By Accounts] Changes In Account Name or Designation

Before any order covered by (1)[,] *or* (2) [or (3)] above is executed, there *must* [shall] be placed upon the order slip or other *similar* record of the member[,] or [his] *member* organization the name or designation of the account for which such order is to be executed. No change in such account name *(including related accounts)* or designation *(including error accounts)* shall be made unless the change has been authorized by [the] *a* member*,* [or another member,] allied member*,* or a person or persons designated under the provisions of Rule 342(b)(1). [in his organization who shall,] *Such person must,* prior to giving his *or her* approval of [such] *the account designation* change, be personally informed of the essential facts relative thereto and [shall] indicate his *or her* approval of such change in writing on the order *or other similar record of the member or member organization. The essential facts relied upon by the person approving the change must be documented in writing and maintained in a central location.*

Exceptions

Under exceptional circumstances, the Exchange may upon written request waive the requirements contained in (1), (2) and (3) above.

(b) Every order *in any manner transmitted or carried to the Floor and* [covered by (1) or (2) above to be] executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder *must* [shall] be identified in a manner that will enable the executing member to disclose to other members that the order is subject to those provisions.

(See also Rules 112A.10 and 123A.45.)

.10 For purposes of this Rule, a person designated under the provisions of Rule 342(b)(1) to approve account name or designation changes must pass an examination acceptable to the Exchange.

INTERPRETATION

Rule 342 OFFICES—APPROVAL, SUPERVISION AND CONTROL

(a)(b)

.03 Annual Branch Office Inspection

[At least annual b]*B*ranch office inspections by *members and* member organizations are expected *to be conducted at least annually* pursuant to this Rule, unless *it has been* demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory *practice, other* arrangements[,] *may satisfy the Rule's requirements.* [certain offices may not warrant an annual inspection.] *All required inspections must be conducted by a person who is independent of the ongoing supervision, control, or performance evaluation of the branch office* (*i.e., not the Branch Office Manager, Sales Manager, District/Regional Manager assigned to the office, or any other person performing a similar supervisory function*). Written reports of these inspections, *or the written authorization of an alternative arrangement,* are to be kept on file by the organization for a minimum period of three years.

An annual branch office inspection program must include, but is not limited to, testing and independent verification of internal controls related to the following areas:

(1) *Safeguarding of customer funds and securities,*

(2) *Maintaining books and records,*

(3) *Supervision of customer accounts serviced by Branch Office Managers,*

(4) *Transmittal of funds between customers and registered representatives and between customers and third parties,*

(5) *Validation of customer address changes, and*

(6) *Validation of changes in customer account information.*

For purposes of this interpretation, ''annual'' means once in a calendar year.

* * * * *

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. 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 Changes

1. Purpose

Cases involving misappropriation of funds and securities have highlighted the need to re-examine issues related to both supervision and internal controls, including the appropriate application of such controls and the independent testing of their efficiency. In the course of reviewing the issues raised by these cases, Exchange staff has met with management of several member organizations, undertaken special sales practice examinations of potential problem areas, and conducted surveys of members' and member organizations' existing policies and procedures. As a result, the Exchange is proposing a number of initiatives intended to generally bolster the overall internal controls and procedures of members and member organizations and to specifically require such controls and procedures in certain areas that have been identified as particularly problematic. It is expected that the proposed amendments will help to focus and reinforce members' and member organizations' internal control policies. The proposals include the addition of paragraph .23 to NYSE Rule 342 (''Offices—Approval, Supervision and Control'') which addresses internal control requirements generally, as well as amendments to Rule 401 (''Business Conduct'') which identify and require specific internal control safeguards related to the transmission of customer funds and securities, and changes of customer address.

The proposals also address related supervision and/or control issues that were encompassed in the Exchange's review including amendments to: NYSE Rule 342 (''Offices—Approval, Supervision and Control'') that would require systems and procedures to independently supervise sales managers who handle customer accounts; NYSE Rule 408 (''Discretionary Power in Customers' Accounts'') that would clarify time limits on time-and-price discretionary authority; NYSE Rule 410 (''Records of Orders'') that would expand the Rule's application and clarify its supervisory and recordkeeping provisions; and to the Interpretation of NYSE Rule 342 that would require persons who conduct branch office inspections to be independent of such office's ongoing supervision, control, or performance evaluation.

Supervision and Control

NYSE Rule 342 prescribes the general requirement that ''[e]ach office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member organization establishing it and of the personnel

delegated such authority and responsibility.'' In this context, ''supervision'' refers to the ongoing, day-to-day review of each business activity to ensure overall compliance with applicable rules and regulations. A member organization's supervisory structure is reflected in its policy and the manner in which personnel implement the systems and procedures designed to enforce that policy.

''Control,'' on the other hand, refers to the development of these systems and procedures and to the independent oversight and testing of them in order to measure and maintain their effectiveness. Such internal controls typically involve random sampling of supervisory functions to identify shortcomings, gaps, or other inefficiencies. Internal controls also involve ongoing reassessment of these functions to determine whether they are serving their intended purpose (*i.e.*, have they been updated to address new or modified means of doing business?). Internal controls should, therefore, be considered a means by which the process of supervision is analyzed, tested, and refined. The following sets forth proposed internal control requirements, both general and specific, designed to highlight the importance of such controls, identify those areas where they can be most effectively implemented, and provide minimum standards for their application.

Internal Controls—General Requirement

Proposed paragraph .23 of NYSE Rule 342 elaborates upon the general requirement that members and member organizations develop and maintain adequate controls over each of their business activities. Paragraph .23 further requires that such controls must provide for the establishment of procedures for independent verification and testing of those business activities separate and apart from the day-to-day supervision of such functions. A summary of these actions is required to be included in the required Annual Report to a member organization's chief executive officer or managing partner per NYSE Rule 342.30.

In recognition of the fact that the ''independent verification and testing'' requirement may not be practical or reasonable for certain business models, an exemption from this requirement is available to members or member organizations that do not conduct a public business, or have a capital requirement of $5,000 or less, or employ 10 or fewer registered representatives. This exemption does not, however, provide relief from the general requirement that internal controls be developed, established, and effectively maintained.

Internal Controls—Specific Requirements

The following proposed amendments require that internal control policies and procedures be adopted that address specific areas identified to be particularly susceptible to potential abuse. These include the transmission of customer funds and securities and changes of customer address.

The Exchange states that it is recognized that no single approach to internal controls can be appropriate for all business models given differences in organizational size, supervisory structure, scope of business activities, products offered, location of branch offices, etc. Therefore, the controls established and implemented should reasonably conform to the nature of the business conducted.

Business Conduct: Transmission of Customers' Funds and Securities/ Customer Changes of Address

Proposed NYSE Rule 401(b)(1) clarifies that, consistent with their duty to adhere to principles of good business practice, members and member organizations must maintain written policies, procedures, and controls over the transmission of customer funds and securities. The proposed amendments specify certain types of transmission based on their potential for abuse. These include transmission of funds (*e.g.*, wires, checks, etc.) or securities:

- From customer accounts to third party accounts (*i.e.*, a transmittal that would result in a change of beneficial ownership);
- From customer accounts to outside entities (*e.g.*, banks, investment companies, etc.);
- From customer accounts to locations other than a customer's primary residence (*e.g.*, post office box, ''in care of'' account, alternate address, etc.); and
- Between customers and registered representatives (including the hand delivery of checks).

Proposed NYSE Rule 401(b)(2) requires written policies and controls to monitor customer changes of address, including a reasonable method of customer notification that can be documented. The purpose of this amendment is to prevent the delivery of confirmations, statements, and other account-related documentation to other than the beneficial owner of the account or their duly authorized agent. Proposed NYSE Rule 401(b)(3) requires written policies and controls to monitor customer changes of investment objectives.

Additional Amendments

The following proposed amendments address additional specific supervision and/or control issues identified by Exchange staff during the course of their review:

Supervision of Sales Managers

Proposed NYSE Rule 342.19 requires the development and implementation of written policies and procedures to independently supervise sales managers and other supervisory personnel who handle customer accounts. This requirement applies to Branch Office Managers, Regional/District Sales Managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all sales-related activities to include, at a minimum, new account approval, the monitoring of customer account activity (for suitability, unauthorized transactions, etc.), and prior approval of account designation changes (both ''cancel and re-bills'' and ''order errors'') pursuant to NYSE Rule 410. This provision is intended to ensure all sales activity is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity and to remove doubt with respect to whether managers may ''self-approve'' their sales-related activities.

Time-and-Price Discretionary Power in Customers' Accounts

Proposed Amendment to NYSE Rule 408(d) limits the authority of registered representatives to exercise time-and-price discretion [5] over customer orders, absent a signed authorization from the customer, to the end of the business day on which the customer granted such discretion. NYSE Rule 408(d) currently allows the exercise of time-and-price discretion, without written authorization, on orders for the purchase or sale of a definite amount of a specified security, but is silent on such authority's length of effectiveness. The absence of clear guidance on this point has been the source of interpretive uncertainty. The proposed amendment's establishment of a specific time limitation will eliminate uncertainty in this regard.

[5] Time-and-price discretion is authority granted (usually informally) by a customer to a registered representative that allows the representative to exercise judgment, based on prevailing market conditions, as to when and at what price to execute a customer order.

Records of Orders: Record Preservation/Account Designation Changes

NYSE Rule 410, as currently written, applies only to orders transmitted or carried to the Floor of the Exchange. It requires members and member organizations to preserve a record of certain specified terms of each order, and it prescribes procedures for administering changes in account name or designation on previously executed orders. The proposed amendments would:

• Expand the application of the Rule to all orders (sent to any market-place), not just those carried or transmitted to the Floor. The Exchange states that the expansion of the Rule to include all orders sent to any marketplace is necessary for effective regulatory oversight and enforcement proceedings. The Exchange also states that the information requested is not duplicative of existing NASD recordkeeping requirements.[6]

• Require that a person designated to approve account name or designation changes be qualified by passing an examination acceptable to the Exchange. Currently, the Rule reads that such changes shall be approved by a person or persons designated under the provisions of NYSE Rule 342(b)(1). While this provision requires that the designated person be ''qualified,'' it does not specifically prescribe an examination requirement. Given that account name and designation changes can be indicative of serious sales practice violations such as unauthorized or unsuitable trading, the Exchange has long held that this exceptionally important and sensitive area be subject to heightened supervisory scrutiny. Accordingly, proposed paragraph .10 would specify that, for purposes of NYSE Rule 410, a person designated under the provisions of NYSE Rule 342(b)(1) would be required to pass a qualifying examination such as the General Securities Sales Supervisor Qualification Examination (''Series 9/10''), the Compliance Official Examination (''Series 14''), or other sales supervisory examination acceptable to the Exchange.

• Clarify that the Rule applies to all account name and designation changes, including related accounts and order errors. Some have read the current Rule to apply only to ''Cancel-and-Rebills'' in which a trade is moved from one customer account to another unrelated account. The proposed amendments make clear that the provisions of the Rule also apply to designation changes to related accounts (*e.g.*, ''Smith Trading Account'' to ''Smith IRA'') and to orders cancelled and moved into an error account.

• Require documentation of the essential facts relied upon when approving such account name or designation changes in order to maintain a record, available for review, of the basis for the change.

Annual Branch Office Inspection

The proposed amendments also include changes to the written Interpretation of NYSE Rule 342, clarifying that persons who conduct a member organization's annual branch office inspection must be independent of any ongoing supervision, control, or performance evaluation in connection with the particular office. This clarification recognizes that, with regard to such persons, an objective perspective is best maintained by having no interest in a branch's ''bottom line'' and by being outside of the branch's supervisory structure. In addition, the Interpretation requires that annual branch office inspection programs include, at minimum, testing and verification of specified internal controls including:

• Safeguarding of customer funds and securities,

• Maintaining books and records,

• Supervision of customer accounts serviced by Branch Office Managers,

• Transmittal of funds between customers and registered representatives and between customers and third parties,

• Validation of customer address changes, and

• Validation of changes in customer account designation.

2. Statutory Basis

The basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to 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. The proposed rule change is intended to foster the strengthening of NYSE members' and member organizations' internal controls and supervisory systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) 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 such 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 filed with the Commission and all written communications relating to the proposed rule changes 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 No. SR–NYSE–2002–36 and should be submitted by December 18, 2002.

[6] Telephone call with Donald Van Weezel, Vice President, Regulatory Affairs, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, October 25, 2002.

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30040 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed temporary, emergency amendments to sentencing guidelines, policy statements, and commentary. Notice of intent to repromulgate temporary, emergency amendments as permanent, non-emergency amendments. Request for public comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, and section 314 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. Issues for comment follow each proposed amendment.

DATES: Written public comment on these proposed emergency amendments should be received by the Commission not later than December 18, 2002, in anticipation of a vote to promulgate these emergency amendments at the Commission's January 2003 public meeting. Thereafter, written public comment on whether to repromulgate the emergency amendments as permanent, non-emergency amendments should be received by the Commission not later than February 18, 2003.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. § 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. § 994(a), (o), (p), (x); sections 805, 905, and 1104 of Pub. L. 107–204; section 314 of Pub. L. 107–155; USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,

Chair.

1. Corporate Fraud

Synopsis of Proposed Amendment: This proposed amendment implements the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the ''Act''). The Act requires the Commission to promulgate guideline amendments under emergency amendment authority not later than January 25, 2003. In addition to several general directives regarding fraud and obstruction of justice offenses, the Act also sets forth specific directives that require the Commission to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence.

First, the proposed amendment sets forth two options for amending § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) to address the directive contained in section 1104 of the Act pertaining to fraud offenses involving significantly greater than 50 victims. Option One expands the victims table in § 2B1.1(b)(2). Currently, subsection (b)(2) provides a two level enhancement if the offense involved more than 10, but less than 50, victims or was committed through mass-marketing, or a four level enhancement if the offense involved 50 or more victims. Option One provides an additional two levels, for a total of six levels, if the offense involved 250 victims or more. Alternatively, Option Two provides an encouraged upward departure provision if the offense involved substantially more than 50 victims.

Second, the proposed amendment modifies subsection § 2B1.1(b)(12)(B) to address directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Subsection (b)(12)(B) currently provides a four level enhancement and a minimum offense level of 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The proposed amendment expands the scope of this enhancement to apply to offenses that substantially endanger the solvency or financial security of a publicly traded company. The enhancement does not require the court to determine whether the offense endangered the solvency or financial security of each individual victim. Such a determination likely would unduly complicate the sentencing process. Instead the enhancement is based on a presumption that if the offense conduct endangered the solvency or financial security of a publicly traded company, the offense similarly affected a substantial number of individual victims. The proposed amendment also

[8] 17 CFR 200.30–3(a)(12).

contains options for extending the scope of the enhancement to include other organizations with a substantial number of employees. This extension might be appropriate because offenses that endanger other large organizations may, like offenses that endanger publicly traded companies, affect the solvency or financial security of a substantial number of victims.

The corresponding application note to the new enhancement sets forth situations in which an offense shall be considered to have endangered the solvency or financial security of a publicly traded company. The note, which is modeled after an analogous note for the financial institutions prong of the enhancement, includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of situations that would trigger application of the new enhancement.

An issue for comment follows the proposed amendment regarding whether the list of situations should be a non-exhaustive list that the court may consider in determining whether to apply the enhancement.

Third, the proposed amendment addresses the directive contained in section 1104 of the Act pertaining to fraud offenses committed by officers or directors of publicly traded corporations by providing a new two level enhancement at § 2B1.1(b)(13). This enhancement would apply if the offense involved a violation of any provision of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. This enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud statute (*e.g.*, 18 U.S.C. § 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (*e.g.*, 18 U.S.C. § 1341, prohibiting wire fraud), provided that the offense involved a violation of securities law. The corresponding application note provides that in cases in which the new enhancement applies, the current enhancement for abuse of position of trust at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply. Although the directive only specifically addresses officers and directors of publicly traded companies, the proposed amendment provides an option to include registered brokers or dealers because they also are subject to certain requirements under securities law and as such may be considered to hold a heightened position of trust to investors.

Pursuant to the corresponding application note, ''securities law'' (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in section 3(a)(47).

The proposed amendment also includes an issue for comment regarding whether, in addition to the two level enhancement, a minimum offense level should be provided for such offenses committed by officers and directors of publicly traded companies. The issue for comment also requests comment regarding whether the scope of the enhancement should be broadened to apply to an officer or director of other large organizations.

Additional issues for comment are included regarding whether other enhancements, possibly to apply cumulatively, should be added to § 2B1.1 in response to the Act, as well as whether further guidance should be provided regarding the calculation of loss in complex white collar offenses.

Fourth, the proposed amendment provides an option for expanding the loss table at § 2B1.1(b)(1). Currently, the loss table provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The proposed amendment provides two additional levels to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000, and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. This proposed addition to the loss table would address congressional concern expressed in the Act regarding particularly extensive and serious fraud offenses and would more fully effectuate increases in statutory maximum penalties, for example, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). An issue for comment follows the proposed amendment regarding whether more extensive modifications to the loss table should be made in response to the Act, particularly for offenses involving significantly lower loss amounts.

Fifth, the proposed amendment implements the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. The proposed amendment adds a new two level enhancement to § 2J1.2 (Obstruction of Justice) that applies if the offense (i) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (ii) involved the selection of especially probative or essential evidence to destroy or alter; or (iii) was otherwise extensive in scope, planning, or preparation. An issue for comment follows the proposed amendment regarding whether the base offense level in § 2J1.2 should be increased and whether an enhancement for the use of sophisticated means should be included in § 2J1.2. There is an additional issue for comment regarding whether modifications also should be made to the guideline covering perjury offenses, § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) in light of the proposed amendment to the obstruction of justice guideline, in order to maintain sentencing proportionality between the two types of offenses.

Finally, the proposed amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, is referenced to § 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act). This offense provides a statutory maximum of 10 years' imprisonment if the defendant certifies the publicly traded company's periodic financial report knowing that the statement does not comply with all requirements of the Securities and Exchange Commission (and 20 years' imprisonment if that certification is done willfully). The proposed amendment also expands the current cross reference in § 2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant who is convicted under 18 U.S.C. § 1520 certified the financial report of a publicly traded company in order to facilitate a fraud, the proposed change to the cross reference provision would require the court to apply § 2B1.1 instead of § 2E5.3. Other new offenses are proposed to be included in Appendix A (Statutory Index) as well as the statutory provisions of the relevant guidelines.

Proposed Amendment

Section 2B1.1(b)(1) is amended by striking the period and inserting a semi-colon; and by adding at the end the following:

''(O) More than $200,000,000 add 28

(P) More than $400,000,000 add 30.''.

[Option 1 for Substantial Number of Victims:

Section 2B1.1 is amended by striking subsection (b)(2) and inserting the following:

''(2) (Apply the greatest) If the offense—

(A) (i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels;

(B) involved at least 50, but less than 250, victims, increase by 4 levels; or

(C) involved 250 or more victims, increase by 6 levels.''.]

Section 2B1.1(b)(12) is amended by striking subdivision (B) and inserting the following:

''(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; or (ii) substantially endangered the solvency or financial security of an organization that, at the time of the offense [(I)] was a publicly traded company[; or (II) had [200][1,000][5,000] or more employees], increase by 4 levels.''.

Section 2B1.1(b) is amended by adding at the end the following:

''(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was [(i)] an officer or a director of a publicly traded company[; or (ii) a registered broker or dealer], increase by 2 levels.''.

The Commentary to § 2B1.1 caption ''Statutory Provisions'' is amended by inserting ''1348, 1350,'' after ''1341–1344,''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after ''Secretary of the Interior.'' the following new paragraph:

'' 'Publicly traded company' means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)). 'Issuer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by redesignating Notes 11 through 15 as Notes 12 through 16, respectively.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by striking Note 10 and inserting the following:

''10. Application of Subsection (b)(12)(B).—

(A) Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(12)(B)(i).—For purposes of subsection (b)(12)(B)(i), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution, if, as a consequence of the offense, the institution (i) became insolvent; (ii) substantially reduced benefits to pensioners or insureds; (iii) was unable on demand to refund fully any deposit, payment, or investment; (iv) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (v)was placed in substantial jeopardy of any of subdivisions (i) through (iv) of this note.

(B) Enhancement for Endangering the Solvency or Financial Security of a Publicly Held Company [or An Organization with more than [200][1000][5000] Employees] under Subsection (b)(12)(B)(ii).—

(i) Definitions.—For purposes of this subsection, 'organization' has the meaning given that term in Application Note 1 of § 8A1.1 (Applicability of Chapter Eight).

(ii) Application.—An offense shall be considered to have substantially endangered the solvency or financial security of an organization that was a publicly traded company[or that had more than [200][1000][5000] employees] if, as a consequence of the offense, the organization (I) became insolvent; (II) filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11 of the United States Code); (III) suffered a substantial reduction in the value of [its equity securities][a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l)] or the value of its employee retirement accounts; (IV) substantially reduced its workforce; (V) substantially reduced its employee pension benefits; (VI) was so depleted of its assets as to be forced to merge with another company in order to continue active operations; or (VII) was placed in substantial endangerment of any of subdivisions (I) through (VI) of this note. ['Equity securities' has the meaning given that term in section 3 of Securities Exchange Act of 1934 (15 U.S.C. § 78c).]

11. Application of Subsection (b)(13).—

(A) Definitions.—For purposes of this subsection:

'Registered broker or dealer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

'Securities law' (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in section 3(a)(47).

(B) In General.—A conviction under securities law is not required in order for subsection (b)(13) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated securities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) Nonapplicability of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).—If subsection (b)(13) applies, do not apply § 3B1.3.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 16, as redesignated by this amendment, in subdivision (A) by striking subdivision (v).

[Option 2 for Substantial Number of Victims:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 16, as redesignated by this amendment, in subdivision (A) by inserting the following:

''(v) The offense involved substantially more than 50 victims.''.]

Section 2E5.3 is amended in the heading by adding at the end ''; Destruction and Failure to Maintain Corporate Audit Records''.

Section 2E5.3 is amended by striking subsection (a)(2) and inserting the following:

''(2) If the offense was committed to facilitate or conceal (A) an offense involving theft, fraud, or embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply § 2B1.1 (Theft, Fraud and Property Destruction), § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or § 2J1.2 (Perjury or Subornation of Perjury; Bribery of a Witness), as appropriate.''.

The Commentary to § 2E5.3 captioned ''Statutory Provisions'' is amended by inserting ''§ '' before ''1027''; and by inserting '', 1520'' after ''1027''.

Section 2J1.2(b) is amended by adding at the end the following:

''(3) If the offense (A) involved the destruction, alteration, or fabrication of

a substantial amount of evidence; (B) involved the selection of especially probative or essential evidence to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by [2] levels.''.

The Commentary to § 2J1.2 captioned ''Statutory Provisions'' is amended by inserting '', 1519'' after ''1516''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. § 1347'' the following new lines:

''18 U.S.C. § 1348 2B1.1
18 U.S.C. § 1349 2X1.1
18 U.S.C. § 1350 2B1.1''.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 1512(c) by striking ''(c)'' and inserting ''(d)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1512(b) the following new line:

''18 U.S.C. § 1512(c) 2J1.2''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1518 the following lines:

''18 U.S.C. § 1519 2J1.2
18 U.S.C. § 1520 2E5.3''.

Issues for Comment

1. The Sarbanes-Oxley Act of 2002 requires the Commission to consider providing an enhancement for officers or directors of publicly traded companies who commit fraud and related offenses. The Act also requires the Commission to ensure that the enhancements relating to obstruction of justice are adequate in cases in which the offense involved an abuse of position of trust or use of a special skill. In response to these directives, the proposed amendment provides an enhancement in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) specifically targeting officers and directors who violate securities law, including violations of the rules and regulations issues by the Securities and Exchange Commission. The Commission requests comment regarding whether it also should provide a minimum offense level for this proposed enhancement, and if so, what an appropriate offense level would be. Additionally, should this proposed enhancement apply to cases in which an officer or director of a large, non-public organization violates any provision of security law? Such a case may cause similar harm to the organization, its shareholders, and employees even though the organization is not a publicly traded company and the offense typically would not undermine public confidence in the securities market. The Commission further requests comment regarding whether, as an alternative to the proposed enhancement, it should provide a series of enhancements, possibly to apply cumulatively, to address separate aspects of these directives. Specifically, should the Commission provide enhancements in § 2B1.1 that would apply if (A) the defendant used his or her position as officer or director of a publicly traded company in furtherance of a fraud or some other corporate crime; (B) the officer or director of a publicly traded company worked to defeat or compromise internal corporate controls, independent audits, or the oversight by a corporate governing board; or (C) an officer or director derived more than $1,000,000 in personal gain from unlawful activity? If so, should the Commission also provide minimum offense levels for any such enhancements? What would be an appropriate minimum offense level for such enhancements?

2. The proposed amendment expands the scope of § 2B1.1(b)(12)(B) to apply to offenses that substantially endanger the solvency or financial security of a publicly traded company. This proposed enhancement is in response to directives pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. The proposed corresponding application note sets forth instances of when an offense shall be considered to have endangered the solvency or financial security of a publicly traded company. The note includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce, any one of which would require application of the new enhancement upon a finding of its presence. The Commission requests comment regarding whether the note alternatively should provide that the references are a non-exhaustive list that the court may consider in determining whether to apply § 2B1.1(b)(12)(B). The Commission also requests comment regarding whether additional factors should be included in the list of instances that could trigger application of the enhancement.

3. The Commission requests comment regarding whether the loss definition in § 2B1.1 should be amended to provide further guidance as to how to calculate loss in complex white collar crime cases. For example, should loss in such cases be based on a change in the market capitalization of a corporation, a change in the value of corporate assets, or some other economic effect?

4. The current loss table in § 2B1.1 provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The proposed amendment provides two additional increases to the table: an enhancement of 28 levels for offenses in which the loss exceeded $200,000,000, and an enhancement of 30 levels for offenses in which the loss exceeded $400,000,000. This proposed addition to the loss table would address congressional concern expressed in sections 805, 905, and 1104 of the Sarbanes-Oxley Act regarding particularly extensive and serious fraud offenses and would more fully effectuate increases in statutory maximum penalties, for example, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). Should the Commission modify the loss table more extensively to provide increased offenses levels at lower loss amounts? Commission data indicate that approximately one-third of fraud offenses involve loss amounts less than $20,000, approximately one-third involve loss amounts between $20,000 and $120,000, and approximately one-third involve loss amounts greater than $120,000. For instance, should the Commission modify the loss table to result in a Zone D offense level (assuming a two level reduction for acceptance of responsibility) for offenses involving more than $50,000? Similarly, should the Commission modify the loss table to restrict Zone A offense levels (which provide sentences of straight probation) to offenses involving loss amounts of $10,000 or less (assuming a two level reduction for acceptance of responsibility)? If any changes are made to the loss table in § 2B1.1, should the Commission also make similar changes to the tax loss table in § 2T4.1 (Tax Table) in order to maintain the long standing relationship between the two loss tables? In addition, the Commission requests comment regarding whether the base offense level in § 2B1.1 should be increased from level 6.

5. In response to the directives in the Sarbanes-Oxley Act pertaining to obstruction of justice offenses, the proposed amendment sets forth a new two level enhancement in § 2J1.2

(Obstruction of Justice) that applies if the offense (A) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (B) involved the selection of especially probative or essential evidence to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation. The Commission requests comment regarding whether, in addition to this enhancement, it should provide an enhancement that is based on the number of participants recruited to commit the obstruction of justice offense. Additionally, should the Commission provide an enhancement for obstruction of justice offenses committed through the use of sophisticated means, perhaps in lieu of the proposed subdivision (C) prong, and if so, what characteristics would be common to such an offense? Finally, given congressional concern with obstruction of justice offenses, should the Commission increase the base offense level in § 2J1.2 from level 12 to level 14?

6. Part Three of the proposed amendment addresses the emergency amendment directives in the Sarbanes-Oxley Act pertaining to the Chapter Two guidelines for obstruction of justice offenses. Specifically, the proposed amendment would provide a new enhancement in § 2J1.2 addressing the directive relating to the destruction of evidence and offenses that are otherwise extensive in scope, planning, or preparation. Currently, defendants sentenced under § 2J1.2 or § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) are sentenced proportionately because these guidelines have the same base offense level and provide substantially parallel enhancements. The Commission requests comment regarding whether, in light of the proposed changes to § 2J1.2, modifications also should be made to § 2J1.3 in order to maintain proportionate sentencing between these two guidelines. For example, should the Commission increase the base offense level in § 2J1.3 or increase the magnitude of the enhancement of the current specific offense characteristics? Any such amendment to § 2J1.3 would be made when the Commission re-promulgates as a permanent amendment any emergency amendment made to § 2J1.2.

2. Campaign Finance

Synopsis of Proposed Amendment: This proposed amendment responds to the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155 (the ''Act''). The most pertinent provision of the Act, for the Commission, is section 314, which gives the Commission emergency authority to promulgate amendments to implement the Act not later than February 3, 2003. Specifically, section 314(a) and (b) state:

''(a) IN GENERAL.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violations involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.''.

Section 309(d)(1) of the FECA sets forth the Act's criminal penalty provisions as follows:

(1) Violations of the FECA as Penalized under Section 309(d)(1)(A)

Section 309(d)(1)(A) is the main penalty provision of the FECA (2 U.S.C. § 437g(d)(1)(A)). As amended by section 312 of the Act, it states that ''[a]ny person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure (i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or (ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, imprisoned for not more than 1 year, or both.''. (Before amendment by the Act, section 309(d)(1)(A) of the FECA provided for a maximum term of imprisonment of one year, or a fine, or both.)

The major violations of the FECA to which section 309(d)(1)(A) applies are:

(A) The Ban on Soft Money

Section 323 of the FECA (2 U.S.C. § 441i) prohibits national political party committees (including senatorial and congressional campaign committees) from accepting soft money from any person (including an individual) after November 6, 2002.

(B) Restrictions on Hard Money Contributions

The FECA limits the amount of hard money that may be contributed to a Federal campaign. The FECA limits the amount of hard money that persons other than multicandidate political committees may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed $2,000 per election. (The limit used to be $1,000; see section 315(a)(1)(A) of the FECA, as amended by section 307(a)(1) of the Act.)

(ii) The contribution to a national party committee may not exceed $25,000 per calendar year. (The limit used to be $20,000; see section 315(a)(1)(B) of the FECA, as amended by section 307(a)(2) of the Act.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed $5,000 per calendar year. (No change in the former law; see section 315(a)(1)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed $10,000 per calendar year. (The limit used to be $5,000; see section 315(a)(1)(D) of the FECA, as amended by section 102(3) of the Act.)

The FECA limits the amount of hard money that multicandidate political committees other than individuals may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed $5,000 per election. (See section 315(a)(2)(A) of the FECA.)

(ii) The contribution to a national party committee may not exceed $15,000 per calendar year. (See section 315(a)(2)(B) of the FECA.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed $5,000 per calendar year. (No change in the former law; see section 315(a)(2)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed $5,000 per calendar year. (See section 315(a)(2)(C) of the FECA.)

(C) The Ban on Contributions and Donations by Foreign Nationals

Section 319 of the FECA (2 U.S.C. § 441e) makes it ''unlawful for (1) a foreign national, directly or indirectly, to make (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election; (B) a contribution or donation to a committee of a political party; or (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.''.

''Foreign national'' is broadly defined to mean (1) a foreign principal, as defined in the Foreign Agent Registration Act of 1938 (22 U.S.C. § 611(b)) or (2) an individual who is not a citizen or national of the United States or who is not lawfully admitted for permanent residence.

(D) Restrictions on Electioneering Communications

Section 304(f) of the FECA, as added by section 201 of the Act, requires any person who makes a disbursement for the direct costs of producing and airing electioneering communications exceeding $10,000 in a calendar year to file a disclosure statement to the Federal Election Commission.

Section 316 of the FECA (2 U.S.C. § 441b) makes it unlawful for any national bank, any corporation organized by authority of any Federal law, or any labor union to make a contribution or expenditure in connection with any federal election to any federal political office, or a disbursement, using non-PAC money, for an ''electioneering communication''.

An electioneering communication is any broadcast, cable, or satellite communication which (A) refers to a clearly identified candidate for Federal office; (B) is made within 60 days before a general election or 30 days before a primary election. The Communication must be targeted to the pertinent electorate. (*See* 2 U.S.C. § 434(f)(3)(c).)

(2) Violations of Section 316(b)

Section 309(d)(1)(B) of the FECA states that ''[i]n the case of a knowing and willful violation of section 316(b)(3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $250 or more during a calendar year. Such violation of section 316(b)(3) may incorporate a violation of section 317(b), 320, or 321.

Section 316(b)(3) of the FECA (2 U.S.C. § 441b(b)(3)) makes it unlawful for a national bank, any corporation organized by authority of any law of Congress, or any labor union (A) to use a political fund to make a political contribution or expenditure from money or anything of value that was secured by physical force, job discrimination, financial reprisals (or the threat thereof), or from dues, fees, or other money required as a condition of membership in the labor organization or as a condition of employment; (B) who solicits an employee for contribution to a political fund to fail to inform the employee of the purposes of the fund at the time of the solicitation; and (B) who solicits an employee for contribution to a political fund to fail to inform the employee of his right to refuse to contribute without reprisal.

The sections which may incorporate violations of section 316(b)(3) of the FECA are section 317(b), which prohibits government contractors from making contributions of currency in excess of $100 for any candidate for Federal office, section 320 which prohibits a person from making a contribution in the name of another or accepting a contribution so made, and section 321, which prohibits any person from making contributions of currency in excess of $100 for any candidate for Federal office.

(3) Fraudulent Misrepresentations Under Section 322

Section 309(d)(1)(C) of the FECA states that ''[i]n the case of a knowing and willful violation of section 322, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved.''

Section 322(a) of the FECA (2 U.S.C. 441h) states that ''[n]o person who is a candidate for Federal office or an employee or agent of such a candidate shall (1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).''

Section 322(b) states that ''[n]o person shall (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).''

(4) Conduit Contributions under Section 320

Section 309(d)(1)(D) of the FECA states that ''[a]ny person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be (i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more); (ii) fined not less than 300 percent of the amount of the violation and not more than the greater of (I) $50,000; or (II) 1,000 percent of the amount involved in the violation; or (iii) both imprisoned under clause (i) and fined under clause (ii).''

Section 320 of the FECA (2 U.S.C. § 441f) states that ''[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.''

In addition to changes made to the FECA, section 302 of the Act amended section 607 of title 18, United States Code, to make it ''unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other things of

value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.'' The penalty is a fine of not more than $5,000, not more than 3 years or imprisonment, or both.

In order to implement the directive in the Act, this proposed amendment expands the scope of Chapter Two, Part C (Offenses Involving Public Officials) by providing within that Part a new guideline for offenses under the FECA and related offenses. A new guideline, rather than amendment of an existing guideline, seems most appropriate to implement the directive. Currently there exists no guideline which already incorporates the elements of the FECA and related offenses, although the fraud guideline in particular (§ 2B1.1) and the public corruption guidelines to a lesser degree (Chapter Two, Part C) provide some overlap in the elements of the offense and aggravating conduct. In addition, the enhancements required to be added by the directive in the Act would fit nicely into a guideline devoted solely to campaign finance offenses but could prove unwieldy if added to the fraud or public corruption guidelines, which cover so many other non-campaign finance offenses.

The proposed amendment provides for a base offense level of level [6–10]. The statutorily authorized maximum term of imprisonment for the conduct covered by the proposed guideline was raised by the Act from one year for all such offenses to two years for some offenses and five years for others. The base offense level is set at level [6–10] in recognition of the relative similarity of these offenses to fraud offenses covered by § 2B1.1 and public corruption offenses covered by Chapter Two, Part C. A base offense level of level [6–10] both insures proportionality with relatively similar offenses and permits various sentencing enhancements directed to be added by the Act to operate well.

The proposed amendment also creates a number of specific offense characteristics in response to the directive in section 314(b) of the Act. First, the directive requires the Commission to provide an enhancement if the offense involved a large aggregate amount of illegal contributions, donations, or expenditures and to provide an enhancement for a large number of illegal transactions. These two directives are fundamentally interrelated because the amount of the illegal contributions necessarily tends to increase as the number of illegal transactions increases. Because of the interrelatedness of these two directives, one option is to address these two considerations by providing a specific offense characteristic, at subsection (b)(1), that uses the fraud loss table in § 2B1.1 to incrementally increase the offense level according to the dollar amount of the illegal transactions. This approach would foster proportionality with related guidelines, notably the fraud guideline and the public corruption guidelines (which also reference the fraud loss table), and would provide incremental, rather than a flat, punishment according to the dollar amount involved in the offense.

The proposed amendment provides commentary to explain that ''illegal transactions'' include only those amounts that exceed the amount a person may legitimately contribute, solicit, or expend. The proposed amendment also provides references in the definition to the FECA's definitions of ''contribution'' and ''expenditure''.

Another option, provided in the proposed amendment, is to provide enhancements for both the number of illegal transactions and the dollar amount of the transactions. A separate enhancement for the number of illegal transactions takes into account the aspect of sophistication and planning attendant to multiple violations.

Second, the proposed amendment provides an enhancement if the offense involved a contribution, donation, or expenditure from a foreign source. In implementing this enhancement, the proposed amendment adopts the expansive definition of ''foreign national'' provided in section 319 of the FECA, and provides for a greater enhancement if the defendant knew that the source of the funds was a foreign government.

Third, the proposed amendment provides an enhancement if the offense involved a donation, contribution, or expenditure of governmental funds. The proposed amendment defines ''governmental funds'' to mean any Federal, State, or local funds. It is anticipated that this enhancement will apply in situations such as using governmental funds awarded in a contract to make a donation or contribution. The FECA itself addresses this type of situation but in very few places. For example, section 317 of the FECA, 2 U.S.C. § 441c, prohibits any person who enters into a contract with the United States for the rendition of services, the provision of materials, supplies, or equipment, or the selling of any land or property to the United States, if the payment from the United States is to be made in whole or in part from funds appropriated from Congress and before completion of or negotiation for the contract, to make or solicit a contribution of money or anything of value to a political party, committee, or candidate for public office or to any person for a political purpose. (This provision does not prohibit, however, the establishment of a segregated account to be used for political purposes.) The concern behind this provision of the FECA, therefore, is to prevent the use of Federal funds for political purposes. The same concern pertains to State and local funds as well.

Fourth, the proposed amendment provides a number of options for responding to the directive to provide an enhancement for cases involving an intent to achieve a benefit from the Federal government. One option is to incorporate this factor into the base offense level. Examination of available Commission data reveals that this factor is present in the majority of illegal campaign finance cases and thus lies within the heartland of these cases. Another option presented in the proposed amendment defines this factor as the intent to influence a Federal public official to perform an official act in return for the contribution, donation, or expenditure. A third option is also presented that limits the intent to achieve a Federal benefit to the intent to achieve a financial benefit.

The amendment also proposes to add an enhancement if the contribution, donation, or expenditure was obtained through intimidation, threat of harm, including pecuniary harm, or coercion.

The proposed amendment also amends the guideline on fines for individual defendants, § 5E1.2, to set forth the fine provisions unique to FECA and to provide two upward departure provisions related to certain FECA fines. This part of the amendment also provides that the defendant's participation in a conciliation agreement with the Federal Election Commission pursuant to section 309 of the FECA may be a potentially legitimate factor for the court to consider in evaluating where to sentence an offender within the presumptive fine guideline range. An issue for comment is provided regarding whether, in the alternative, a downward adjustment should apply in cases involving conciliation agreements, or alternatively, whether the Commission should discourage downward departures in such cases.

The proposed amendment provides commentary that counts under this proposed guideline are groupable under subsection (d) of § 3D1.2 (Groups of Closely Related Counts). Finally, the

Statutory Index is amended to incorporate these offenses.

Proposed Amendment

Chapter Two, Part C is amended in the heading by adding at the end ''AND VIOLATIONS OF FEDERAL ELECTION CAMPAIGN LAWS''.

Chapter Two, Part C is amended by striking the introductory commentary in its entirety.

Chapter Two, Part C is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: [6][7][8][9][10]

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions (i) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (ii) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved a contribution, donation, or expenditure, or an express or implied promise to make a contribution, donation, or expenditure—

(A) by a foreign national, increase by [2][4] levels; or

(B) by a foreign government, and the defendant knew that the source of the contribution, donation, or expenditure was a foreign government, increase by [4][8] levels.

(3) If the offense involved a contribution, donation, or expenditure of governmental funds, increase by [2][4] levels.

(4) If the offense involved an intent [Option One: to influence a Federal public official to perform an official act][Option Two: to obtain a financial Federal benefit] in return for the contribution, donation, or expenditure, increase by [2][4] levels.

[(5) If the offense involved more than five illegal transactions in a 12-month period, increase as follows:

Number of illegal transactions	Increase in level
(A) 6–15	add [1]
(B) 16–30	add [2]
(C) 31 or more	add [3].]

(6) If the offense involved a donation or contribution obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by [2] [4] levels.

(c) Cross Reference

(1) If the offense involved the fraudulent misrepresentation of authority to speak or otherwise act for a candidate, political party, or employee or agent thereof for the purpose of soliciting a donation or contribution, apply § 2B1.1 (Theft, Fraud, and Property Destruction), if the resulting offense level is greater than the offense level determined under this guideline.

Commentary

Statutory Provisions: 2 U.S.C. §§ 437g(d)(1), 439a, 441a, 441a–1, 441b, 441c, 441d, 441e, 441f, 441g, 441h(a), 441i, 441k; 18 U.S.C. § 607. For additional provision(s), see Statutory Index (Appendix A).

Application Notes

1. Definitions.—For purposes of this guideline:

''Foreign government'' means the government of a foreign country, regardless of whether the United States formally has recognized that country.

''Foreign national'' has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441e(b)).

''Governmental funds'' means money, assets, or property of a Federal, State, or local government[, including a governmental branch, subdivision, department, agency, or other component.]

''Illegal transaction'' means (A) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, solicitation, or expenditure that may be made under the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq*; and (B) in the case of a violation of 18 U.S.C. § 607, any solicitation or receipt of money or anything of value under that section. The terms 'contribution' and 'expenditure' have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431(8) and (9)), respectively.

2. Application of Abuse of Position of Trust Adjustment.—If the defendant is an elected official, a candidate for elected office, or acting on behalf of, or employed by, an elected official or candidate for elected office, an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.]

3. Multiple Counts.—For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving offenses covered by this guideline are grouped together under subsection (d) of § 3D1.2 (Groups of Closely Related Counts).

4. Departure Provisions.—In a case in which the value of the illegal transactions does not adequately reflect the seriousness of the offense, an upward departure may be warranted. For example, a relatively small contribution in violation of the Federal Election Campaign Act of 1971 may be made in exchange for favorable consideration in the award of a substantial Federal government contract. Depending on the facts of such a case, an upward departure may be warranted.

In a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.

Background: This guideline covers violations of the Federal Election Campaign Act of 1971 and related federal election laws, such as 18 U.S.C. § 607.''.

Section 3D1.2(d) is amended by inserting '', 2C1.8'' after ''2C1.7''.

The Commentary to § 5E1.2 captioned ''Application Notes'' is amended in Note 4 by adding at the end the following:

''[If the count of conviction involves a violation of the Federal Election Campaign Act under 2 U.S.C. § 437g(d)(1)(A), an upward departure to the maximum fine permitted under 18 U.S.C. § 3571 may be warranted. If the count of conviction involves a violation of the Federal Election Campaign Act under 2 U.S.C. § 441f punishable under 2 U.S.C. § 437g(d)(1)(D), an upward departure to the maximum fine permitted under that subsection may be warranted.]''.

The Commentary to § 5E1.2 captioned ''Application Notes'' is amended in the second sentence of Note 5 by striking ''and'' after ''Control Act;'' and by inserting before the period at the end the following:

''and 2 U.S.C. § 437g(d)(1)(D), which authorizes, for violations of the Federal Election Campaign Act under 2 U.S.C. § 441f, a fine up to the greater of $50,000 or 1,000 percent of the amount of the violation, and which requires, in the case of such a violation, a minimum fine of not less than 300 percent of the amount of the violation.

There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309

of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. The existence of a conciliation agreement between the defendant and Federal Election Commission may be an appropriate factor in determining at what point within the applicable fine guideline range to sentence the defendant.''.

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. § 6 the following new lines:

''2 U.S.C. § 437g(d)(1) 2C1.8
2 U.S.C. § 439a 2C1.8
2 U.S.C. § 441a 2C1.8
2 U.S.C. § 441a–1 2C1.8
2 U.S.C. § 441b 2C1.8
2 U.S.C. § 441c 2C1.8
2 U.S.C. § 441d 2C1.8
2 U.S.C. § 441e 2C1.8
2 U.S.C. § 441f 2C1.8
2 U.S.C. § 441g 2C1.8
2 U.S.C. § 441h(a) 2C1.8
2 U.S.C. § 441i 2C1.8
2 U.S.C. § 441k 2C1.8''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 597 the following new lines:

''18 U.S.C. § 607 2C1.8''.

Issues for Comment: There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. For such cases, the proposed amendment provides that such an agreement may be an appropriate factor in determining the amount of fine that might be imposed. The Commission requests comment regarding whether the existence of such a conciliation agreement between the defendant and Federal Election Commission should be the basis for a downward adjustment under the proposed guideline (and if so, what should the extent of the adjustment be), or, alternatively, should the Commission discourage downward departures in cases involving conciliation agreements so as to limit the effect such an agreement might have on the criminal penalties imposed?

The Commission also requests comment regarding whether, in contrast to proposed Application Note 2, application of the abuse of position of trust adjustment in § 3B1.3 should be precluded for cases under the proposed guideline.

[FR Doc. 02–30088 Filed 11–26–02; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice 4193]

Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Thursday, December 12, 2002, in Room 600, 301 4th St., SW., Washington, DC from 8:30 a.m. to 11 a.m.

The Commission, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will have an organizational meeting as well as discuss potential areas of examination for the remainder of the Commissioners' terms of office.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, DC and Maria Elena Torano of Florida.

For more information, please contact Matt Lauer at (202) 619–4457.

Dated: November 20, 2002.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 02–30114 Filed 11–26–02; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Cancellation of Meeting of the Industry Sector Advisory Committee on Textiles and Apparel (ISAC–15)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting cancellation.

SUMMARY: A notice was published in the **Federal Register** dated November 21, 2002, Volume number 67, Notice 225, page 70289, announcing a meeting of the Industry Sector Advisory Committee on Textiles and Apparel (ISAC–15), scheduled for December 10, 2002, from 10 a.m. to 12 p.m. The meeting was to be open to the public from 10 a.m. to 12 p.m. However, the meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Maria E'Andrear, of the Department of Commerce, (202) 482–4792.

Christopher A. Padilla,

Assistant U.S. Trade Representative, for Intergovernmental Affairs and Public Liaison.

[FR Doc. 02–30056 Filed 11–26–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Pedestal Actuators From the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed measure; request for comments.

SUMMARY: The United States International Trade Commission (ITC) has determined, pursuant to section 421(b)(1) of the Trade Act of 1974, as amended (the Trade Act)(19 U.S.C. 2451(b)(1)), that pedestal actuators [1] from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. Pursuant to section 421(h)(1) of the Trade Act, the United States Trade Representative (USTR) is publishing notice of proposed restrictions with respect to imports of pedestal actuators from China. USTR invites domestic producers, importers, exporters, and other interested parties to submit their views and evidence on the

[1] For purposes of the ITC investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The product includes any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the Harmonized Tariff System of the United States. They are primarily used in mobility scooters and electric wheelchairs.

appropriateness of the proposed restrictions and whether they would be in the public interest. USTR also invites interested parties to participate in a public hearing (if requested).

DATES: Requests for USTR to hold a public hearing are due by December 9, 2002. Written comments and requests to testify at any public hearing are due by December 11, 2002. If a request for USTR to hold a public hearing is received, the hearing will be held on December 18, 2002.

ADDRESSES: *Submissions by electronic mail: FR0055@ustr.gov.*

Submissions by facsimile: Sandy McKinzy, USTR, at (202) 395–9672.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and holding of a public hearing, contact Sandy McKinzy, USTR, telephone (202) 395–9483, facsimile (202) 395–9672. Other questions should be addressed to Terrence J. McCartin, Office of North Asian Affairs, USTR, telephone (202) 395–3900, or David L. Weller, Office of General Counsel, USTR, telephone (202) 395–3581.

SUPPLEMENTARY INFORMATION:

1. The ITC Investigation and Section 421

Following receipt of a petition filed on August 19, 2002, on behalf of Motion Systems Corporation, the ITC instituted investigation No. TA–421–1, Pedestal Actuators From China, under section 421 of the Trade Act (19 U.S.C. 2451) to determine whether pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The ITC made an affirmative determination on October 18, 2002, and transmitted a report on its determination, as well as its remedy proposals, to USTR on November 7, 2002. The views of the ITC, including its remedy proposals, are available on the ITC's Web site (*http://www.usitc.gov/7ops/chinasafeguard.htm*) and are contained in USITC Publication 3557 (November 2002), entitled ''Pedestal Actuators from China: Investigation No. TA–421–1''. A copy of that publication, which also includes the ITC staff report, can be obtained from the ITC by faxing a request to (202) 205–2104 or calling (202) 205–1809.

Following an affirmative determination by the ITC, and pursuant to Section 421(h) of the Trade Act, USTR is required to make a recommendation to the President concerning what action, if any, to take to remedy the market disruption. Within 15 days after receipt of USTR's recommendation, the President is required to provide import relief unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States. (Section 421(k)) Prior to making a recommendation, USTR is required to publish notice of any proposed measures and of the opportunity to comment.

2. Proposed Measure and Opportunity for Comment

The ITC recommended that the President impose a quantitative restriction for a three-year period on imports of pedestal actuators from China, in the amount of 5,626 units in the first year; 6,470 units in the second year; and 7,440 units in the third year. (67 FR 69557) USTR proposes this remedy for further consideration by domestic producers, importers, exporters, and other interested parties, and invites any of these parties to submit their views and evidence on the appropriateness of the proposed remedy and whether it would be in the public interest. In addition, USTR invites comments on other possible actions, including: imposition of a quota on imports of pedestal actuators from China, with a quantity and/or duration different from the ITC recommendation; imposition of a tariff-rate quota on imports of pedestal actuators from China; increased duties on imports of pedestal actuators from China; an import monitoring mechanism; or no import relief (pursuant to a determination under Section 421(k) of the Trade Act regarding the national economic interest or national security). In commenting on possible actions, interested parties are requested to address: (i) The short- and long-term effects that implementation of the proposed action is likely to have on the domestic pedestal actuator industry, on other domestic industries (including the mobility scooter industry), and on downstream consumers, and (ii) the short- and long-term effects that not taking the proposed action is likely to have on the domestic pedestal actuator industry, its workers, and on other domestic industries or communities.

An interested party may request that USTR hold a public hearing, which request must be received by December 9, 2002. Written comments, as well as requests to testify at any public hearing, must be received by December 11, 2002, and should be submitted in accordance with the instructions below. Parties that have submitted comments and/or requested to testify at any public hearing will be informed if a hearing is to be held. In addition, information on any public hearing may be obtained by contacting Sandy McKinzy at (202) 395–9483. If a public hearing is requested, it will be held on December 18, 2002, at 10 a.m. in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: ''Pedestal Actuators'' followed by (as appropriate) ''Written Comments'', ''Request for Public Hearing'', or ''Request to Testify''. Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public

documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

Wendy S. Cutler,

Assistant United States Trade Representative, Office of North Asian Affairs.

[FR Doc. 02–30307 Filed 11–25–02; 2:46 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed

Aviation Proceedings, Agreements filed during the week ending November 15, 2002. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13821.

Date Filed: November 13, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0595 dated 12 November 2002, Mail Vote 251—Resolution 010g, TC3 between Japan/Korea and South East Asia, Special Passenger Amending Resolution between Korea, (Rep. of) and China, (excluding Hong Kong SAR and Macao SAR), Intended effective date: 26 December 2002.

Docket Number: OST–2002–13822.

Date Filed: November 13, 2002.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 246, PTC23 ME–TC3 0155 dated 8 October 2002, TC23/TC123 Middle East-South East Asia Resolutions r1–r16, PTC23 ME–TC3 0159 dated 5 November 2002 (Affirmative), Minutes—PTC23 ME–TC3 0157 dated 15 October 2001, Tables—PTC23 ME–TC3 Fares 0064 dated 5 November 2002, Intended effective date: 1 April 2003.

Docket Number: OST–2002–13826.

Date Filed: November 13, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SWP 0071 dated 5 November 2002, TC23/TC123 Europe-South West Pacific Resolutions r1–r17, Minutes—PTC23 EUR–SWP 0072 dated 5 November 2002, Tables—PTC23 EUR–SWP FARES 0036 dated 5 November 2002, Intended effective date: 1 April 2003.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–30106 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending November 15, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3419.

Date Filed: November 13, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 2002.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. sections 41102 and 41108 and subpart B, requesting renewal of its certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail between the terminal point Atlanta, Georgia and the terminal point Tokyo, Japan.

Docket Number: OST–1998–3419.

Date Filed: November 13, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 2002.

Description: Application of Continental, Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting renewal of its Route 753 certificate authorizing Continental to provide scheduled air transportation of persons, property, and mail between certain points in the United States and Tokyo and Osaka, Japan, as well as beyond Japan to Seoul, Korea, Singapore and Bangkok, Thailand.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–30107 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 196X)]

Union Pacific Railroad Company—Abandonment Exemption—in Los Angeles County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon the Lakewood Industrial Lead, a 0.85-mile rail line extending from milepost 16.50 near Cover Street, in Lakewood, to milepost 17.35 at the end of the line, south of Wardlow Street, in Long Beach, in Los Angeles County, CA. The line traverses United States Postal Service Zip Codes 90712 and 90807.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line has not been used as an overhead route for the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 28, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve

environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 9, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 17, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 3, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 27, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *''www.stb.dot.gov.''*

Decided: November 19, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29877 Filed 11–26–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning forms ''Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.''

DATES: Written comments should be received on or before January 27, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Karol Forsberg, Director, Electronic Banking Services Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6952.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(20(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.

OMB Number: 1510–0067

Form Number: FMS 5902; FMS 5903.

Abstract: These forms are used to give authority to financial institutions to become a depositary of the Federal Government. The also execute an agreement from the financial institutions that are authorized to pledge collateral to secure public funds with Federal Reserve Banks or their designees.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 15 (2 forms each).

Estimated Time Per Respondent: 30 minutes (15 minutes each form).

Estimated Total Annual Burden Hours: 7.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility,and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Bettsy Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 02–30016 Filed 11–26–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Research and Strategic Planning for Limited English Proficient (LEP) Hispanic Taxpayers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Research and Strategic Planning For Limited English Proficient (LEP) Hispanic Taxpayers.

DATES: Written comments should be received on or before January 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Research and Strategic Planning For Limited English Proficient (LEP) Hispanic Taxpayers.

OMB Number: To be assigned later.

Abstract: Executive Order 13166 requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access consistent with the fundamental mission of the agency. In addition, the IRS Restructuring and Reform Act of 1998 requires the IRS to report to Congress annually on its progress in eliminating barriers to e-filing. The purpose of these focus groups, ethnographies, one-on-one interviews, and segmentation study is to understand the cultural nuances and perceptions of taxes and the IRS and needs among Hispanics so that the IRS can provide better services and outreach to this growing segment of the U.S. population. These studies will not only help identify barriers to e-filing, but will also provide the IRS with information to be used in marketing and communication efforts related to reaching Hispanic in a way that is more impactful and relevant. The efforts resulting from the studies will help the IRS build a more trusting relationship while educating LEP Hispanics on how to properly fill out their tax forms encourage electronic filing.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 1,712.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 1,440.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 22, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–30144 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
November 27, 2002

Part II

Department of Defense

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Sandy Hook Bay, Naval Weapons Station EARLE, New Jersey; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Sandy Hook Bay, Naval Weapons Station EARLE, New Jersey

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend regulations to establish a restricted area in the vicinity of Naval Weapons Station EARLE (EARLE) Piers and Terminal Channel, Sandy Hook Bay, New Jersey. These regulations will enable the U.S. Navy to enhance safety and security around active military vessels moored at the facility and partly restrict travel in the area. These regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

DATES: Written comments must be submitted on or before December 27, 2002.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Richard L. Tomer, U.S. Army Corps of Engineers, New York District, Regulatory Branch, at (212) 264–3996.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by establishing a restricted area at § 334.102. The public currently has restricted access near the facility and units assigned there due to the existence of a ''Security Zone'' previously established by the U.S. Coast Guard which is identified at 33 CFR 165.130. It should be noted that the restricted area represents an expansion of the Security Zone by an additional 295 yards to the west. This expansion would allow the maintenance of a 750-yard wide perimeter around the pier complex. To better protect authorized vessels transiting the Terminal Channel and mooring at the EARLE Piers from acts of terrorism, sabotage, or other subversive acts and incidences of a similar nature during explosives loading and unloading, the Commander, Naval Weapons Station EARLE, has requested that the U.S. Army Corps of Engineers establish a Restricted Area to be enforced at all times. This will enable the U.S. Navy to restrict vessel traffic in a portion of Sandy Hook Bay.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The U.S. Army Corps of Engineers expects that the establishment of this restricted area would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, it is certified that this proposal if adopted, will not have a significant economic impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act

An Environmental Assessment (EA) has been prepared for this action. The U.S. Army Corps of Engineers has concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not be a major federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at **FOR FURTHER INFORMATION CONTACT** above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104.4, 109 Statute 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small Governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.102 is added to read as follows:

§ 334.102 Sandy Hook Bay, Naval Weapons Station EARLE (EARLE) Piers and Terminal Channel, Middletown, New Jersey, Restricted Area.

(a) *The area:* An area bounded by the following points, beginning at: latitude 40° 25′55.6″N, longitude 074° 04′31.4″W; thence to latitude 40° 26′54.0″N, longitude 074° 03′53.0″W; thence to latitude 40° 26′58.0″N, longitude 074° 04′03.0″W; thence to latitude 40° 27′56.0″N, longitude 074° 03′24.0″W; thence to latitude 40° 27′41.7″N, longitude 074° 02′45.0″W; thence to latitude 40° 27′23.5″N, longitude 074° 02′16.6″W; thence to latitude 40° 28′21.2″N, longitude 074° 01′56.0″W; thence to latitude 40° 28′07.9″N, longitude 074° 02′18.6″W; thence to latitude 40° 27′39.3″N, longitude 074° 02′38.3″W; thence to latitude 40° 27′28.5″N, longitude 074° 02′10.4″W; thence to latitude 40° 26′29.5″N, longitude 074° 02′51.2″W; thence to latitude 40° 26′31.4″N, longitude 074° 02′55.4″W; thence to latitude 40° 25′27.1″N, longitude 074° 03′39.7″W longitude; thence along the shoreline to the point of origin (NAD 83).

(b) *The regulation.* (1) Except as set forth in paragraph (b)(2) of this section, all persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and other state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer, Naval Weapons Station EARLE, USN, New Jersey, or his/her authorized representative; and (2) Vessels are authorized to cross the

Terminal Channel provided that there are no naval vessels then transiting the channel (bounded by latitude 40° 27′41.7″N, longitude 074° 02′45.0″W; thence to latitude 40° 27′23.5″N, longitude 074° 02′16.6″W; thence to latitude 40° 28′21.2″N, longitude 074° 01′56.0″W; thence to latitude 40° 28′07.9″N, longitude 074° 02′18.6″W; thence to latitude 40° 27′39.3″N, longitude 074° 02′38.3″W).

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Naval Weapons Station EARLE, New Jersey and/or other persons or agencies as he/she may designate, or any other person authorized by the District Engineer, New York District, U.S. Army Corps of Engineers.

Dated: October 31, 2002.

Michael G. Ensch,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–30028 Filed 11–26–02; 8:45 am]

BILLING CODE 3710–92–P

Federal Register

Wednesday,
November 27, 2002

Part III

Securities and Exchange Commission

17 CFR Part 210
Retention of Records Relevant to Audits and Reviews; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–8151; 34–46869; IC–25830; File No. S7–46–02]

RIN 3235–AI74

Retention of Records Relevant to Audits and Reviews

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by section 802 of the Sarbanes-Oxley Act of 2002, we are proposing rules requiring accounting firms to retain for five years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained would include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.

DATES: Comments should be received on or before December 27, 2002.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically to the following address: *rule-comments@sec.gov.* Please use only one method of delivery. All comment letters should refer to File No. S7–46–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Samuel L. Burke, Associate Chief Accountant, Robert E. Burns, Chief Counsel, or D. Douglas Alkema, Professional Accounting Fellow, at (202) 942–4400, Office of the Chief Accountant, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: We are proposing to add rule 2–06 to Regulation S–X.

I. Executive Summary

As mandated by section 802 of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'' or ''the Act''),[1] we are proposing to amend Regulation S–X to require accountants who audit or review an issuer's financial statements to retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. These records would include workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor.

II. Discussion of Proposed Rule

Section 802 of the Sarbanes-Oxley Act[2] is intended to address the destruction or fabrication of evidence and the preservation of ''financial and audit records.''[3] We are directed under that section to promulgate rules related to the retention of records relevant to the audits and reviews of financial statements that issuers file with the Commission.

Section 802 states that the record retention requirements should apply to audits of issuers of securities to which section 10A(a) of the Securities Exchange Act of 1934 (''Exchange Act'') applies. The term ''issuer'' in this context is defined in section 10A(f) of the Exchange Act to include certain entities filing reports under that Act and entities that have filed and not withdrawn registration statements to sell securities under the Securities Act of 1933.[4] We also are proposing that the record retention requirements apply to any audit or review of the financial statements of any registered investment company.[5] We believe that it is

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[1] Pub. L. 107–204, 116 Stat. 745 (2002).

[2] Section 802 of the Sarbanes-Oxley Act, among other things, adds sections 1519 and 1520 to Chapter 73 of Title 18 of the United States Code. Section 1519 states, among other things, that anyone who knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence an investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under the bankruptcy code, or in relation to or contemplation of any such matter or case, may be fined, imprisoned for not more than 20 years, or both.

Section 1520(a)(1) specifies that: ''Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.'' Section 1520(a)(2) directs the Commission to promulgate, by January 26, 2003:

''* * * such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by an accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.''

Section 1520 also provides that any person who knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), may be fined, imprisoned for not more than 10 years, or both. It further provides that nothing in section 1520 shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

[3] Floor statement by Senator Leahy, 148 Cong. Rec. S7418 (July 26, 2002).

[4] Section 802 states that the record retention requirement applies to ''an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies.'' Section 10A(a) of the Securities Exchange Act of 1934 (''Exchange Act'') states, ''Each audit required pursuant to this title of the financial statements of an issuer by an independent public accountant shall include'' designated procedures. Section 10A(f), which has been added to the Exchange Act by section 205(d) of the Sarbanes-Oxley Act, states: ''As used in this section the term 'issuer' means an issuer (as defined in section 3 [of the Exchange Act]), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.'' Section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8), states that, with certain exceptions, an ''issuer'' is ''any person who issues or proposes to issue any security* * *.''

Neither section 802 nor the proposed rules exempt auditors of foreign issuers' financial statements. Accordingly, the retention requirements would apply to domestic and foreign accounting firms conducting audits or reviews of foreign issuers' financial statements.

Because investment advisers and broker-dealers are not necessarily issuers, audits of their financial statements required for regulatory purposes would not be subject to the proposed rules. In other words, only the audits of the financial statements of investment advisers and broker-dealers meeting the definition of ''issuer'' in section 10A(f), or that are registered investment companies, would be subject to the retention requirements in the proposed rules.

[5] *See* section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8.

important for these record retention requirements, like our other record retention requirements, to apply consistently with respect to all registered investment companies, regardless of whether they fall within the periodic reporting requirements of the Exchange Act.[6]

Documents To Be Retained and Time of Retention

Paragraph (a) of proposed rule 2–06 would identify the documents that must be retained and the time period for retaining those documents.[7] In both instances, we have followed the guidance in section 802.

The proposed rule would require that the auditor[8] retain workpapers and other documents that form the basis of the audit or review of an issuer's financial statements, and memoranda, correspondence, communications, other documents, and records (including electronic records) that meet two criteria. The two criteria are that the materials (1) are created, sent or received in connection with the audit or review, and (2) contain conclusions, opinions, analyses, or financial data related to the audit or review. The proposed rule, therefore, would require an auditor to retain any materials satisfying both criteria. Non-substantive materials that are not part of the workpapers, however, such as administrative records, and other documents that do not contain relevant financial data or the auditor's conclusions, opinions or analyses would not meet the second of these criteria and would not have to be retained.[9]

The period for retention of these materials is five years after the end of the fiscal period in which an accountant audits or reviews an issuer's financial statements,[10] which is the period prescribed by section 802.[11]

Section 103 of the Sarbanes-Oxley Act directs the Public Company Accounting Oversight Board (''the Board'') to require auditors to retain for seven years audit workpapers and other materials that support the auditor's conclusions in any audit report.[12] There may be fewer documents retained pursuant to section 103, which focuses more on workpapers that support the auditor's conclusions, than under section 802, which includes not only workpapers but also other documents that meet the criteria noted in this release. Many documents, however, may be covered by both retention requirements.

Workpapers Defined

Section 802 is intended to require the retention of more than what traditionally has been thought of as an auditor's ''workpapers.''[13] To clarify the distinction between workpapers and other materials that would be retained, paragraph (b) of the proposed rules would define the term ''workpapers.'' The legislative history to this section states that the term is to be used as it is ''widely understood'' by the Commission and by the accounting profession.[14] We believe that the term is understood to refer to the documents required to be retained by generally accepted auditing standards (''GAAS'').

GAAS does not use the specific term ''workpapers'' [15] but Statement on Auditing Standards No. 96, ''Audit Documentation,'' states, in part:

> The auditor should prepare and maintain audit documentation, the content of which should be designed to meet the circumstances of the particular audit engagement. Audit documentation is the principal record of the auditing procedures applied, evidence obtained, and conclusions reached by the auditor in the engagement.[16]

We have placed the body of this provision into paragraph (b) and stated that ''workpapers'' means ''documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board.'' [17] The proposed rule, therefore, recognizes that the Board, subject to Commission oversight, has the ability to review and change the nature and scope of the required documentation of procedures, evidence, and conclusions related to audits and reviews of financial statements.[18]

Differences of Opinion

SAS 96 states that audit documentation serves mainly to provide the principal support for the auditor's report and to aid the auditor in the conduct and supervision of the audit.[19] In order to ensure that the purposes of the Act are fulfilled, we have included in paragraph (c) of the proposed rules the specific requirement that the materials retained under paragraph (a) would include not only those that support an auditor's conclusions about the financial statements but also those materials that may ''cast doubt'' on

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[6] *Cf.* rules 31a–1 and 31a–2 under the Investment Company Act of 1940, 17 CFR 270.31a–1 and 31a–2 (record-keeping and record-retention requirements for registered investment companies).

[7] The Commission's proposals are not intended to pre-empt or supersede any other federal or state record retention requirements.

[8] Proposed rule 2–06 uses the term ''accountant,'' which is defined in rule 2–01(f)(1) of the Commission's auditor independence rules, 17 CFR 210.2–01(f)(1), to mean ''a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public or public accountant is affiliated.'' In a comparison release, the Commission is proposing to amend this definition to include the term ''registered public accounting firm.'' We would apply the definition in rule 2–01(f)(1) to proposed rule 2–06. Because the definition would continue to reference certified public accountants and public accountants, the Commission could make the proposed rules effective before accounting firms register with the Public Company Accounting Oversight Board.

[9] Senator Leahy stated on the Senate floor, ''Non-substantive materials, however, which are not relevant to the conclusions or opinions expressed (or not expressed), need not be included in such retention regulations.'' 148 Cong. Rec. S7419 (July 26, 2002).

[10] The retention period is not based on the fiscal period covered by the financial statements being audited or reviewed, but when the audit or review occurs. For example, if a company has a calendar year-end fiscal year, for an audit of year 2002 financial statements that concludes in February or March 2003, the records would be required to be retained until January 1, 2009.

[11] *See* Statement of Senator Leahy on the Senate floor: ''[I]t is intended that the SEC promulgate rules and regulations that require the retention of such substantive material * * * for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations.'' 148 Cong. Rec. S7419 (July 26, 2002).

[12] The Board is required under section 103(a)(2)(A)(i) of the Sarbanes-Oxley Act to adopt an auditing standard that requires accounting firms registered with the Board to ''* * * maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report.''

[13] Senator Leahy stated on the Senate floor that section 802 ''requires the SEC to promulgate reasonable and necessary regulations * * * regarding the retention of categories of electronic and non-electronic audit records, which contain opinions, conclusions, analysis or financial data, in addition to the actual work papers.'' 148 Cong. Rec. S7418 (July 26, 2002).

[14] Statement by Senator Leahy on the Senate floor, 148 Cong. Rec. S7418 (July 26, 2002).

[15] American Institute of Certified Public Accountants (''AICPA''), Statement on Auditing Standards No. (''SAS'') 96, ''Audit Documentation,'' at footnote 1, however, acknowledges that: ''*Audit Documentation* also may be referred to as *working papers*''; Codification of Statements on Auditing Standards (''AU'') § 339.

[16] SAS 96, at ¶ 1; AU § 339.01. This paragraph also states: ''The quality, type, and content of audit documentation are matters of the auditor's professional judgment.'' The proposed rule does not include this sentence, but instead notes that the Commission or the Board may reexamine these requirements in the auditing standards.

[17] Prior to the estblishment or adoption of auditing standards by the Board, ''workpapers'' would continue to mean the documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement as required by GAAS.

[18] *See* section 103(a) of the Sarbanes-Oxley Act.

[19] SAS 96, at ¶ 3; AU § 339.03

those conclusions.[20] Paragraph (c) is intended to ensure the preservation of those records that reflect differing professional judgments and views (both within the accounting firm and between the firm and the issuer) and how those differences were resolved. To better communicate what we intend by ''cast doubt'' on the auditor's conclusions, we have included in the proposed rule the example of documentation of differences of opinion concerning accounting and auditing issues.

The auditor in a variety of contexts may create materials related to differences of opinion. For example, SAS No. 22, ''Planning and Supervision,'' states in part:

> The auditor with final responsibility for the audit and assistants should be aware of the procedures to be followed when differences of opinion concerning accounting and auditing issues exist among firm personnel involved in the audit. Such procedures should enable an assistant to document his disagreement with the conclusions reached if, after appropriate consultation, he believes it necessary to disassociate himself from the resolution of the matter. In this situation, the basis for the final resolution should also be documented.[21]

An interpretation of this section issued by the AICPA's Auditing Standards Board emphasizes the professional obligation on each person involved in an audit engagement to bring his or her concerns to the attention of others in the firm and, as appropriate, to document those concerns. This interpretation states:

> Accordingly, each assistant has a professional responsibility to bring to the attention of appropriate individuals in the firm, disagreements or concerns the assistant might have with respect to accounting and auditing issues that he believes are of significance to the financial statements or auditor's report, however those disagreements or concerns may have arisen. In addition, each assistant should have a right to document his disagreement if he believes it is necessary to disassociate himself from the resolution of the matter.[22]

In addition, SAS 96 states that the documentation for an audit should include the findings or issues that in the auditor's judgment are significant, the actions taken to address them (including any additional evidence obtained), and the basis for the final conclusions reached.[23] For example, if a memorandum is prepared by a member of a large accounting firm's national office that is critical of the accounting used by an audit client, or of a position taken by the partner in charge of the audit of those financial statements, that memorandum should be retained.[24] Another example would be documentation related to an auditor's communications with an issuer's audit committee about alternative disclosures and accounting methods used by the issuer that are not the disclosures or accounting preferred by the auditor.[25]

We believe that retaining the materials created under SAS 22 and SAS 96, as well as other materials that might cast doubt on the conclusions reflected in the auditor's report, would be consistent with the letter and spirit of the Sarbanes-Oxley Act.

Request for Comment

- Are the ''workpapers'' and other documents that would be required to be retained under this proposed rule sufficiently described? If not, what changes should be made to provide for greater clarity? Are there alternative definitions that would better implement section 802?
- Would auditors have to implement significant changes to their retention policies or internal control processes and procedures, as well as system upgrades, to ensure compliance with the proposed rule? If so, what types of changes most likely would be required? How can we minimize any required changes consistent with section 802?
- Would auditors circumvent the proposed record retention requirements by, for example, replacing written communications with oral communications? If so, what additional measures should be taken?
- Section 103 of the Sarbanes-Oxley Act directs the Public Company Accounting Oversight Board to adopt an auditing standard that requires each registered public accounting firm to retain for a period of not less than seven years audit workpapers and other information that support the conclusions in the auditor's report. Should the retention period in the proposed rules be extended to seven years to coincide with the retention period in section 103? Why?
- Should the retention period be for some other appropriate period based on consideration of other factors, such as the utility of the records to investors, regulators or litigants, the cost of retaining the records, or the size of the accounting firm?
- Audits of the financial statements of many investment advisers and broker-dealers would not be subject to the proposed rules because they are not ''issuers'' of securities. Should the proposals be amended to apply the retention period to audits of the financial statements of these entities? Why?
- The proposed rules would incorporate the definition of ''issuer'' in new section 10A(f) of the Exchange Act? Should ''issuer'' be defined more broadly to include any issuer of securities with respect to which a registration statement or report is filed with the Commission? Why?
- Should there be a document retention requirement for issuers as well as auditors? If yes, what would be the scope and nature of that requirement? For example, should issuers be required to retain records that the auditor reviewed but did not include in the

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[20] Senator Leahy stated on the Senate floor: In light of the apparent massive document destruction by Andersen, and the company's apparently misleading document retention policy, even in light of its prior SEC violations, it is intended that the SEC promulgate rules and regulations that require the retention of such substantive material, including material that casts doubt on the views expressed in the audit or review, for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statue of limitations.

148 Cong. Rec. S7419 (July 26, 2002).

[21] SAS 22, ¶ 22 (as amended by SAS 47, 48 and 77); AU § 311.22. ''Assistants,'' in the context of the first sentence of the quoted paragraph, should be defined broadly and include other partners who are on the audit engagement team.

[22] ''Planning and Supervision: Auditing Interpretations of Section 311,'' AU § 9311.37. ''Assistants,'' in the context of this interpretation, should be defined broadly and include other partners who are on the audit engagement team.

[23] SAS 96, ¶ 9; AU § 339.09, which states: In addition, the auditor should document findings or issues that in his or her judgment are significant, actions taken to address them (including any additional evidence obtained), and the basis for the final conclusions reached.

See also, SAS 96, ¶ 6; AU § 339.06, which states: Audit documentation should be sufficient to (a) enable members of the engagement team with supervision and review responsibilities to understand the nature, timing, extent, and results of auditing procedures performed, and the evidence obtained; (b) indicate the engagement team member(s) who performed and reviewed the work; and (c) show that the accounting records agree or reconcile with the financial statements or other information being reported on.

[24] Such a memorandum might be prepared in connection with the consultation process that is part of an accounting firm's quality controls. *See, e.g.,* Section 103(a)(2)(B)(ii) of the Sarbanes-Oxley Act. Superseded drafts or auditor review notes that do not reflect a difference of opinion, however, would not have to be retained.

[25] Section 204 of the Sarbanes-Oxley Act adds section 10A(k) to the Exchange Act and requires auditors to report certain matters to audit committees, including: ''(a) all critical accounting policies and practices to be used, (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and (3) other material written communications between the registered public accounting firm and the management of the issuer, such as the management letter or schedule of unadjusted differences.''

audit workpapers? Should issuers be required to keep copies of all correspondence with the auditors and copies of documents provided to the auditors?

• Section 32(c) of the Investment Company Act of 1940 authorizes the Commission to adopt rules to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such periods as the Commission may prescribe, and to make these documents and papers available for inspection by the Commission and its staff. Should we use our authority under this section to extend proposed rule 2–06 by requiring that audit workpapers and other documents required to be retained with respect to the audit or review of investment company financial statements be made available for inspection by the Commission and its staff?

• The proposed rules would apply to foreign auditors. Are there statutes, rules or standards in foreign jurisdictions that govern the retention of records by foreign auditors that are different from and potentially conflict with the requirements of the proposed rules? If so, how is the foreign law incompatible with the specific provisions of the proposed rules?

• Does the ''cast doubt on the final conclusions reached by the auditor'' provision in the proposed rules adequately capture the scope of the retention requirements under the Sarbanes-Oxley Act? Should the scope be narrower or broader? Would a different test be more appropriate, such as ''significant differences in professional judgment,'' or ''differences of opinion on issues that are material to the issuer's financial statements or to the auditor's final conclusions regarding any audit or review'?

• Should the rules include other examples of materials that ''cast doubt'' on auditors' conclusions? If so, what examples should be included?

III. General Request for Comments

We invite any interested person wishing to submit written comments on the proposed rules to do so. We specifically request comments from investors, accounting firms and issuers. We solicit comment on each component of the proposal.

IV. Paperwork Reduction Act

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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. Compliance with the proposed requirements would be mandatory. The proposed rules would require that accounting firms retain certain records for five years. Retained information would be kept confidential unless or until made public during an enforcement, disciplinary or other legal or administrative proceeding.

The title for the collection of information is ''Regulation S–X—Record Retention.'' We are applying for a new OMB Control Number for this collection.

As mandated by section 802 of the Sarbanes-Oxley Act of 2002, we are proposing to amend Regulation S–X to require accountants who audit or review an issuer's financial statements to retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. The proposed rules do not require accounting firms to create any new records.

The records to be retained would include workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted and litigation brought under the securities laws.

We estimate that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered investment companies filing financial statements with the Commission.[26] Each firm currently is required to perform its audits and reviews in accordance with generally accepted auditing standards (''GAAS''), which require auditors to retain certain documentation of their work.[27] Accounting firms, therefore, currently make decisions about the retention of each record created during the audit or review. GAAS, however, currently does not require explicitly that auditors retain documents that may ''cast doubt'' on their opinions and GAAS does not set definite retention periods. As a result, the proposed rule might result in the retention of more records than currently required under GAAS, and might result in some accounting firms keeping those records for a longer period of time.

The Commission, through its experience in matters pertaining to accounting firms, believes that many accounting firms retain records of audits and reviews of the financial statements of current clients for five or more years. Once an issuer is no longer a client, some firms currently may dispose of those records before the expiration of the five-year period. It is important to note, however, that the proposed rules do not require the creation of any record, they require only that existing records be maintained for the prescribed time period. It also is important to note that decisions about the retention of records currently are made as a part of each audit or review.

We do not anticipate any significant increase in burden hours for accounting firms or issuers because the proposed rules do not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. The disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we do not anticipate that the incremental increase in storage costs for documents would be significant for any firm or for any single audit client. To cover all increases in burden hours,

[26] These estimates are based on information in Commission databases. The number of public companies includes those filing annual reports and those filing registration statements to conduct initial public offerings. The same auditors also audit the financial statements of approximately 5,587 investment companies.

[27] *See* American Institute of Certified Public Accountants (''AICPA''), Statement on Auditing Standards No. (''SAS'') 96, ''Audit Documentation'; Codification of Statements on Auditing Standards (''AU'') 339. GAAS does not specify a required retention period. The documents to be retained under SAS 96 include those indicating the auditing procedures applied, the evidence obtained during the audit, and the conclusions reached by the auditor in the engagement.

we estimate that, on average, the incremental burden on firms would be no more than one hour for each public company audit client, or approximately 15,000 hours.[28]

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (1) Evaluate whether the proposed collections of information are 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 Commission's estimates of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–46–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–46–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost—Benefit Analysis

The record retention requirements that we propose would implement a congressional mandate. We recognize that any implementation of the Sarbanes-Oxley Act likely will result in costs as well as benefits and will have an effect on the economy.

We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals. We request comments on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed rules.

A. Background

Under section 802 of the Sarbanes-Oxley Act, accountants who audit or review an issuer's financial statements must retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. The proposed rules would implement this provision and indicate the records to be retained, but they do not require accounting firms to create any new records.

The records to be retained would include workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted under the securities laws.

B. Potential Benefits of the Proposed Rules

The proposed rules would require that certain records relevant to the audit and review of an issuer's financial statements be retained for five years. To the extent that the proposals increase the availability of documents beyond current professional practices, the proposed rules may benefit investigations and litigation conducted by the Commission and others. Increased retention of these records may provide important evidence of financial reporting improprieties or deficiencies in the audit process.

One of the most important factors in the successful operation of our securities markets is the trust that investors have in the reliability of the information used to make voting and investment decisions. In addition to providing materials for investigations, the availability of the documents subject to the proposed rules might facilitate greater oversight of audits and improved audit quality, which, in turn, ultimately could increase investor confidence in the reliability of reported financial information.

C. Potential Costs of the Proposal

We estimate that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered investment companies filing financial statements with the Commission.[29] Each firm currently is required to perform its audits and reviews in accordance with generally accepted auditing standards (''GAAS''), which require auditors to retain certain documentation of their work.[30] Accounting firms, therefore, currently make decisions about the retention of each record created during the audit or review. GAAS, however, does not require explicitly that auditors retain documents that may ''cast doubt'' on their opinions and GAAS does not set definite retention periods. As a result, the proposed rule might result in the retention of more records than currently required under GAAS, and might result in some accounting firms keeping those records for a longer period of time.

The Commission, through its experience in matters pertaining to accounting firms, believes that many accounting firms retain records of audits and reviews of the financial statements of current clients for five or more years. Once an issuer is no longer a client, some firms currently may dispose of those records before the expiration of the proposed five-year period. It is important to note, however, that the proposed rules do not require the creation of any record; they require only that existing records be maintained for the prescribed time period. It also is important to note that decisions about the retention of records currently are made as a part of each audit or review.

[28] This burden accounts for incidental reading and implementation of the proposed rule. Fifteen thousand burden hours should be sufficient to cover the audits and reviews of not only public companies but also registered investment companies. Because of the nature and scope of the audits of investment companies, there would be an even smaller and insignificant incremental burden imposed on those audits than on the audits of public companies.

[29] These estimates are based on information in Commission databases. The number of public companies includes those filing annual reports and those filing to conduct an initial public offering. The same auditors also audit the financial statements of approximately 5,587 investment companies.

[30] *See* American Institute of Certified Public Accountants (''AICPA''), Statement on Auditing Standards No. (''SAS'') 96, ''Audit Documentation'; Codification of Statements on Auditing Standards (''AU'') 339.

We do not anticipate any significant increase in costs for accounting firms or issuers because the proposed rules do not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. The disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we do not anticipate that the incremental increase in storage costs for documents would be significant for any firm or for any single audit client.

For purposes of the Paperwork Reduction Act, we estimated the total burden to be 15,000 burden hours. Assuming an accounting firm's average cost of in-house staff is $110 per hour,[31] the total cost would be $1,650,000.

D. Request for Comments

As noted above, we request comments on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed amendments. We request comments, including supporting data, on the magnitude of the costs and benefits mentioned in this section.

- Are there any other costs or benefits that we have not identified? For example, would the cost of audits increase? Please describe any such costs and provide relevant data.
- Are there additional costs related to the proposed rules? If there are, please identify them and provide supporting data.
- Are there measures that the Commission should take, such as encouraging accounting firms to keep more records electronically, to lower storage costs?
- We request comments on the reasonableness of the burden hours, cost estimates, and underlying assumptions related to the proposed disclosures.

[31] We estimate that associates would perform three-fourths of the required work, with a partner performing about one-fourth of the work. We also estimate that, on average, an associate's annual salary would be approximately $125,000 and a partner's annual compensation would be approximately $500,000. Based on these amounts, the in-house cost of an associate's time would be approximately $65 per hour, and the in-house cost of a partner's time would be approximately $250 per hour. The average hourly rate, therefore, would be about $110 per hour ([(3 × $65) + $250] / 4).

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[32] the Commission is requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commentators should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act[33] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. In addition, Section 2(b) of the Securities Act of 1933,[34] Section 3(f) of the Exchange Act,[35] and Section 2(c) of the Investment Company Act[36] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

We believe that the proposed rules would not have an adverse impact on competition. To the extent the proposed rules would increase the quality of audits and the efficiency of enforcement and disciplinary proceedings, there might be an increase in investor confidence in the efficacy of the audit process and the efficiency of the securities markets.

We request comment on the anti-competitive effects of the proposals.

The possible effects of our rule proposals on efficiency, competition, and capital formation are difficult to quantify. We request comment on these matters in connection with our proposed rules.

VII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Regulation S–X. The proposals would require the retention of certain audit and review documentation.

A. Reasons for the Proposed Action

The proposed rules generally carry out a congressional mandate. The proposed rules, in general, would prohibit destruction for five years of certain records related to the audit or review of an issuer's financial statements.[37] The proposed rules would not require accounting firms to create any new records.

B. Objectives

Our objectives are to implement section 802 of the Sarbanes-Oxley Act in order to increase investor confidence in the audit process and in the reliability of reported financial information. This would be accomplished by defining the records to be retained related to an audit or review of an issuer's financial statements. Having these records available should enhance oversight of corporate reporting and of the performance of auditors and facilitate the enforcement of the securities laws.

C. Legal Basis

We are proposing amendments to Regulation S–X under the authority set forth in sections 3(a) and 802 of the Sarbanes-Oxley Act, and Schedule A and Sections 7, 8, 10, 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, and Sections 8, 30, 31, 32(c) and 38 of the Investment Company Act of 1940.

D. Small Entities Subject to the Proposed Rules

Our rules do not define ''small business'' or ''small organization'' for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[38] We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that practice before the Commission. We request comment on the number of accounting firms with revenue under $6 million that audit issuers' financial statements.

E. Reporting, Recordkeeping and Other Compliance Requirements

Under the proposed rules,[39] accountants who audit or review an issuer's financial statements must retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. These records would include workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other

[32] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[33] 15 U.S.C. 78w(a)(2).

[34] 15 U.S.C. 77b(b).

[35] 15 U.S.C. 78c(f).

[36] 15 U.S.C. 80a–2(c).

[37] *See* section 802 of the Sarbanes-Oxley Act.

[38] 13 CFR 121.201.

[39] *See* section 802 of the Sarbanes-Oxley Act of 2002.

documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted under the securities laws.

The Commission, through its experience in matters pertaining to accounting firms, believes that many accounting firms retain records of audits and reviews of the financial statements of current clients for longer periods of time than for former clients.

We do not anticipate any significant increase in costs for small accounting firms or small issuers because the proposed rules do not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. The disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we do not anticipate that the incremental increase in storage costs for documents would be significant for any firm or for any single audit client.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission is not aware of any current rules that duplicate, overlap, or conflict with the proposed rules. The proposed rules contemplate that the Board will define ''workpapers,'' as required in section 103 of the Sarbanes-Oxley Act. Our proposal is designed to not conflict with the Board's rule.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Sarbanes-Oxley Act provides the basis for the requirements and timetables for the proposed record retention rules. The proposed rules are designed to require the retention of those records necessary for oversight of the audit process, to enhance the reliability and credibility of financial statements for all public companies, and to facilitate enforcement of the securities laws.

We considered not applying the proposals to small accounting firms. We believe, however, that investors would benefit if accountants subject to the proposed record retention rules, regardless of their size, audit all companies.

Currently, we do not believe that it is feasible to further clarify, consolidate, or simplify the proposed rules for small entities. We invite comments, however, on whether the requirements could be simplified or clarified for small accounting firms.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comments regarding the number of small entities that may be affected by the proposed rules, and the existence or nature of the potential impact on those small entities. We also seek comments on how to quantify the number of small accounting firms that would be affected by the proposals, how to quantify the impact of the proposed rules on those firms, and how to lower the cost of record retention for small accounting firms.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

VIII. Codification Update

The Commission proposes to amend the ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982):

By amending section 602 to add a new discussion at the end of that section under the Financial Reporting Release Number (FR–XX) assigned to the adopting release and including the text in the adopting release that discusses the final rules, which, if the proposals are adopted, would be substantially similar to Section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

IX. Statutory Bases and Text of Proposed Amendments

We are proposing amendments to Regulation S–X under the authority set forth in sections 3(a) and 802 of the Sarbanes-Oxley Act, and Schedule A and Sections 7, 8, 10, 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, 31, 32 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 210

Accountants, Accounting.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), unless otherwise noted.

2. By adding § 210.2–06 to read as follows:

§ 210.2–06 Retention of audit and review records.

(a) For a period of five years after the end of the fiscal period in which an accountant concludes an audit or review of an issuer's financial statements to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, or of the financial statements of any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), the accountant shall retain workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which:

(1) Are created, sent or received in connection with the audit or review, and

(2) Contain conclusions, opinions, analyses, or financial data related to the audit or review.

(b) For the purposes of paragraph (a) of this section, ''workpapers'' means documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board.

(c) Materials described in paragraph (a) of this section shall be retained whether the conclusions, opinions, analyses, or financial data in the materials support or cast doubt on the final conclusions reached by the auditor. For example, such materials shall include documentation of differences of opinion concerning accounting and auditing issues.

(d) For the purposes of paragraph (a) of this section, the term ''issuer'' means an issuer as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)).

Dated: November 21, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30036 Filed 11–26–02; 8:45 am]

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Federal Register

Wednesday,
November 27, 2002

Part IV

Department of Agriculture

Forest Service

Extension of Currently Approved Information Collection for Special Use Administration; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Currently Approved Information Collection for Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection for the administration of special uses on National Forest System lands. The information helps the Forest Service ensure that the authorized use of Federal land is in the public interest and compatible with the mission of the agency. Respondents will include individuals, groups, organizations, businesses, corporations, and Federal, State, and local governments.

DATES: Comments must be received in writing on or before January 27, 2003. Comments received after that date will be considered to the extent practical.

ADDRESSES: All comments should be addressed to: Director, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124 or e-mail *mhearst@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Melissa Hearst, Lands Staff, at (202) 205–1196.

SUPPLEMENTARY INFORMATION:

Background

The forms described in this request for extension of an information collection are used by the agency to issue and administer special use permits to use or occupy National Forest System lands. The data collected will be evaluated by the Forest Service to ensure that the authorized use of Federal land is in the public interest and is compatible with the mission of the agency. The data will help identify environmental and social impacts of special uses and will ascertain whether the agency is receiving a fair market rental fee for the use of National Forest System lands. The data will be collected through application forms and stipulations in operating plans and special use authorizations. There are four general categories of information requests: (1) Initial and amended application process; (2) annual financial information; (3) preparing and updating operation and maintenance plans; and (4) compliance reports and information updates.

Description of Information Collection

1. Application Process

The following describes the information collections required for the application process:

a. *Title:* Form SF–299, Application for Transportation and Utility Systems and Facilities on Federal Lands.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate the applicant's technical and financial capability, nature of the proposed operations, and anticipated environmental impacts and proposed mitigation of those impacts. This form is used for the majority of nonrecreational requests to use National Forest System lands.

Estimate of Burden: 8 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 1,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 12,000 hours.

b. *Title:* Form FS–27003a, Request for Termination of and Application for Special Use Permit.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to facilitate issuance of a new authorization when the private improvements authorized on National Forest System lands change ownership.

Estimate of Burden: 0.5 hours.

Type of respondents: Individuals, businesses, and corporations.

Estimated number of respondents: 1,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 500 hours.

c. *Title:* Form FS–27003b, Special Use Application and Permit for Noncommercial Group Use.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate requests, such as noncommercial group gatherings, to use National Forest System lands. These requests usually involve First Amendment rights that require a short, specific time frame (48 hours) for the agency to approve or deny the request.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, groups, organizations.

Estimated number of respondents: 2,400.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2,400 hours.

d. *Title:* Form FS–27003c, Special Use Application and Permit for Recreation Events.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate requests to use National Forest System lands for recreation events.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, groups, organizations.

Estimated number of respondents: 2,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2,000 hours.

e. *Title:* Form FS–2700–3e, Special Use Application and Permit for Government-Owned Buildings.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate requests to utilize, through a special use permit, Government-owned buildings and facilities.

Estimate of Burden: 0.25 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 3,200.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 800 hours.

f. Title: Form FS–2700–10, Technical Data for Communications Uses.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate the compatibility of communications equipment at a communications site to minimize frequency interference and other compatibility problems.

Estimate of Burden: 0.5 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 250 hours.

g. Title: Form FS–6500–24, Financial Statement.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization if issued. This form is used primarily for requests to operate Government-owned campgrounds, or requests for ski or resort area use on National Forest System lands.

Estimate of Burden: 8 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 800 hours.

h. Title: Form FS–6500–25, Request for Verification.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization if issued. This form is used primarily for requests to operate Government-owned campgrounds, or requests for ski area or resort area use on National Forest System lands.

Estimate of Burden: 0.5 hours.

Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 50 hours.

2. Annual Financial Information

Title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriation Act of 1952, and the Office of Management and Budget Circular A–25 require the Forest Service to collect rental fees that reflect fair market value for the use of National Forest System lands. Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized officer with the information necessary to calculate fair market value rental fees. Procedures for how the information is provided and when it is required are contained in the authorization terms and conditions. Information requests for financial information are provided to the authorized officer in a variety of ways. Several examples include gross revenues, value of capital improvements, number of trips and/or customers served, or a listing of occupants in a communications site building.

The following describes the information collections required to obtain financial information:

a. Title: Form FS–2700–7, Reconciliation of Sales for Fee Calculation.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for the use of National Forest System lands.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

b. Title: Form FS–2700–8, Reconciliation of Gross Fixed Assets (GFA) to Booked Amounts.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for the use of National Forest System lands based on gross fixed assets of the entity holding the permit.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

c. Title: Form FS–2700–10a, Telecommunications Facility Inventory.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to determine the annual rental for a communications facility based on the number of tenants in that facility. This form provides the authorized officer with that information.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, and State, and local governments.

Estimated number of respondents: 3,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 3,000 hours.

d. Title: Form FS–2700–19, Fee Calculation for Concession Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for concession permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 275.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 275 hours.

e. Title: Form FS–2700–19a, USDA Forest Service Fee Calculation For Ski Area Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for ski area permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 100 hours.

f. *Title:* Business Practices (no specific agency form for this information request).

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information is provided by the authorization holder to the agency when requested by the authorized officer or as a term and condition of the authorization. There is no specific form involved. The holder-provided information is usually maintained in a form that is customary for the type of business.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 1,675.

Estimated number of responses per respondent: 1.5.

Estimated total annual burden on respondents: 2,513 hours.

3. Preparing and Updating Operation and Maintenance Plans

The following describes the information collection required to prepare and update an operation and maintenance plan:

Title: There is no specific agency form for this information request.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain a clause requiring the holder of a special use authorization to prepare or update an operation and maintenance plan, when the authorized officer determines that the day-to-day operations of the use authorized need to be specified. This information is useful to the holder of the special use authorization and the Forest Service because it outlines procedures and policies used while the holder conducts operations or business on National Forest System lands. Typically, operation and maintenance plans contain daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, inspection standards and frequencies, and so forth. Operation and maintenance plans are not required for all special use authorizations, but are usually necessary for complex operations, commercial uses, and situations involving sensitive environmental areas.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 35,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 35,000 hours.

4. Compliance Reports and Information Updates

The following describes the information collection required to obtain compliance reports and information updates:

Title: There is no specific agency form for this information collection.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized officer with compliance reports, information reports, and other information required by Federal law or required to properly manage National Forest System lands to ensure adequate protection of forest resources and public health and safety. Examples of compliance and information requests include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978, the Federal Dam Safety Inspection Act of 1979, and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is covered in an insurance policy; notifications involving changes in corporation or partnership status; and documentation of compliance with nondiscrimination in Federally assisted programs as required by title VI and VII of the Civil Rights Act of 1964.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 13,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 13,500 hours.

Comments Are Invited

The agency invites comments on the following: (a) 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; (b) the accuracy of this 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 the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: November 21, 2002.

Abigal R. Kimbell,

Associate Deputy Chief, National Forest System.

[FR Doc. 02–30018 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–11–P

Federal Register

Wednesday,
November 27, 2002

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI48

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl). Information on the biological needs of the pygmy-owl that would help us define areas essential to its conservation is limited. However, we must respond to a court order issued on September 21, 2001, vacating critical habitat established for the pygmy-owl and remanding the previous designation of critical habitat for preparation of a new analysis of the economic and other effects of the designation (*National Association of Home Builders et al.* v. *Norton*, Civ.–00–903–PHX–SRB). This proposed designation, totaling approximately 488,863 hectares (ha) (1,208,001 acres (ac)), includes portions of Pima and Pinal Counties, Arizona, and includes approximately 9 percent of the recognized historical range of the pygmy-owl in Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, we will consider economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat. We also announce the availability of the draft economic analysis conducted on the proposed designation of critical habitat for the pygmy-owl. 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 this proposal to incorporate or address new information received during the comment period. We expect to publish a notice making the draft pygmy-owl recovery plan available for public comment in November 2002.

DATES: We will accept comments until February 25, 2003. We will hold one public hearing on this proposed rule; we have scheduled the hearing for January 23, 2003, from 6:30 p.m. to 9:00 p.m. in the Leo Rich Theatre at the Tucson Convention Center in Tucson, AZ.

ADDRESSES: Send comments and information to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. Written comments may also be sent by facsimile to 602/242–2513 or by electronic mail (email) to *cfpo_habitat@fws.gov.* Copies of the draft economic analysis are available on the Internet at *http://ifw2irm2.irml.r2.fws.gov/*, by writing the Field Supervisor at the above address, or by calling 602/242–0210 to have a copy mailed to you or that you may pick up at the address above. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing will be held in the Leo Rich Theatre at the Tucson Convention Center at 206 South Church Avenue, Tucson, AZ, 85701.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (see **ADDRESSES**) (telephone 602/242–0210; facsimile 602/242–2513).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) is in the order Strigiformes and the family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6.75 inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Color may vary, with some individuals being more grayish brown. The crown is lightly streaked, and a pair of black/dark brown spots outlined in white occur on the nape suggesting ''eyes.'' This species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars. The pygmy-owl is primarily diurnal (active during daylight) with crepuscular (active at dawn and dusk) tendencies. They can be heard making a long, monotonous series of short, repetitive notes, mostly during the breeding season.

The pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of the pygmy-owl is listed as an endangered species (62 FR 10730; March 10, 1997).

The total number of pygmy-owls and their distribution in Arizona are unknown. Survey and monitoring work in Arizona resulted in documenting 41 adult pygmy-owls in 1999, 34 in 2000, 36 in 2001, and, most recently, 18 in 2002. A cumulative total of 85 occupied sites (includes both single or paired birds) were recorded during these 4 years (Abbate *et al.* 1999, 2000, AGFD unpubl. data). Most of these pygmy-owls were distributed in four general areas: northwest Tucson, southern Pinal County, Organ Pipe Cactus National Monument, and the Altar Valley. We believe that more pygmy-owls exist in Arizona, but systematic surveys have not been conducted in all areas of potential habitat.

In addition, recent survey information has shown pygmy-owls to be more numerous adjacent to and near the Arizona border in Mexico (Flesch and Steidl 2000). There also exists considerable unsurveyed habitat on the Tohono O'odham Nation, and, although we have no means of quantifying this habitat, the distribution of recent sightings on non-Tribal areas east, west, and south of the U.S. portion of the Tohono O'odham Nation lead us to reasonably conclude that these Tribal lands may support meaningful numbers of pygmy-owls. Consequently, we believe that it is highly likely that the overall pygmy-owl population in Arizona is maintained by the movement and dispersal of owls among groups of pygmy-owls in southern Arizona and northern Mexico resulting from the connectivity of suitable habitat. The extent to which pygmy-owls disperse across the U.S./Mexico border is unknown. Therefore, addressing habitat connectivity and the movements of pygmy-owls within Arizona is the primary consideration of this proposal due to the importance of maintaining dispersal and movement among pygmy-owl groups.

Given recent data, it is probable that conservation of the pygmy-owl in Arizona requires both sufficient numbers and productivity of pygmy-owls north of the border and immigration of pygmy-owls from Mexico into Arizona, although we do not know at this time to what extent immigration does or needs to occur.

The patchy, dispersed nature of the pygmy-owl population in Arizona suggests that the overall population may function as a metapopulation. A metapopulation is a set of

subpopulations within an area, where movement and exchange of individuals among population segments is possible, but not routine. A metapopulation's persistence depends on the combined dynamics of the productivity of subpopulations, the maintenance of genetic diversity, the availability of suitable habitat for maintenance and expansion of subpopulations, and the ''rescue'' of subpopulations that have experienced local extinctions by the subsequent recolonization of these areas by dispersal from adjacent population segments (Hanski 1999, Hanski and Gilpin 1991, 1997). The local groups of pygmy-owls within Arizona may function as subpopulations within the context of metapopulation theory. However, more information is needed regarding the population dynamics of pygmy-owls in Arizona.

Historically, pygmy-owls were recorded in association with riparian woodlands in central and southern Arizona (Bendire 1892, Gilman 1909, Johnson *et al.* 1987). Plants present in these riparian communities included cottonwood (*Populus fremontii*), willow (*Salix* spp.), ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.). However, recent records have documented pygmy-owls in a variety of vegetation communities such as riparian woodlands, mesquite (*Prosopis velutina*, and *P. glandulosa*) bosques (Spanish for woodlands), Sonoran desertscrub, semidesert grassland, and Sonoran savanna grassland communities (see Brown 1994 for a description of these vegetation communities). While native and nonnative plant species composition differs among these communities, there are certain unifying characteristics such as the presence of vegetation in fairly dense thickets or woodlands, the presence of trees, saguaros (*Carnegiea giganteus*), or organ pipe cactus (*Stenocereus thurberi*) large enough to support cavities for nesting, and elevations below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993, Proudfoot and Johnson 2000). Large trees provide canopy cover and cavities used for nesting, while the density of mid- and lower-story vegetation provides foraging habitat and protection from predators, and it contributes to the occurrence of prey items (Wilcox *et al.* 2000).

The density of trees and the amount of canopy cover preferred by pygmy-owls in Arizona has not been fully defined. However, preliminary results from a habitat selection study indicate that nest sites tend to have a higher degree of canopy cover and higher vegetation diversity than random sites (Wilcox *et al.* 2000). Overall vegetation density may not be as important as patches of dense vegetation with a developed canopy layer interspersed with open areas. Vegetation structure may be more important than species composition (Wilcox *et al.* 1999, Cartron *et al.* 2000). This is related to the fact that canopy cover and layers of vegetation provide hunting perches, thermal cover, and promote predator avoidance regardless of species. Larger trees with greater canopy also have a greater potential to support cavities needed for nesting. Flesch (1999) indicated that areas with large trees and canopy coverage are likely important areas for pygmy-owls in the Altar Valley. Riparian and xeroriparian (dry washes) areas, which are often used by pygmy-owls, are generally characterized by increased vegetation layers, higher plant diversity and larger tree sizes because of increased moisture availability.

Background information on the ecology and life history of pygmy-owls relied on many of the documents reviewed during the proposed listing (59 FR 63975; December 12, 1994) and final listing (62 FR 10730; March 10, 1997) and our previous designation of critical habitat (64 FR 37419; July 12, 1999). We have also reviewed biological data from pygmy-owl studies made available since the previous designation (Abbate *et al.* 1999, 2000, Cartron and Finch 2000, Proudfoot and Johnson 2000, Wilcox, *et al.* 2000). Since the previous designation of critical habitat, there were very few new references that provided additional information on characteristics of pygmy-owl habitat. None of the new biological data contradicted previous studies on the ecology of the subspecies; however, these studies have refined our understanding of the pygmy-owl's ecology. The information above summarizes the key elements of the pygmy-owl's habitat that are pertinent to the designation of critical habitat. Additional information on the biology of the pygmy-owl is contained in the ''Primary Constituent Elements'' section of this rule.

Previous Federal Actions

We included the pygmy-owl in our Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. After soliciting and reviewing additional information, we elevated the pygmy-owl to category 1 status throughout its range in our November 21, 1991, Notice of Review (56 FR 58804). Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal Notice of Review of February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned us to list the pygmy-owl as an endangered species under the Act. In accordance with section 4(b)(3)(A) of the Act, on March 9, 1993, we published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we proposed to list the pygmy-owl as endangered with critical habitat in Arizona and threatened in Texas (59 FR 63975; December 12, 1994). After a review of all comments received in response to the proposed rule, we published a final rule listing the pygmy-owl as endangered in Arizona (62 FR 10730; March 10, 1997). In that final rule we determined that listing in Texas was not warranted and that critical habitat designation for the Arizona population was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior for failure to designate critical habitat for the pygmy-owl and a plant, *Lilaeopsis schaffneriana var. recurva*, (Huachuca water umbel) (*Southwest Center for Biological Diversity* v. *Babbitt*, CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order that, along with subsequent clarification from the Court, required proposal of critical habitat by December 25, 1998, followed by a final determination 6 months later.

In September 1998, we appointed the Cactus Ferruginous Pygmy-owl Recovery Team (Recovery Team),

comprised of biologists (pygmy-owl experts and raptor ecologists) and representatives from affected and interested parties (*i.e.*, Federal and State agencies, local governments, the Tohono O'odham Nation, and private groups).

On December 30, 1998, we proposed to designate critical habitat in Arizona for the pygmy-owl (63 FR 71820). On April 15, 1999, we released the draft economic analysis on proposed critical habitat and reopened the public comment period for 30 days (64 FR 18596). On July 12, 1999, we published our final critical habitat determination (64 FR 37419), essentially designating the same areas as were proposed.

On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of the Service's listing of the Arizona population of the pygmy-owl as an endangered species and the designation of its critical habitat. On September 21, 2001, the Court upheld the listing of the pygmy-owl in Arizona but, at our request, and without otherwise ruling on the critical habitat issues, remanded the designation of critical habitat for preparation of a new analysis of the economic and other effects of the designation (*National Association of Home Builders et al.* v. *Norton*, Civ.–00–0903–PHX–SRB). The Court also vacated the critical habitat designation during the remand. Subsequently the court ordered that we submit the proposed rule to the **Federal Register** on or before November 15, 2002, and that we must issue a final rule by July 31, 2003. The plaintiff's appeal of the listing decision is still pending.

Draft Recovery Plan

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our Endangered Species Program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. A final recovery plan formalizes the recovery strategy for a species, but is not a regulatory document (*i.e.*, recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species based solely on a recovery plan).

In September 2002, the Recovery Team developed a proposal for the current draft of the recovery plan which outlines a recommended recovery strategy for the pygmy-owl. We reviewed and considered the pertinent information contained in the current draft recovery plan in developing this proposed critical habitat designation because it represents the best scientific data available to us. We are required to base listing and critical habitat decisions on the best scientific and commercial data available at the time (16 U.S.C. § 1533(b)(1)(A)). We may not delay making our determinations until more information is available, nor can we be required to gather more information before making our determination (*Southwest Center for Biological Diversity* v. *Babbitt*, 215 F. 3d 58 (D.C. Cir. 2000)). This proposal relies upon the best scientific and commercial data available to us including the biological and habitat information described in the draft recovery plan, and recognized principles of conservation biology. However, the proposed designation does not include all areas which are identified in the draft recovery plan. Instead this proposed critical habitat designation includes only those areas that we consider essential to the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management 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. Regulations at 50 CFR 424.12(e) further state that areas outside the geographical area presently occupied by the species will only be designated if presently occupied areas are insufficient to ensure the conservation of the species. The term ''conservation,'' as defined in section 3(3) of the Act and in 50 CFR 424.02(c), means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (*i.e.*, the species is recovered and removed from the list of endangered and threatened species).

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking 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 the extinction of the species.

Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Where Federal agency action is involved, such as in permitting or funding, critical habitat designation can affect private landowners, State, or Tribal activities. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Areas outside the critical habitat designation have been, and will continue to be, subject to conservation actions that may be implemented under section 7(a)(1), the species' regulatory protections afforded by the section 7(a)(2) jeopardy standard (see ''Effects of Critical Habitat Designation'' section below), and the section 9 take prohibition. Federally funded, permitted or implemented projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs) under section 10 of the Act, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential for the conservation of the pygmy-owl in Arizona, we used the best scientific information available. This information includes habitat descriptions and pygmy-owl life history information including: Abbate *et al.* 1999, 2000, Cartron and Finch 2000, Proudfoot and Johnson 2000, Wilcox, *et al.* 2000. Additional information to identify and define specific habitat needs of pygmy-owls in Arizona has been gathered since our initial critical habitat designation in 1999, including surveys and research by

the Arizona Game and Fish Department (AGFD). Data from project clearance surveys conducted by private consultants were also used to help in our understanding of pygmy-owl distribution. We also considered preliminary habitat assessment work which has been initiated in limited areas of the State, primarily on Bureau of Land Management (BLM) and U.S. Forest Service (FS) lands, and initial micro-habitat research studies have been conducted by the AGFD. Unpublished data gathered by the AGFD with regard to dispersal, numbers, and distribution of pygmy-owls were also considered.

The number of known pygmy-owls in the State remains relatively few, and the information base regarding the needs of this species is still small. This necessitated our reliance on limited information as we developed this critical habitat proposal. Recent survey data indicate that the majority of known pygmy-owls in Arizona are found in the southern portion of its historical range in the State (Abbate *et al.* 1996, 1999, 2000, AGFD unpubl. data). Specifically, surveys that have been conducted have produced no recent (since 1997) records of pygmy-owls in the northern and eastern periphery of the historical range, such as the riparian habitats along the Gila, San Pedro, and Salt Rivers, although the survey effort in these areas has not been extensive nor systematic in nature. Most surveys are conducted for project-related purposes; therefore, the vast majority of surveys have occurred in the NW Tucson area where the greatest amount of development is occurring within the current range of the pygmy-owl.

We reviewed survey information from Arizona and have emphasized those areas that contain recent (since 1997), verified (per AGFD recommended criteria) records of pygmy-owls in Arizona. Thus, when we refer generally to verified sites within the text of this rule, we are referring to sites documented since 1997. We determined that using sites documented since 1997 would ensure that this proposed designation of critical habitat is based on the most recent data that most closely represents the current status of the pygmy-owl. Survey effort has been the most consistent and extensive since the listing of the pygmy-owl in 1997. As noted below, a priority action within the draft Recovery Plan is to provide protection for all verified sites of pygmy-owls in Arizona since 1993. Our emphasis in protecting recent (since 1997) verified sites of pygmy-owls is, nonetheless, consistent with the draft Recovery Plan in that the areas we have proposed for designation also include those sites where pygmy-owls were documented between 1993 and 1997. In order to maintain genetic and demographic interchange that will help maintain the viability of what may be a regional metapopulation of pygmy-owls, we included habitat linkages that allow movement and dispersal among the areas supporting pygmy-owls. Dispersal is the straight line distance a juvenile pygmy-owl travels from its nest to the site where it becomes resident. Finally, we recognize that maintenance of a viable pygmy-owl population in Arizona is likely dependent upon immigration from the population in Sonora, Mexico, and that maintaining habitat through which pygmy-owls can move between Mexico and the northern portion of the Arizona range is essential to the Arizona population's conservation.

This critical habitat proposal includes four of the five areas recommended by the Recovery Team as Special Management Areas (SMAs). The fifth SMA was not included based on the lack of recent verified pygmy-owl locations in that area, our inability to determine if the SMA included the primary constituent elements described in this rule, and the Recovery Team's description of this area as needing further investigation to confirm its role in recovery. SMAs are those portions of certain Recovery Areas (Recovery Areas 1, 2, and 3) that the Recovery Team recommended, and we concur, as needing special management based primarily on imminent and significant threats, but also on occupancy by owls and habitat function (nesting, dispersal, *etc.*). The defining characteristics of the SMAs, *i.e.*, they provide some necessary function for pygmy-owls and are under imminent and significant threats, indicate that regulation may play an important role in the conservation of these areas. Any portion of an SMA that is included in this proposal, but does not contain the primary constituent elements, is excluded from critical habitat by definition.

Generally, the proposed system of critical habitat was developed based on recent, verified owl sites, the presence of areas that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation (see discussion below), the average straight-line dispersal distance (8 km (5 mi)) from nest sites (AGFD unpubl. data), and the SMAs described above. The average dispersal distance was used to define the area that is likely to be necessary for the maintenance of existing breeding locations through mate replacement and reoccupation of sites through dispersal. The average dispersal distance is a measure of central tendency which increases the likelihood that the area will actually be used by dispersing juvenile pygmy-owls, unlike the maximum or minimum distances which are extremes and more likely to be chance events. In addition, most (10 out of 16) measured dispersal distances were below the average, indicating that using the average dispersal distance accounts for the distance documented as typically being used by dispersing pygmy-owls (AGFD unpubl. data). Areas proposed for connectivity that fall outside the average dispersal distance are still essential for pygmy-owls and could potentially be used for dispersal as all proposed areas of critical habitat also fall within the maximum dispersal distance 34.8 km (21.8 mi) from recent, verified owl locations and are considered occupied as described below.

We have proposed an interconnected system of habitat linkages. All proposed Critical Habitat Units (CHUs) support nesting and dispersal habitat or are within documented pygmy-owl dispersal distances, and thus are likely to be used by dispersing pygmy-owls during certain seasons or years. Because the areas included in this proposal are likely to be used by pygmy-owls for breeding, feeding, sheltering, or dispersing, we considered them to be within the geographic area occupied by the species. As with other raptor species (Call 1979), pygmy-owl nest sites and occupied territories can vary from year to year over the landscape, as well as within a pygmy-owl's home range (Abbate 1999, 2000, AGFD unpubl. data). Information on raptors indicates that it is not uncommon for sites to be occupied, become vacant, and then be reoccupied over time (Woodbridge and Detrich 1994, Reynolds *et al.* 1994). Therefore, although a specific site may be unoccupied at one point in time, it may be occupied at a different point in time, particularly given that all the areas proposed as critical habitat are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation, except for the few locations without primary constituent elements that we were unable to exclude explicitly due to mapping constraints.

Habitat linkages within the historical range of the pygmy-owl in Arizona can play a pivotal role in maintaining this potential Arizona metapopulation, especially since the pygmy-owl is capable of dispersal up to 34.8 km (21.8 mi) (AGFD unpubl. data). We believe that habitat linkages will provide connections for the movement of

dispersing pygmy-owls among local groups of pygmy-owls on the Tohono O'odham Nation, in the Altar Valley, on Organ Pipe Cactus National Monument, in northwest Tucson, and in Pinal County. We also believe that this interconnected matrix will allow the potential immigration of pygmy-owls from Mexico to help maintain the Arizona population. Although habitat that allows for dispersal may be marginal for nesting, we believe it can provide roosting, perching, foraging, and predator avoidance habitat and maintains an important linkage function among blocks of nesting habitat both within local groups of pygmy-owls and throughout the overall range of the pygmy-owl in Arizona.

Without habitat linkages, the overall population of pygmy-owls in Arizona has is likely to become fragmented to the extent that individuals may be unable to disperse and find mates and suitable blocks of nesting habitat. Additionally, adequate habitat must be available to allow survival of juvenile pygmy-owls and their recruitment as breeding adults. We believe this is essential for maintaining the current population and hope that this approach will facilitate expansion of local populations. In particular, enlargement of small, local groups of pygmy-owls by expansion onto adjacent lands would not only increase the chances of their long-term survival, but would also improve connectivity among local populations by enhancing their value as ''stepping stones'' within the distribution of the overall population. Low population numbers and fragmented habitat reduce the probability that local groups of pygmy-owls will recolonize naturally in order to offset population fluctuations and local population losses, resulting in the extirpation of this distinct population segment.

As discussed above, the need to connect known pygmy-owl sites and local populations with each other is necessary to the maintenance of the overall pygmy-owl population in Arizona. All known recent pygmy-owl sites and recommended SMAs are included in our proposed critical habitat designation. We selected connections for these areas based on our knowledge of the existing habitat and on aerial photography. Some areas proposed for connectivity fall outside of the 5-mile average dispersal distance around known pygmy-owl locations. However, these areas are still likely to be occupied because all areas proposed also fall within the maximum dispersal distance documented for pygmy-owls in Arizona (34.8 km (21.8 mi)) (AGFD unpubl. data), substantiating their potential use by dispersing young from known pygmy-owl sites.

This proposed designation does not include all lands identified as Recovery Areas in the draft Recovery Plan, nor does it include all areas previously designated as critical habitat (64 FR 37419; July 12, 1999). Some areas have been added based on pygmy-owl locations documented since the previous designation. Areas not being proposed for designation that are identified within the draft recovery plan or that were included in the previous designation have been excluded based on the lack of survey and research information sufficient to allow our determination that they are essential to the conservation of the species in Arizona. Changes reflected in this proposal as compared to the previous designation resulted from a refinement of our understanding of the current numbers and distribution of pygmy-owls. We are not proposing to include all draft recovery areas nor all areas from the previous designation because (1) they do not include any recent, verified locations of pygmy-owls; (2) they do not fall within the average dispersal distance (8 km (5 mi)) from recent, verified pygmy-owl locations; (3) the draft recovery plan indicates that some of these areas are in need of further research (*i.e.*, surveys, habitat assessment, *etc.*) and may be used for possible augmentation activities, not to protect known pygmy-owl sites; (4) they do not provide connectivity proximate to known pygmy-owl sites or SMAs; and (5) some of these areas have not been evaluated with regard to current habitat suitability (*i.e.*, they are not known to contain the primary constituent elements). This does not mean that these areas are not possibly beneficial to the species, simply that we could not yet determine, based on the best available scientific data, that they are essential for the conservation of the species or in need of special management and protection. We intend to promote conservation and recovery of the pygmy-owl in these areas through the use of other tools which may include the reestablishment of pygmy-owls through a section 10(j) experimental population rule, HCPs, Safe Harbor agreements, and section 7 consultations under the jeopardy standard, if applicable.

In developing this critical habitat proposal we made an effort to avoid developed areas such as towns, agricultural lands, and other areas unlikely to contribute to pygmy-owl conservation. However, limitations on spatial data (*e.g.*, vegetative and other land-cover information), plus the difficulty in legally describing particular patterns of vegetation, precluded us from mapping critical habitat in sufficient detail to exclude all such areas. Therefore, the 1,208,001 acres within the boundaries does not represent critical habitat acreage; only areas within the geographic boundaries that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation are actually critical habitat. Thus, lands without the primary constituent elements are excluded from proposed critical habitat by definition. However, these lands account for a very small proportion of the total proposed designated area. We request that peer reviewers who are familiar with this species review the proposed rule (see ''Peer Review'' section below) in order to ensure that we have identified those areas that are essential for the conservation of the pygmy-owl, and avoided designating unsuitable habitat inappropriately.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR § 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and, within areas currently occupied by the species, that may require special management considerations or protection. These generally include, but are not limited to, the following: space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The specific primary constituent elements required for pygmy-owl habitat are derived from the biological needs of the pygmy-owl as described below.

Space for Individual and Population Growth and Normal Behavior

As described previously, pygmy-owls were recorded in association with riparian woodlands in central and southern Arizona (Bendire 1892, Gilman 1909, Johnson *et al.* 1987) and are currently found in a variety of vegetation communities such as riparian woodlands, mesquite bosques, Sonoran desertscrub, semidesert grassland, mesquite grasslands and Sonoran savanna grassland communities (see

Brown 1994 for vegetation community descriptions).

During the 1990s, nesting pygmy-owls were recorded in the Arizona upland subdivision of the Sonoran desert, particularly Sonoran desertscrub, and semidesert grasslands (Brown 1994), primarily below 1,220 m (4,000 ft.) elevation (Wilcox *et al.* 2000). While pygmy-owls will use the upland areas, xeroriparian areas (dry washes) within these vegetative communities appear to be especially important (Wilcox *et al.* 2000). Sonoran desertscrub communities are characterized by the presence of a variety of cacti, large trees, shrubs, and a diversity of plant species and vegetation layers. This community includes, but is not limited to, palo verde (*Cercidium* spp.), ironwood *(Olneya tesota),* mesquite, acacia (*Acacia* spp.), bursage (*Ambrosia* spp.), desert hackberry *(Celtis pallida),* gray thorn *(Zizyphus obtusifolia),* and columnar cacti such as saguaro and organ pipe (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Davis and Russell 1984, Johnson and Haight 1985, Johnson-Duncan *et al.* 1988, Johnsgard 1988, Millsap and Johnson 1988).

Certain areas within the Altar Valley were historically Sonoran savanna grassland; however, with the invasion of mesquite, these areas are now more properly classified as Sonoran desertscrub (Brown 1994). The Altar Valley has also been described as semidesert grassland and/or a mesquite grassland biotic community with Sonoran desertscrub in the foothill areas (Abbate *et al.* 1999, Wilcox *et al.* 2000). We, therefore, include all three of these grassland communities in our description of pygmy-owl habitat because they now contain the apparent habitat requirements needed by pygmy-owls.

Xeroriparian areas are utilized by pygmy-owls in desertscrub and grassland vegetation communities. Pygmy-owls have been documented using xeroriparian drainages for nesting and dispersal (Wilcox *et al.* 2000). Drainages throughout these areas concentrate available moisture influencing the diversity and structure of the vegetation. Grasslands have experienced the invasion of velvet mesquite in the uplands, and there are linear woodlands of various tree species (ash, hackberry, mesquite, *etc.*) along lowland areas and washes. In desertscrub communities, xeroriparian sites are characterized by species found in the uplands (palo verde, mesquite, acacia, ironwood, *etc.*) but typically grow bigger and occur in higher densities within the drainages.

Pygmy-owls are considered non-migratory throughout their range. There are winter (November through January) pygmy-owl location records in Organ Pipe Cactus National Monument (R. Johnson unpubl. data 1976, 1980; Tibbitts, pers. comm. 1997). Major Bendire collected pygmy-owls along Rillito Creek near Camp Lowell at present-day Tucson on January 24, 1872. The University of Arizona Bird Collection contains a female pygmy-owl collected in the Tucson area on January 8, 1953 (University of Arizona 1995). Similarly, records exist from Sabino Canyon on December 3, 1941, and December 25, 1950 (U.S. Forest Service, unpubl. data). Research and monitoring conducted by AGFD has documented year-round occupancy of known home ranges (the area used by pygmy-owls throughout the year) (Abbate *et al.* 1999, 2000). These winter records demonstrate that pygmy-owls are found within Arizona throughout the year and do not appear to migrate southward to warmer climates during the winter months. Therefore, it is important that pygmy-owls have home ranges of adequate size to provide for their life history requirements throughout the entire year.

Pygmy-owl dispersal patterns are just beginning to be documented. One banded juvenile in Arizona was observed in 1998 approximately 3.9 km (2.4 mi) from its nest site following dispersal. Five young monitored with radio telemetry during 1998 were recorded dispersing from 3.5 km (2.17 mi) to 10.4 km (6.5 mi) for an average of 5.9 km (3.6 mi) (Abbate *et al.* 1999). In 1999, 6 juveniles in Arizona dispersed from 2.3 km (1.4 mi) to 20.7 km (12.9 mi) for an average of 10 km (6.2 mi) (Abbate *et al.* 2000). In Arizona, the maximum documented dispersal distance is 34.8 km (21.8 mi) (AGFD unpubl. data). Juveniles typically disperse from natal areas in July and August and do not appear to defend a territory until September. They appear to fly from tree to tree instead of long flights and may move up to 1.6 km (1 mi) or more in a night (Abbate *et al.* 1999). Trees of appropriate size and spacing appear to be necessary for successful dispersal, but specific data describing this pattern are currently unavailable. Once dispersing male pygmy-owls settle in a territory (the area defended by a pygmy-owl), they rarely make additional movements outside of their home range. For example, spring surveys have found male juveniles in the same general location as observed the preceding autumn (Abbate *et al.* 2000). However, unpaired female dispersers may make additional movements into the subsequent breeding season (AGFD unpubl. data).

Pygmy-owls typically make short, rapid flights. Observations indicate that pygmy-owls rarely fly longer distances than what is needed to travel from one tree to an adjacent tree (Abbate *et al.* 1999, 2000, AGFD unpubl. data). Pygmy-owls will avoid flying across large open areas such as golf courses (Abbate *et al.* 1999, 2000). Pygmy-owls have rarely been observed using areas of high human activity, such as high-density (4–5 houses/ac) housing, for normal day-to-day activities within a home range, nor during dispersal (AGFD unpubl. data). Successful dispersal is dependent on habitats in an appropriate configuration that are protected from disturbance.

Sufficient space must occur within pygmy-owl home ranges to provide vegetation of appropriate size and cover for roosting, sheltering, and foraging. The area must be adequate to provide for the needs of the pygmy-owl on a year-round basis. Population growth can only occur if there is adequate habitat in an appropriate configuration to allow for the dispersal of pygmy-owls across the landscape. Dispersal habitat should provide sufficient cover in an appropriate configuration to facilitate movement and reduce mortality factors (predators, prey availability, human-related factors, *etc.*).

Food

Pygmy-owls typically hunt from perches in trees with dense foliage using a perch-and-wait strategy; therefore, sufficient cover must be present within their home range for them to successfully hunt and survive. Pygmy-owls also hunt by inspecting tree and saguaro cavities for other nesting birds, and possibly bats. Their diverse diet includes birds, lizards, insects, and small mammals (Bendire 1888, Sutton 1951, Sprunt 1955, Earhart and Johnson 1970, Oberholser 1974, Proudfoot 1996, Abbate *et al.* 1996,1999). Observations in Arizona from 1996 through 1998 indicate that reptiles, birds, mammals, and insects were 44, 23, 6, and 3 percent, respectively, of pygmy-owl prey deliveries recorded; 24 percent were unidentified (Abbate *et al.* 1999). It is likely that use of insects was underestimated in these observations because of the speed at which they are consumed and the difficulty in observing such small prey items. The density of annual plants and grasses, as well as shrubs, may be important to enhancing the pygmy-owl's prey base.

Vegetation communities which provide a diversity of structural layers

and plant species likely contribute to the availability of prey for pygmy-owls (Wilcox *et al.* 2000). Pygmy-owls also utilize different groups of prey species on a seasonal basis. For example, lizards, small mammals, and insects are utilized as available during the spring and summer during periods of warm temperatures (Abbate *et al.* 1999). However, during winter months, when low temperatures reduce the activity by these prey groups, pygmy-owls likely turn to birds as their primary source of food and appear to expand their use area in response to reduced prey availability (Proudfoot 1996). Therefore, conservation of the pygmy-owl should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Pygmy-owl habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nest and roost sites.

Water

Free-standing water does not appear to be necessary for the survival of pygmy-owls. During many hours of research monitoring, pygmy-owls have never been observed directly drinking water (Abbate *et al.* 1999, AGFD unpubl. data). It is likely that pygmy-owls meet much of their biological water requirements through the prey they consume. However, the presence of water may provide related benefits to pygmy-owls. The availability of water may contribute to improved vegetation structure and diversity which improves cover availability. The presence of water also likely attracts potential prey species improving prey availability.

Reproduction and Rearing of Offspring

Male pygmy-owls establish territories using territorial-advertisement calls to repel neighboring males and attract females. Usually, pygmy-owls nest as yearlings (Abbate *et al.* 1999, Gryimek 1972), and both sexes breed annually thereafter. Territories normally contain several potential nest-roost cavities from which responding females select a nest. Hence, cavities/acre may be a fundamental criteria for habitat selection. Historically, pygmy-owls in Arizona used cavities in cottonwood, mesquite, ash trees, and saguaro cacti for nest sites (Millsap and Johnson 1988). Recent information from Arizona indicates nests were located in cavities in saguaro cacti for all but two of the known nests documented from 1996 to 2002 (Abbate *et al.* 1996, 1999, 2000, AGFD unpubl. data). One nest in an ash tree and one in a eucalyptus tree were the only non-saguaro nest sites (Abbate *et al.* 2000).

Pygmy-owls exhibit a high degree of site fidelity once territories (the area defended) and home ranges (the area used throughout the year) have been established (AGFD unpubl. data). Therefore, it is important that habitat characteristics within territories and home ranges be maintained over time in order for them to remain suitable. This is important for established owl sites, as well as new sites established by dispersing pygmy-owls.

Shrubs and large trees also provide protection against predators for juvenile and adult pygmy-owls and cover from which they may capture prey (Wilcox *et al.* 2000). Little is known about the rate or causes of mortality in pygmy-owls; however, they are susceptible to predation from a wide variety of species. Documented and suspected pygmy-owl predators include great horned owls *(Bubo virginianus),* Harris' hawks *(Parabuteo unicinctus),* Cooper's hawks *(Accipiter cooperii),* screech-owls *(Otus kennicottii),* and domestic cats *(Felis catus)* (Abbate *et al.* 2000, AGFD unpubl. data). Pygmy-owls may be particularly vulnerable to predation and other threats during and shortly after fledging (Abbate *et al.* 1999). Arizona Game and Fish Department (AGFD) telemetry monitoring in 2002 indicated at least three of the nine young were killed by predators prior to dispersal during a year when tree species failed to leaf out due to drought conditions (AGFD unpubl. data). Therefore, cover near nest sites may be important for young to fledge successfully (Wilcox *et al.* 1999, Wilcox *et al.* 2000). A number of fledgling pygmy-owls have perished after being impaled on cholla cactus, probably due to undeveloped flight skills (Abbate *et al.* 1999). Conditions which promote the proliferation of cholla (overgrazing, vegetation disturbance, *etc.*) may contribute to this mortality factor. Habitat that provides for successful reproduction and rearing of young provides trees and cacti that are of adequate size to provide cavities in proximity to foraging, roosting, sheltering and dispersal habitats, in addition to adequate cover for protection from climatic elements and predators in an appropriate configuration in relation to the nest site.

The primary constituent elements determined necessary for the conservation of the pygmy-owl include: (1) Elevations below 1,200 m (4,000 ft) within the biotic communities of Sonoran riparian deciduous woodlands; Sonoran riparian scrubland; mesquite bosques; xeroriparian communities; tree-lined drainages in semidesert, Sonoran savanna, and mesquite grasslands; and the Arizona Upland and Lower Colorado River subdivisions of Sonoran desertscrub (see Brown 1994 for a description of vegetation communities); (2) nesting cavities located in trees including, but not limited to cottonwood, willow, ash, mesquite, palo verde, ironwood, and hackberry with a trunk diameter of 15 cm (6 in) or greater measured 1.4 m (4.5 ft) from the ground, or large columnar cactus such as saguaro or organ pipe greater than 2.4 m (8 ft); (3) multilayered vegetation (presence of canopy, mid-story, and ground cover) provided by trees and cacti in association with shrubs such as acacia, prickly pear, desert hackberry, graythorn, *etc.*, and ground cover such as triangle-leaf bursage, burro weed, grasses, or annual plants. By way of description, preliminary data gathered by AGFD indicates 35 percent ground cover at perch sites and 48 percent ground cover at nest sites; mid-story cover of 65 percent at perch sites and 65 percent at nest sites; and 73 percent canopy cover at perch sites and 87 percent canopy cover at nest sites (Wilcox *et al.* 1999) (This AGFD information is based on a limited study area, a small sample size, and methods used to describe microhabitat characteristics and may have only limited applicability in project evaluation); (4) vegetation providing mid-story and canopy level cover (this is provided primarily by trees greater than 2 m (6 ft) in height) in a configuration and density compatible with pygmy-owl flight and dispersal behaviors. Within 15-m radius plots centered on nests and perch sites, AGFD has documented the mean number of trees and average height of trees for Sonoran desertscrub and semidesert grassland areas. The mean number of trees per plot in Sonoran desertscrub plots was 12.5 with a mean height of 3.95 m. The mean number of trees in semidesert grassland was 28.5 with a mean height of 8.1 m (Wilcox *et al.* 2000) (This AGFD information is based on a small sample size using a method designed to describe microhabitat characteristics. These numbers may have only limited applicability in project evaluations); and (5) habitat elements configured and human activity levels minimized so that unimpeded use, based on pygmy-owl behavioral patterns (typical flight distances, activity level tolerance, *etc.*), can occur during dispersal and within home ranges (the total area used on an annual basis).

We determined that these proposed primary constituent elements of critical

habitat provide for the physiological, behavioral, and ecological requirements of the pygmy-owl. The first primary constituent element provides the general biotic communities which are known to support pygmy-owl habitat in Arizona. We conclude that this element is essential to the conservation of the pygmy-owl because the species is not known to occur outside of these biotic communities.

The second primary constituent element provides the components necessary for nesting, such as cavity availability and cover. The third primary constituent element describes the structural makeup of habitat necessary to meet the biological needs of the pygmy-owl such as breeding, nesting, roosting, perching, foraging, predator avoidance, and thermal cover, and also promotes prey diversity and availability.

The fourth primary constituent element describes the structural makeup of vegetation necessary to meet the biological needs of the pygmy-owl related to movements and dispersal. This includes small-scale movements for foraging, defense, predator avoidance, pair formation, nest site selection, *etc.,* as well as landscape level movements needed to promote genetic diversity and expansion of the population.

The fifth constituent element describes landscape conditions which may affect pygmy-owl behavioral patterns and relates to the need to protect habitats from various disturbances. Pygmy-owl behavior is not typically affected by low levels of human activity or activities which are predictable (Abbate et al. 1999, 2000, AGFD unpubl. data). Low-density (< 3 houses per acre) residential areas and roads with low traffic volumes are examples of this type of activity. However, high levels of human activities, high-intensity activities, or activities which cannot be predicted may affect the areas pygmy-owls will use for nesting, foraging and dispersal (AGFD unpubl. data). High-density (> 3 houses per acre) residential, commercial areas with lights and constant high levels of activity or unpredictable activities of any level, ball fields, and roads with high traffic volumes are some examples of activity levels that could potentially affect pygmy-owl behavior and habitat use. Habitat elements should be configured, and human activities should be minimized, so dispersal and pygmy-owl activities within its home range are not impeded.

We did not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain primary constituent elements essential for pygmy-owl conservation. Within the proposed critical habitat boundaries, only lands containing some or all of the primary constituent elements (defined above) are proposed as critical habitat. Existing features and structures within proposed critical habitat, such as buildings; roads; residential landscaping (*e.g.,* mowed nonnative ornamental grasses); residential, commercial, and industrial developments; and lands above 1,200 m (4,000 ft) do not contain some or all of the primary constituent elements. Therefore, these areas are not considered critical habitat and are specifically excluded by definition.

Facilitating the movement of juvenile pygmy-owls to establish breeding sites, as well as movements among currently known local populations of pygmy-owls, is important for dispersal and gene flow, and providing such connectivity is a widely accepted principle of conservation biology. Thus, portions of CHUs may function primarily to provide such connectivity within and among CHUs and may contain only the primary constituent elements required for dispersal, but we recognize the essential nature of such connectivity to the persistence of pygmy-owls in Arizona.

We are soliciting public comments, information, or data which will help us evaluate whether the areas we have proposed are essential for the conservation of the pygmy-owl. We seek public comment on all areas within the pygmy-owl's current and historical range in Arizona, including whether any of these or other areas should be included or excluded from the final designation. As stated previously, if new information indicates that proposed CHUs are inappropriate or that there are additional areas that are essential for the conservation of the species in Arizona, we could revise the designation of critical habitat as appropriate (50 CFR 424.12(g)). The addition of any new areas to the current proposal will require us to start the proposal process again by publishing a new proposed rule and obtaining public comment before making a final determination.

Proposed Critical Habitat

The proposed CHUs encompass all of the verified, recent sites occupied by pygmy-owls in Arizona, with the exception of pygmy-owls located on the Tohono O'odham Nation (see ''Exclusions Under Section 4(b)(2)'' section of this rule). Each CHU contains recent documented occurrences of pygmy-owls. The CHUs were configured by evaluating topography, vegetation, and our current understanding of pygmy-owl habitat suitability and dispersal capabilities to select areas that form an interconnected system of habitat supported by the principles of conservation biology. New pygmy-owls continue to be found each year within the proposed CHUs. Consequently, we believe that continued surveys will detect additional sites occupied by pygmy-owls within these proposed CHUs.

Table 1 presents a comparison of the 1999 designation of pygmy-owl critical habitat and our current proposal. A brief summary of changes to the initial designation are included. Table 2 shows the approximate acreage of proposed critical habitat by land ownership and county. Areas in Pima and Pinal Counties, Arizona, that are proposed as critical habitat have been divided into CHUs (see maps in the ''Rule Promulgation'' section). Critical habitat for the pygmy-owl includes habitat within the CHUs which contain areas that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation, as described above. A brief description of each CHU and our reasons for proposing those areas as critical habitat are presented below.

TABLE 1.—COMPARISON OF THE 1999 CRITICAL HABITAT DESIGNATION WITH THE CURRENT PROPOSAL

Former designation (64 FR 37419)			Current proposal		
Unit	Acres	Description	Unit	Acres	Description
1	159,811	Extended from the Mexican border northward between the Buenos Aires National Wildlife Refuge (NWR) and the Tohono O'odham Nation, but did not include the Buenos Aires NWR.	1	435,464	Extends eastward to include the Buenos Aires NWR and recent owl locations; northward to include recent owl sites and habitat for dispersal
2, 3	47,678	Strip of potential habitat that connected the Tohono O'odham Nation to Saguaro National Park-West and Tucson Mountain County Park. Unit 3 was a very small unit designed to provide connectivity across I–10.	2	179,805	Includes the former Unit 3 and extends northward to provide for enhanced connectivity facilitating movement between southern Pinal Co., the Tucson area, and occupied areas to the south and west. Saguaro National Park-West was added.
4	87,352	Unit 4 included occupied habitat in the Tucson area, which was then the most dense pygmy-owl concentration known in the State.	3	73,958	This unit is based on recent owl locations, average dispersal distance, and the Northwest Tucson and Tortolita Fan SMAs proposed in the draft Recovery Plan.
5a, 5b	211,354	Designated to provide connectivity to the riparian habitat of the Gila and San Pedro Rivers north and northeast of Tucson.	4	76,161	Much of this unit is not being proposed. The remaining portions are designated around recent pygmy-owl locations to provide for the expansion of this subpopulation (see ''Methods'' section).
6	133,351	Encompassed the riparian habitats of the Gila and San Pedro Rivers.	None	.....	This unit is not being proposed for designation based on the lack of recent, verified locations and our inability to determine the presence of the primary constituent elements (see ''Methods'' section).
7	99,542	Connected from unit 5a northward to and including the riparian habitat of the Salt River.	None	.....	This unit is not being proposed for designation based on the lack of recent, verified locations and our inability to determine the presence of the primary constituent elements (see ''Methods'' section).
None	.....	This unit was not previously designated.	5	442,612	This unit includes habitat recently found to be occupied in Organ Pipe Cactus NM, on Cabeza Prieta NWR, and on largely BLM land around the Ajo area.
Total	739,088	.....	.....	1,208,001	

TABLE 2.—APPROXIMATE CRITICAL HABITAT ACREAGE BY COUNTY AND LAND OWNERSHIP [1]

Unit	County	FWS	BLM	NPS	State trust	Private	Other [2]	Total
1	Pima	114,490	22,908	0	233,467	63,310	1,289	435,464
2	Pima	0	58,189	22,022	25,782	34,967	18,091	159,051
2	Pinal	0	1,494	0	12,730	6,530	0	20,754
	Total	0	59,683	22,022	38,512	41,497	18,091	179,805
3	Pima	0	0	0	12,072	21,292	60	33,424
3	Pinal	0	4,295	0	22,391	13,197	651	40,534
	Total	0	4,295	0	34,463	34,489	711	73,958
4	Pinal	0	29,594	0	41,491	5,076	0	76,161
5	Pima	99,446	84,267	255,509	2,638	752	0	442,612
	Total	213,936	200,747	277,531	350,572	145,124	20,091	1,208,001

[1] Note: acreage estimates are derived from Arizona Land Resource Information System data based on the cited legal descriptions.
[2] Includes other Federal (BOR, Barry M. Goldwater Range), Military (AZ National Guard), State (AZGFD) and County lands.

CHU Descriptions

The following includes general descriptions of each proposed CHU, including general land ownership, geographical extent, dominant vegetation, general land-use information, and the reason(s) why the areas were determined to be essential to pygmy-owl conservation in Arizona. Much of the detail in the following CHU descriptions was taken from Recovery

Team documents. Legal descriptions, a general location map, and maps of individual CHUs are in the ''Regulation Promulgation'' section of this rule.

CHU 1

CHU 1 extends from the Mexican border northward approximately 80 km (50 mi) through the Altar Valley along the eastern edge of the Tohono O'odham Nation. This CHU includes the Buenos Aires National Wildlife Refuge, as well as BLM, State Trust and private lands to the north. Numerous washes descend from the Baboquivari Mountains on the west and the Sierrita and San Luis Mountains to the east. The Altar and Brawley Washes are important valley wash systems. Vegetation is dominated by semidesert grassland (also described as Sonoran savanna or mesquite grassland (Brown 1994)), but also supports Arizona upland Sonoran desertscrub vegetation, particularly in the northern part of this unit. Tree species such as mesquite, ash, and hackberry are found in the drainages of this unit, while grasses, scattered mesquite, and isolated saguaros are found in the upland areas. Documented pygmy-owl use in this unit includes both breeding and dispersal. Management issues primarily relate to grazing and controlled burning, while secondary issues involve residential and commercial development. Illegal border crossings and management also impact vegetation and other resources in this unit.

We determine that this area is essential to pygmy-owl conservation in Arizona because it contains recent documentation of breeding pygmy-owl locations and a number of pygmy-owls with unknown breeding status. Since 1999, this unit has accounted for approximately 43 percent of the known pygmy-owls in Arizona (Harris Environmental Group 1998, Flesch 1999, Abbate *et al.* 2000, AGFD unpubl. data). In addition, the CHU is contiguous with the Tohono O'odham Nation, which provides important connectivity to the west and south and may support breeding pygmy-owls. Finally, the area provides connectivity between the pygmy-owls in Mexico and the Tohono O'odham Nation with those in the Tucson area (CHU 2 and 3). CHU 1 contains all of the described primary constituent elements, and its primary functions are to provide nesting opportunities and connectivity for dispersal.

CHU 2

This CHU is connected to the northern portion of CHU 1 and the Tohono O'odham Nation, providing connectivity and dispersal corridors between populations of pygmy-owls in CHUs 1 and 3. This CHU includes the western unit of Saguaro National Park and Pima County's Tucson Mountain Park and extends westward to the Tohono O'odham Nation, then northward and eastward to Interstate 10 to join CHU 3 at points north and south. Part of this CHU is within the newly designated Ironwood Forest National Monument, which is predominantly composed of BLM land but also includes some State Trust and private lands. Vegetation is dominated by Arizona upland Sonoran desertscrub and lower Colorado River Sonoran desertscrub. This unit also includes some lands on which native trees are returning and provide the described conditions for connectivity and dispersal (primary constituent element 4). These lands were previously used for agricultural purposes and have been retired. Much of CHU 2 is under Federal administration (BLM, Ironwood National Monument, Saguaro National Park), but there is some State Trust and private lands, particularly in the northern part of the unit. No single land use dominates this CHU; mining, agriculture, grazing, development, and recreation are present. Impacts to pygmy-owl habitat are also occurring from the constant movement of individuals and groups crossing the border illegally through this unit.

An important purpose of this CHU is to allow for dispersal and other movements of pygmy-owls among CHU 1, CHU 3, CHU 4 and the Tohono O'odham Nation. Movement among these areas is necessary for the maintenance and expansion of pygmy-owl subpopulations found within these CHUs. There is a known pygmy-owl site located in the southeastern portion of this CHU; however, in general there has been a lack of survey effort in this unit.

We determine that this CHU is essential to pygmy-owl conservation in Arizona because it provides connectivity between occupied CHUs 1, 3, 4, and the Tohono O'odham Nation. This CHU provides breeding, roosting, perching, and foraging habitat (constituent elements 1, 2, and 3) and maintains an important linkage function among blocks of nesting habitat both locally and over the pygmy-owl's range (constituent element 4) that is essential to the pygmy-owl's conservation (see discussion above). Human activities and development are dispersed, and this unit also contains park lands resulting in conditions associated with primary constituent element 5. The primary function of this unit is for connectivity, but may become more important with regard to nesting as the overall pygmy-owl's population expands.

CHU 3

This CHU lies primarily northeast of Interstate 10 and extends from northwest Tucson into southern Pinal County. The boundaries of this unit are based on the recommended Northwest Tucson and Tortolita Fan SMAs found in the draft pygmy-owl recovery plan. The dominant vegetation is Arizona upland Sonoran desertscrub, and the area contains stands of trees including ironwood, mesquite, palo verde, and other species important for pygmy-owl roosting, perching, foraging and predator avoidance (primary constituent elements 1, 3 and 4). Saguaros occur in relatively high densities and are used for nesting (primary constituent element 2). Based on our current understanding, this CHU includes the most contiguous and highest-quality pygmy-owl habitat in Arizona (Wilcox *et al.* 1999, Wilcox *et al.* 2000). The southern portion of this CHU is mostly privately owned, the central portion is primarily State Trust, while the rest of the CHU is a mixture of private, State, and BLM lands.

This CHU contains a high density of active pygmy-owl nesting territories and dispersal pathways threatened by existing and on-going land uses, affecting primary constituent element 5. It has one of the highest known densities of pygmy-owls in Arizona, and is one of only four areas in the State with documented breeding pygmy-owls. Since 1999, CHU 3 has accounted for 35 percent of the known pygmy-owls in Arizona and 40 percent of the known nests (Abbate *et al.* 1999, 2000, AGFD unpubl. data). Therefore, the primary purpose of this CHU is to provide and protect adequate breeding habitat for the maintenance and expansion of this local population. Dispersal pathways within the southern portion of this CHU are limited, and so this CHU also protects remaining areas of connectivity for movement within this CHU and among adjacent CHUs. Some of the private land within this CHU has been developed and would not be considered critical habitat if it does not contain the primary constituent elements. Development pressure continues to be the main activity affecting conservation of the species in this CHU. We determine that this CHU remains an essential component of pygmy-owl conservation because it supports one of the highest densities of breeding pygmy-owls in Arizona, contributes to recruitment in the population, contains a significant amount of high-quality habitat, and provides all of the primary constituent elements.

CHU 4

This CHU occurs in Pinal County and encompasses the northernmost extent of this critical habitat proposal, running from the north edge of CHU 3 northward to an area approximately 14.4 km (9 mi) north of Park Link Drive. The northern terminus of this CHU was defined by the average distance juvenile pygmy-owls could disperse from the most northern of recent pygmy-owl sites (see discussion in ''Methods'' section). Vegetation is almost entirely Arizona upland Sonoran desertscrub. Grazing, development, and mining exploration have been identified as management issues affecting the species in this area. Fires have also contributed to the current vegetation condition (increases in exotic grasses and reduction of tree canopy) and will likely remain an issue in this unit into the future. These burned areas still contain one or more primary constituent elements, but could benefit from enhancement or special management. CHU 4 is primarily State Trust and BLM lands, with some scattered private holdings.

This CHU has documented pygmy-owl occupancy (3 sites since 1999 (Abbate *et al.* 1999, 2000, AGFD unpubl. data.)), primarily within the southern portions. However, much of the unit has not been surveyed, and the surveys that have occurred have not been systematic nor regular. CHU 4 does contain breeding habitat, and we expect an increased survey effort would reveal more pygmy-owl sites. The primary purposes of this unit are to maintain and protect occupied sites, provide expanded opportunities for breeding, and provide connectivity for dispersal within the unit and to CHU 3. We determine that this area is essential to the pygmy-owl's conservation in Arizona, as it contains several known pygmy-owl locations and provides habitat for breeding as well as for pygmy-owls dispersing within this unit and from the breeding areas around Tucson. Pygmy-owls have been documented moving between CHUs 3 and 4 over the past few years (Abbate *et al.* 1999). We determine that this CHU remains an essential component of pygmy-owl conservation because it supports breeding pygmy-owls, contributes to recruitment in the population, contains a significant amount of high-quality habitat, and provides all of the primary constituent elements.

CHU 5

This CHU runs from the Mexican border northward along the western edge of the Tohono O'odham Nation. The CHU is almost entirely under Federal ownership, including portions of Cabeza Prieta National Wildlife Refuge, Organ Pipe Cactus National Monument, and contiguous BLM land in the vicinity of the town of Ajo. This unit also contains a small amount of State Trust land. The area consists of Arizona upland Sonoran desertscrub and lower Colorado River Sonoran desertscrub. Recreation-related activities, undocumented alien traffic and management, and grazing on BLM lands are the primary management issues in this unit.

This CHU contains numerous pygmy-owl locations, including breeding sites. Since 1999, this CHU has accounted for approximately 21 percent of the known pygmy-owls in Arizona (Abbate *et al.* 1999, 2000, AGFD unpubl. data). We determine that this CHU is essential to pygmy-owl conservation, as it provides breeding habitat contiguous with known pygmy-owls in Mexico and on the Tohono O'odham Nation. The purpose of this CHU is to protect and maintain known breeding areas, provide connectivity to Mexico and the Tohono O'odham Nation, and allow for expansion of this subpopulation through dispersal. Recruitment and resulting expansion of the population in this area are necessary for the conservation of the species. CHU 5 contains all of the primary constituent elements.

Managed Lands

As part of our process of developing this critical habitat proposal, we evaluated existing management plans to determine whether they provide sufficient protection and management for the pygmy-owl and its habitat such that there is no need for additional special management considerations or protection of areas that otherwise would qualify as critical habitat. Section 3(5)(i) of the Act defines critical habitat as areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. Adequate special management or protection is provided by a legally operative plan that addresses essential habitat and that provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and/or adequate funding for the management plan); and (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

It is possible that some of the areas proposed (*e.g.*, national parks/monuments) are already under a management plan that will provide for the long-term conservation of the pygmy-owl. We encourage landowners to develop and submit management plans and actions that are consistent with pygmy-owl conservation that we can evaluate and that may remove the necessity of critical habitat regulation. If any management plans are submitted during the open comment period, we will consider whether these plans provide adequate special management or protection for the species. We will use this information in determining which, if any, areas should not be included in the final designation of critical habitat for the pygmy-owl.

Exclusions Under Section 4(b)(2) for Tribal Lands

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from a critical habitat designation when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

As discussed in this rule, we know that pygmy-owls occupy the Tohono O'odham Nation, but we have no specific information on the numbers or distribution. There is a considerable amount of unsurveyed habitat on the Nation and, although we have no means of quantifying this habitat, the distribution of recent sightings on non-Tribal areas east, west, and south of the U.S. portion of the Nation lead one to reasonably conclude that these Tribal lands may support meaningful numbers of pygmy-owls. Thus, we believe that Nation lands are important to the

conservation of the pygmy-owl; however, it would be difficult to determine which areas on the Nation meet the definition of critical habitat due to our lack of information on pygmy-owl numbers and distribution. Based on our analysis below we find that the benefits of excluding the Nation from the proposed designation of critical habitat outweigh the benefits of including them. Therefore, we are not proposing to include the lands of the Nation as critical habitat.

(1) Benefits of Inclusion

We do not believe that designating critical habitat within the Nation would provide significant additional benefits for the pygmy-owl. Projects on Nation lands with a Federal nexus (*e.g.*, funded, approved or carried out by Federal agencies, such as the Bureau of Indian Affairs, Indian Health Services, or Federal Highways Administration) will trigger section 7 consultation with us if the projects affect pygmy-owls, regardless of critical habitat. Most projects of a scale large enough to impact pygmy-owls will have a Federal nexus. In addition, we have received from the Tohono O'odham Nation a document entitled *A Conservation Strategy for the Federally Endangered Cactus Ferruginous pygmy-owl on the Tohono O'odham Nation* (Edward D. Manuel, Tohono O'odham Nation, *in litt.* 2002) which outlines the general process by which the Nation and Federal agencies will coordinate to evaluate and address potential impacts to pygmy-owls related to various activities on the Nation. While this document is not sufficient to remove the need for special management (see ''Section 3(5)(A) Definition'' section above), it does indicate the progress that is being made through our efforts to coordinate conservation actions on the Nation and the intent of the Nation to conserve the pygmy-owl.

Because of the extent of the lands within the Nation (approximately 1.2 million ha (3 million ac)) and the low number of people residing in this area, the scope and types of projects being implemented have had minimal impacts on the landscape, disturbing less than 300 acres since September 1999 (E. Manuel, Tohono O'odham Nation, *in litt.* 2002). We will continue Government-to-Government consultations with the Tohono O'odham Nation to address the conservation needs of the pygmy-owl on Tribal lands.

In summary, because any potential impacts to the pygmy-owl from future projects will be addressed through the Nation's Conservation Strategy or through a section 7 consultation with us under the jeopardy standard, we do not believe a designation of critical habitat would provide significant additional benefits to the pygmy-owl.

(2) Benefits of Exclusion

Pursuant to Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to Tribes and Tribal sovereignty while striving to ensure that Indian Tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation.

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, Indian Pueblos and Tribes should be the governmental entities to manage their lands and Tribal trust resources. The designation of critical habitat would be expected to adversely impact our working relationship with the Nation, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into Tribal natural resource programs and may harm our working relationship with the Nation which has been beneficial in implementing natural resource programs of mutual interest. For example, on April 28, 1999, the Chairman of the Nation accepted an invitation to partner with Pima County in developing the Sonoran Desert Conservation Plan. Representatives from the Nation have participated in the Sonoran Desert Conservation Plan planning process, including expert committees and education sessions. Moreover, during 1999, the Service's Region 2 Native American Liaison met with representatives of the Nation to discuss their relationship with Cabeza Prieta National Wildlife Refuge and to further discuss a possible joint venture to survey and manage the pygmy-owl on Nation lands. Representatives from the Nation are members of both the Implementation and Technical Groups of the Cactus Ferruginous Pygmy-Owl Recovery Team. We are now meeting with the Nation on a regular basis to develop a statement of relations and to pursue the development of a management plan for the natural resources on the Nation, which would include the pygmy-owl.

Pursuant to Secretarial Order 3206, the Service acknowledges our unique and distinctive Federal Tribal trust responsibility and obligation toward the Nation with respect to lands owned and managed by the Nation, Tribal trust resources, and the exercise of Tribal rights. Consequently, we are sensitive to the fact that the Tohono O'odham culture, religion, and spirituality may involve or relate to animals, including the pygmy-owl. We acknowledge the cultural sensitivity of the Nation with regard to owls.

We believe the designation of critical habitat on the Tohono O'odham Nation would adversely impact our working relationship with the Nation, which has been and is currently beneficial for the conservation of the pygmy-owl and other natural resource management programs. We believe, as stated in section 4(b)(2) of the Act, that the benefits to excluding the Tohono O'odham Nation outweigh the benefits of specifying this area as critical habitat. We also do not believe this exclusion will result in extinction of the pygmy-owl because of the limited threats to pygmy-owls and their habitats, and the initiation of a conservation program.

Lands Covered Under Existing Habitat Conservation Plans (HCPs)

Section 10(a)(1)(B) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such a habitat conservation plan, or HCP, is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

Within the range of the pygmy-owl, the Service has approved an HCP involving the Lazy K Bar Ranch. We evaluated this HCP to determine whether it: (1) Provides a conservation benefit to the species; (2) provides assurances that the management plan will be implemented; and (3) provides assurances the plan will be effective. Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, the areas we ordinarily would designate as critical habitat for the

covered species will be protected through the terms of the HCPs and their implementation agreements.

The issuance of a permit (under Section 10(a) of the Act) in association with an HCP application is subject to consultation under Section 7(a)(2) of the Act. While these consultations on permit issuance have not specifically addressed the issue of destruction or adverse modification of critical habitat for the pygmy-owl, they have addressed the very similar concept of jeopardy to pygmy-owls in the plan area. Since this HCP addresses land use within the plan boundaries, habitat issues within the plan boundaries have been thoroughly addressed in the HCP and the consultation on the permit associated with the HCP. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Common to both approaches is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Therefore, additional measures to protect the habitat from adverse modification are not likely to be required.

We have reviewed the Lazy K Bar Ranch HCP. A summary of our assessment is as follows:

(1) *A current plan or agreement must be complete and provide sufficient conservation benefit to the species:* A habitat conservation plan was submitted and approved in November 1998 which provides for continued conservation of the species through the minimization of habitat destruction (a maximum of 17 percent disturbance), revegetation (approximately 21 ac), and seasonal restrictions to avoid potential noise disturbance. These efforts will maintain habitat for breeding and dispersal, as well as reduce the potential for disturbance during sensitive seasons of the year.

(2) *The plan or agreement must provide assurances that the conservation management strategies will be implemented:* The coverage provided under this HCP and related 10(a)(1)(B) permit is conditional upon the implementation of the included terms and conditions. The terms and conditions are nondiscretionary. Annual reporting is required showing the results of surveys and cavity inspections, as well as amount of area graded, plat proposals, and the extent of revegetation completed.

(3) *The plan or agreement must provide assurances that the conservation management strategies will be effective:* Monitoring is a key component of this habitat conservation plan. Surveys to detect pygmy-owl presence or absence will be conducted on an annual basis. Cavity inspections will occur to document the status and occupancy of potential nesting cavities. The plan provides for the funding and completion of telemetry studies on any pygmy-owls detected so that the effects of the project on pygmy-owl habitat use and behavior can be determined. The success of vegetation salvage and revegetation efforts will be monitored. Photo documentation will be used to track the effects to habitat from both development activities and revegetation.

On the basis of this assessment, we have determined that the area addressed by the Lazy K Bar Ranch HCP does not require additional special management considerations to conserve the pygmy-owl. Therefore, the area covered by the existing, legally operative incidental take permit issued for pygmy-owls under section 10(a)(1)(B) of the Act is, by definition under Section 3(5)(A) of the Act, not included in this proposed designation of critical habitat.

Lands within HCPs are subject to disposal (*e.g.*, through sale or exchange), subject to various sideboards included in each HCP. Proposed critical habitat does not include non-Federal lands covered by an incidental take permit for pygmy-owls issued under section 10(a)(1)(B) of the Act for these HCPs as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands.

We also considered exclusion of HCPs under subsection 4(b)(2) of the Act, which allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. We believe this is the case in relation to the Lazy K Bar Ranch HCP that addresses pygmy-owls.

The benefits of including HCP lands in critical habitat are normally nonexistent. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act if such actions involve a Federal nexus (*i.e.*, an action authorized, funded, or carried out by a Federal agency). Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat. Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for commercial activity. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat normally has little benefit in areas covered by HCPs.

The benefits of excluding HCPs from being designated as critical habitat include relieving landowners, communities and counties of any additional regulatory review that results from such a designation. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs.

A related benefit of excluding HCP areas is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from

critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, we believe the benefits of critical habitat designation to be insignificant in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to evaluate their actions both 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 § 402. 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. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Section 7(a)(4) of the Act and regulations at 50 CFR § 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat.

Activities on Federal lands that may affect pygmy-owl critical habitat will require section 7 consultation. Activities on private or State lands that are funded, permitted or carried out by a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency (EPA), will be subject to the section 7 consultation process if those actions may affect critical habitat or a listed species through modification of suitable habitat. Through this consultation, we would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise not affecting pygmy-owls, and actions on non-Federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

We will conduct our analyses regarding the destruction or adverse modification of critical habitat over the entire critical habitat designation and on a unit basis, as dictated by conditions within the unit. A consultation focuses on the entire critical habitat area designated, unless the critical habitat rule identifies another basis for analysis, such as discrete units and/or groups of units necessary for different life-cycle phases, units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. In the case of the pygmy-owl, certain CHUs (*e.g.*, CHU 1 and CHU 3) contain habitat for breeding and dispersal constrained by existing land uses. In addition, the small population size and dispersed distribution of the pygmy-owl make local populations within specific CHUs and the ability to maintain connectivity among them geographically significant for the maintenance of the overall Arizona population of pygmy-owls.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.2 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 we believe would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us for actions for which formal consultation has been completed, if those actions may affect proposed or designated critical habitat.

Section 4(b)(8) of the Act requires that we describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of the species is appreciably diminished. We note that such activities may include, but are not limited to:

(1) Activities such as clearing of vegetation that appreciably reduce the value of the critical habitat for breeding;

(2) Activities such as clearing vegetation, road-building, or recreation that appreciably reduce the value of the critical habitat for connectivity;

(3) Activities such as clearing of vegetation, water diversion or impoundment, or high-impact recreation that appreciably reduce the value of the critical habitat for feeding by pygmy-owls;

(4) Activities that appreciably reduce the value of the critical habitat for other biological purposes (*e.g.*, roosting, rearing, or other normal behavior patterns).

The following federally funded programs and actions that may be affected by the proposed designation of critical habitat include, but are not limited to:

(1) Funding or approval of road development, realignment, widening, or maintenance by the Federal Highway Administration resulting in the significant loss or degradation of the primary constituent elements;

(2) Funding of housing development by the Federal Housing Administration, Veteran's Administration, Small Business Administration or Department of Housing and Urban Development resulting in the significant loss or degradation of the primary constituent elements;

(3) Approval of structures and distribution for energy, communication, and other utilities by the Federal Energy Regulatory Commission or the Federal Communications Commission resulting in the loss or degradation of the primary constituent elements;

(4) Approval of actions related to grazing, mining, recreation, and land planning by the Bureau of Land Management, U.S. Forest Service, and National Park Service that result in a significant loss or degradation of the primary constituent elements;

(5) Approval of structures or actions by the Bureau of Reclamation related to the management of waterways or

floodways that result in a significant loss or degradation of the primary constituent elements; and

(6) Approval of permits or actions related to the Clean Water Act by the Environmental Protection Agency or Corps that result in the significant loss or degradation of the primary constituent elements.

The Act and 50 CFR 17.22 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, NM 87103 (telephone 505/248–6920, facsimile 505/248–6922).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 3(5)(A) of the Act defines critical habitat, in part, as those areas requiring special management considerations or protection. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

We began working with Pima County in 1998 to develop the Sonoran Desert Conservation Plan which identifies and provides for the regional or area-wide protection and perpetuation of plants, animals, and their habitats, while allowing compatible land-use and economic activity. This regional HCP will address the effects of urban growth and propose conservation for 55 vulnerable species in Pima County, including the pygmy-owl. The Town of Marana is also pursuing an incidental take permit for actions within their jurisdiction that will address the pygmy-owl and other species. There is one currently operative HCP (Lazy K Bar Ranch) that specifically addresses the pygmy-owl and its habitat. Based on our evaluation of this HCP we have concluded, pursuant to section 3(5)(A) of the Act, that areas within this HCP do not require additional special management considerations or protection, and consequently we have not included areas within it as proposed critical habitat. (See the Managed Lands section, above, for a discussion of the factors considered).

In the event that future HCPs covering the pygmy-owl are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the pygmy-owl.

The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by pygmy-owls. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat areas.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the conservation of the pygmy-owl and appropriate management for those lands. The take minimization and compensation measures provided under these HCPs are expected to protect critical habitat. Furthermore, we will complete intra-Service consultation on our issuances of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that addresses the pygmy-owl as a covered species is ultimately approved, we may reassess the critical habitat boundaries in light of the HCP.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when such an exclusion will result in the extinction of the species. We have conducted a robust economic analysis that complies with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association, et. al.* v. *U.S. Fish and Wildlife Service* on the effects of the proposed critical habitat designation. We are announcing the availability of the draft economic analysis with this proposed rule.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will 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 particularly seek comments concerning:

(1) Whether all areas proposed for designation are essential to the conservation of the species;

(2) Whether any lands within the Tohono O'odham Nation should be included in the designation;

(3) Whether the benefits of excluding specific areas will outweigh the benefits of including those areas as critical habitat;

(4) Whether any areas included in the proposed designation have adequate special management and protection in place such that they do not meet the definition of critical habitat;

(5) Whether we have looked at the right biological factors and other relevant data concerning the number and distribution of pygmy-owls in Arizona, quantity and quality of available pygmy-owl habitat, and what habitat is essential to the conservation of the species and why. Is there additional information we have not considered?;

(6) Whether the methodology utilized to delineate the proposed critical habitat boundaries is appropriate for determining areas that are essential to the conservation of the pygmy-owl (*e.g.*, range of the owl, specific sites, and the need for habitat connectivity);

(7) If the rule accurately reflects the land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(8) Whether there are any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, including any impacts on small entities or families that are not considered in the draft economic

analysis (specifically estimated number of small businesses affected by the designation);

(9) Whether economic and other values associated with designating critical habitat for the pygmy-owl such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs) were included appropriately;

(10) Whether we properly assessed the available literature regarding pygmy-owls;

(11) If the use of the preliminary SMAs described in the draft Recovery Plan is appropriate in delineating critical habitat areas;

(12) If the areas proposed for designation are essential to the conservation of the species;

(13) Whether we have sufficient information to support designation of each of the proposed units;

(14) What should the relationship be between the recovery plan and the critical habitat designations; and

(15) Have we adequately addressed uncertainty and scientific disagreement with respect to all aspects of the proposed designation?

Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period.

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 promote listing decisions that are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts and specialists. We will send these peer reviewers copies of this proposed rule immediately following its publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 90-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal. Depending on public comments, information, or data received, we will evaluate and make a final determination on the areas that are essential to the conservation of pygmy-owl, and critical habitat could be revised as appropriate.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We are scheduling one public hearing on this proposal. We will hold this public hearing in the Leo Rich Theater at the Tucson Convention Center in Tucson, AZ, on January 23, 2002, from 6:30 p.m. to 9 p.m. For more information on this hearing, contact the Field Supervisor of the Arizona Ecological Services Field office (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of 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 the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by Federal law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

Regulatory Planning and Review

For the purposes of Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB). A separate consideration of the economic and other relevant impacts will be conducted under section 4(b)(2) of the Act.

We have prepared a draft economic analysis to assist us in compliance with section 4(b)(2) as well as Executive Order 12866 and other regulatory requirements. Concerning Executive Order 12866, the draft analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency.

As discussed above, Federal agencies would be required to ensure that their actions do not destroy or adversely modify designated critical habitat of the pygmy-owl. Because of the potential for impacts on other Federal agencies' activities, we will review this proposed action for any inconsistencies with other Federal agency actions.

If this rule is finalized we will determine whether it materially affects entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, except those involving Federal agencies which would be required to ensure that their activities do not destroy or adversely modify designated critical habitat. As discussed above, we have conducted an economic analysis and determined that this rule will not have an annual economic effect of $100 million or more.

OMB has determined that the critical habitat portion of this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review. The proposed rule follows the requirements for proposing critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal

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 effect 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 an agency certifies that 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 a rule will not have a significant economic impact on a substantial number of small entities. Based on the information available to us at this time, we are certifying that the rule will not have a significant effect on a substantial number of small entities. However, we intend to consider the information from the addendum to the economic analysis prior to our final designation. The following discussion explains our rationale and is based upon the information contained in the draft Economic Analysis that we are providing for comment concurrently with this proposed rule.

This analysis first determines whether critical habitat potentially affects a ''substantial number'' of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry.[1]

Estimated Number of Small Businesses Affected: The ''Substantial Number'' Test

To be conservative, (*i.e.*, more likely to overstate impacts than understate them), this analysis assumes that a unique entity will undertake each of the projected consultations in a given year, and so the number of businesses affected is equal to the total annual number of consultations (both formal and informal).[2]

First, the number of small businesses affected is estimated;[3]

- Estimate the number of businesses within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations);
- Calculate the percent of businesses in the affected industry that are likely to be small;
- Calculate the number of affected small businesses in the affected industry;
- Calculate the percent of small businesses likely to be affected by critical habitat.

This calculation reflects conservative assumptions and nonetheless yields an estimate that is still far less than the 20 percent threshold that would be considered ''substantial.'' As a result, this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl. Nevertheless, an estimate of the number of small businesses that will experience effects at a significant level is provided below.

Small businesses in the construction and development industry could potentially be affected by the designation of critical habitat for the pygmy-owl if the designation leads to significant project modifications or delays associated with development. To be conservative, this analysis assumes that a unique company will undertake each of the projected consultations in a single year and that each of these companies will be a small business. Thus, this analysis assumes that 27 unique companies will consult with the Service on development projects over ten years, or approximately 2.7 businesses per year. There are approximately 161 residential development companies in the counties in which critical habitat units are located.[4] Thus, approximately 1.7 percent of small residential development companies in Pima and Pinal Counties may be affected by the designation of critical habitat for the pygmy-owl annually. Because 1.7 percent reflects conservative assumptions and is far less than the 20 percent threshold that would be considered ''substantial'', this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

To the extent that the designation of critical habitat for the pygmy-owl may lead to an increase in the number of formal consultations and project modifications, some mining operations, particularly the smaller operators in Pinal County, may be affected by the designation. The Service estimates that approximately six consultations are likely to occur within pygmy-owl critical habitat areas in the next ten years, or approximately 0.6 per year. There are approximately 66 mining companies in the counties in which critical habitat units are located.[5] Therefore approximately 0.9 percent of small mining companies in Pima and Pinal Counties may be affected by the designation of critical habitat for the pygmy-owl annually. Because 0.9 percent reflects conservative assumptions and is still less than the 20 percent threshold that would be considered ''substantial,'' this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

Estimated Effects on Small Businesses: The ''Significant Effect'' Test

Costs of critical habitat designation to small businesses consist primarily of the cost of participating in section 7 consultations and the cost of project modifications. To calculate the likelihood that a small business will experience a significant effect from critical habitat designation for the pygmy-owl, the following calculations were made:

- Calculate the per-business cost. This consists of the unit cost to a third party of participating in a section 7 consultation (formal or informal) and the unit cost of associated project modifications. To be conservative, this analysis uses the high-end estimate for each cost.
- Determine the amount of annual sales that a company would need to have for this per-business cost to constitute a ''significant effect.'' This is calculated by dividing the per-business cost by the three percent ''significance'' threshold value.
- Estimate the likelihood that small businesses in the study area will have

[1] *See* U.S. Small Business Administration, The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, 1998. Accessed at: *www.sba.gov/advo/laws/rfaguide.pdf* on December 3, 2001.

[2] While it is possible that the same business could consult with the Service more than once, it is unlikely to do so during the one-year timeframe addressed in this analysis. However, should such multiple consultations occur, they would concentrate effects of the designation on fewer entities. In such a case, the approach outlined here likely would overstate the number of affected businesses.

[3] Note that because these values represent the probability that small businesses will be affected during a one-year time period, calculations may result in fractions of businesses. This is an acceptable result, as these values represent the probability that small businesses will be affected by section 7 implementation of the Act.

[4] Census Bureau, County Business Patterns, Accessed at: *http://www.census.gov/epcd/ cbp/ view/cbpview.html* on August 26, 2002.

[5] Census Bureau, County Business Patterns, Accessed at: *http://www.census.gov/epcd/cbp/ view/cbpview.html* on August 26, 2002.

annual sales equal to or less than the threshold amount calculated above. This is estimated using national statistics on the distribution of sales within industries.[6]

• Based on the probability that a single business may experience significant effects, calculate the expected value of the number of businesses likely to experience a significant effect.

• Calculate the percent of businesses in the study area within the affected industry that are likely to be affected significantly.

Small businesses in the construction and development industries per-business cost could potentially be $4.3 million. The annual sales that a company would need to have for this per-business cost to constitute a ''significant effect'' would be $120 million. Based on national statistics 11 percent of small businesses in Pima and Pinal Counties will have sales in this range. Thus, the expected number of small businesses likely to experience a significant effect is 89 percent of 2.7, or 2.4 businesses annually. This number represents approximately 1.4 percent of construction and development companies in Pima and Pinal Counties. Because 1.4 percent reflects conservative assumptions and is still less than the 20 percent threshold that would be considered ''significant,'' this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

The mining industry's per-business cost could potentially be $45,700. The annual sales that a company would need to have for this per-business cost to constitute a ''significant effect'' would be $1.5 million. Based on national statistics 22 percent of small businesses in Pima and Pinal Counties will have sales in this range. The expected number of small businesses likely to experience a significant effect is 88 percent of 0.6, or 0.5 businesses annually. This number represents approximately or 0.9 percent of mining companies in Pima and Pinal Counties. Because 0.9 percent reflects conservative assumptions and is still less than the 20 percent threshold that would be considered ''significant,'' this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

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. We have a very good consultation history for the pygmy-owl; thus, we can describe the kinds of actions that have undergone consultations. Within the areas proposed as critical habitat units, the BLM, Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC) are likely to undergo section 7 consultation for actions relating to energy supply, distribution, or use.

Since the species was listed in 1997, the BLM has consulted on the Safford Resource Management Plan (RMP) and the Phoenix RMP, which address utility corridors. There are several other proposed energy distribution lines (*e.g.*, the Sonora-Arizona Interconnection Project) in the planning phases that involve Federal agencies, including DOE, FERC, BLM and the Forest Service, depending on the alternative selected and the lands that will be affected. These distribution lines are likely to require section 7 consultation for one or several listed species that occur along their routes. Measures, including adjustments to routes, should be available to minimize and mitigate adverse effects.

While this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), based upon the information available to us through the draft Economic Analysis and as described in the ''Regulatory Flexibility Act'' section above:

(1) 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 of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat.

(2) This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630, we have considered whether this rule has significant takings implications.

I. Summary of the Action

We are proposing to designate approximately 1.2 million acres of critical habitat for the pygmy-owl. On September 21, 2001, the United States District Court for the District of Arizona, in *National Association of Home Builders et al.* v. *Norton,* Civ.–00–0903–PHX–SRB vacated the previous designation of critical habitat for the pygmy-owl and ordered us to issue a new proposed rule designating critical habitat for the pygmy-owl. This proposed rule is being issued pursuant to that order.

II. Assessment of Takings Implications

The mere promulgation of a regulation, like the enactment of a statute, is rarely sufficient to establish that private property has been taken unless the regulation on its face denies the property owners economically viable use of their land (*Agins* v. *City of Tiburon,* 447 U.S. 255, 260–263 (1980); *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n,* 452 U.S. 264, 195 (1981)). The designation of critical habitat alone does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. This is not the very rare case such as that found in *Whitney Benefits, Inc.* v. *United States,* 926 F.2nd 1169 (Fed. Cir. 1991), in which a statute explicitly prohibits the only economically useful activity possible on certain lands and a court is able to discern without administrative action that no permit could possibly be granted.

Recognizing that governmental regulation involves adjustment of rights for the public good, the court has found that a regulation which curtails the most profitable use of property, resulting in a reduction in value or limitations on use, likewise does not necessarily result in a taking (*Andrus* v. *Allard,* 444 U.S. 51, 66 (1979); *Agins,* 447 U.S. at 262; *Hodel,* 452 U.S. at 296). Where a regulation denies property owners all economically viable use of their property, then a taking will likely occur (*Agins,* 447 U.S. at 260). However, where regulation does not categorically

[6] This probability is calculated based on national industry statistics obtained from the Robert Morris Associated Annual Statement of Studies: 2001–2002 and from comparison with the SBA definitions of small businesses.

prohibit use but merely regulates the conditions under which such use may occur, and does not regulate alternative uses, then no taking occurs (*Hodel,* 452 U.S. at 296). With the designation of critical habitat, property owners are not denied the economically viable use of their land. Use of land is not categorically prohibited but rather certain restrictions are imposed upon Federal agency actions which may result in the destruction or adverse modification of critical habitat. As such, it is not likely that taking occurs.

Even beyond the above, however, a property owner must establish that a ''concrete controversy'' exists before the court may even reach the merits of a takings claim (*Hodel,* 452 U.S. at 294; Agins, 447 U.S. at 260). The property owner must show a specific and real impact to specific properties before judicial resolution of a takings claim is made (*MacDonald, Sommer, and Frates* v. *Yolo County,* 447 U.S. 340, 348–349; *Agins,* 447 U.S. at 260). The issue is not yet ripe for judicial resolution until administrative action is pursued to a final determination (*Hodel,* 452 U.S. at 297; *MacDonald,* 447 U.S. at 348–349). It is likely that, prior to judicial intervention, a solution will be reached at the administrative level (*Hodel,* 452 U.S. at 297). The Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. 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 must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

We believe that the takings implications associated with this critical habitat designation will be insignificant, even though private, State, and Federal lands are included. Impacts of critical habitat designation may occur on private lands where there is Federal involvement (*e.g.*, Federal funding or permitting) subject to section 7 of the Act. Impacts on private entities may also result if the decision on a proposed action on Federally owned critical habitat could affect economic activity on adjoining non-Federal land. Each action would be evaluated by the involved Federal agency, in consultation with us, in relation to its impact on the pygmy-owl and its designated critical habitat. In the unexpected event that extensive modifications would be required to a project on private property, it is not likely that the economic impacts to the property owner would be of sufficient magnitude to support a takings action. We do not anticipates that property values will be affected by critical habitat designation, but this will be analyzed in our economic analysis. Therefore, we anticipate that this critical habitat designation will result in insignificant takings implications on these lands.

III. Alternatives to Designating Critical Habitat

Under the Act, there is no alternative to designation of critical habitat. Critical habitat must be designated unless we determine that it is not prudent or determinable to do so (16 U.S.C. 1533(b)(6)(C)). As described above, we are under court order to complete a rulemaking to designate critical habitat for the pygmy-owl. We will further consider the economic and other relevant impacts of the designation in deciding whether to exclude areas for the designation in the final rule.

IV. Financial Exposure

The designation of critical habitat for the pygmy-owl will not on its face cause a taking of private property. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few, if any, conflicts between critical habitat and private property rights should result. No approximation of the financial exposure of the Federal government is possible, but it is expected to be insignificant.

Based on the above assessment, we find that this proposed rule designating critical habitat for the pygmy-owl does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with appropriate resource agencies in Arizona. We will continue to coordinate any future designation of critical habitat for the pygmy-owl with the appropriate agencies.

We do not anticipate that this regulation will intrude on State policy or administration, change the role of the Federal or State government, or affect fiscal capacity. For example, we have conducted many formal consultations with the Corps and EPA over actions related to their issuance of permits pursuant to sections 404 and 402, respectively, under the Clean Water Act. Because these consultations were conducted prior to the original designation of critical habitat, while critical habitat was in place, and after critical habitat designation for the pygmy-owl was vacated pursuant to court order, we do not believe that this designation of critical habitat will have significant Federalism effects. If this critical habitat designation is finalized, Federal agencies also must ensure, through section 7 consultation with us, that their activities do not destroy or adversely modify designated critical habitat. Nevertheless, we do not anticipate that the types of measures, provided by past consultations (*e.g.*, those issued from 1997 through 2002), will increase because an area is designated as critical habitat. This rule also will not change the private property rights within the area proposed to be designated as critical habitat. For these reasons, we do not anticipate that the designation of critical habitat will change State policy or administration, change the role of the Federal or State government, or affect fiscal capacity.

Within some areas the designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any action that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the majority of such projects can be successfully implemented with modifications that avoid significant economic impacts to project proponents.

The designation may have some benefit to these governments in that the areas essential to the conservation of the species would be clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species would be identified. While this definition and identification do not alter where and what federally sponsored

activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the pygmy-owl.

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 (OMB) under 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the Ninth Circuit *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), *cert. denied,* 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), 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 requirement at 512 DM 2, we understand that recognized Federal Indian Pueblos and Tribes must be related to on a Government-to-Government basis. Therefore, we are soliciting information from the Indian Pueblos and Tribes and will arrange meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation.

We have met with representatives of the Tohono O'odham Nation and, based on the Section 4(b)(2) of the Act, we have determined that the benefits of designating the Nation as critical habitat do not outweigh the benefits of excluding them. We also believe that this exclusion will not result in the extinction of the pygmy-owl because of the limited threats to pygmy-owls and their habitat within the Nation and the Nation's initiation of a conservation program. In addition, the Recovery Team has not recommended inclusion of the Tohono O'odham Nation as a Recovery Area. Consequently, we are not proposing critical habitat on the Tohono O'odham Nation.

Pygmy-owls were recently located on a grazing allotment held by the Pascua Yaqui Tribe. These grazing leases include State Trust and Federal lands, but are adjacent to lands held in title by the Tribe. It will be important to coordinate conservation efforts for the pygmy-owl in this area with the Pascua Yaqui Tribe.

We will continue to work with the Tohono O'odham Nation and the Pascua Yaqui Tribe regarding the development of management and conservation plans, conservation agreements, grants, and other cooperative projects that could contribute to the recovery of pygmy-owls in Arizona.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Field Office (see ''Addresses'' section).

Author

The primary authors of this notice are the staff at the Arizona Ecological Services Field Office (see ''Addresses'' section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Amend § 17.95(b) by revising critical habitat for the Pygmy-owl, cactus ferruginous *(Glaucidium brasilianum cactorum)*, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.* * * *

CACTUS FERRUGINOUS PYGMY-OWL *(Glaucidium brasilianum cactorum)*

(1) Critical habitat units are depicted for Pima and Pinal Counties, Arizona, on the maps below. These maps are a graphical representation of the geographic boundaries that encompass the proposed pygmy-owl critical habitat and are provided for illustrative purposes only. The map and GIS files used to create these maps are not the definitive source for determining critical habitat boundaries. While we make every effort to represent the proposed critical habitat shown on these maps as completely and accurately as possible (given existing time, resource, data, and display constraints), the maps are for reference only; the areas that geographically contain the proposed critical habitat are legally described below.

(2) Within these areas, the primary constituent elements for the pygmy-owl are those habitat components that are essential for the primary biological needs of foraging (provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nest and roost sites), nesting (trees and cacti of adequate size to support cavities in proximity to foraging, roosting, sheltering and dispersal habitats), rearing of young (adequate cover for protection from climatic elements and predators in an appropriate configuration in relation to the nest site), roosting (provides substrates of adequate size and cover), sheltering (provides substrates of adequate size and cover), and dispersal (provides adequate cover and configuration to facilitate movement and reduce mortality factors, *i.e.*, predators, prey availability, human-related factors, *etc.*). Only areas within these geographic boundaries that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation are proposed as critical habitat.

(3) The primary constituent elements include:

(i) Elevations below 1,200 m (4,000 ft) within the biotic communities of Sonoran riparian deciduous woodlands;

Sonoran riparian scrubland; mesquite bosques; xeroriparian communities; tree-lined drainages in semidesert, Sonoran savanna, and mesquite grasslands; and the Arizona Upland and Lower Colorado River subdivisions of Sonoran desertscrub (see Brown 1994 for a description of these vegetation communities);

(ii) Nesting cavities located in trees including, but not limited to, cottonwood, willow, ash, mesquite, palo verde, ironwood, and hackberry with a trunk diameter of 15 cm (6 in) or greater measured 1.4 m (4.5 ft) from the ground, or large columnar cactus such as saguaro or organ pipe greater than 2.4 m (8 ft);

(iii) Multilayered vegetation (presence of canopy, mid-story, and ground cover) provided by trees and cacti in association with shrubs such as acacia, prickly pear, desert hackberry, graythorn, *etc.,* and ground cover such as triangle-leaf bursage, burro weed, grasses, or annual plants. By way of description, preliminary data gathered by the Arizona Game and Fish Department (AGFD) indicates 35 percent ground cover at perch sites and 48 percent ground cover at nest sites; mid-story cover of 65 percent at perch sites and 65 percent at nest sites; and 73 percent canopy cover at perch sites and 87 percent canopy cover at nest sites (Wilcox *et al.* 1999). This AGFD information is based on a limited study area, a small sample size, and methods used to describe microhabitat characteristics and may have only limited applicability in project evaluation;

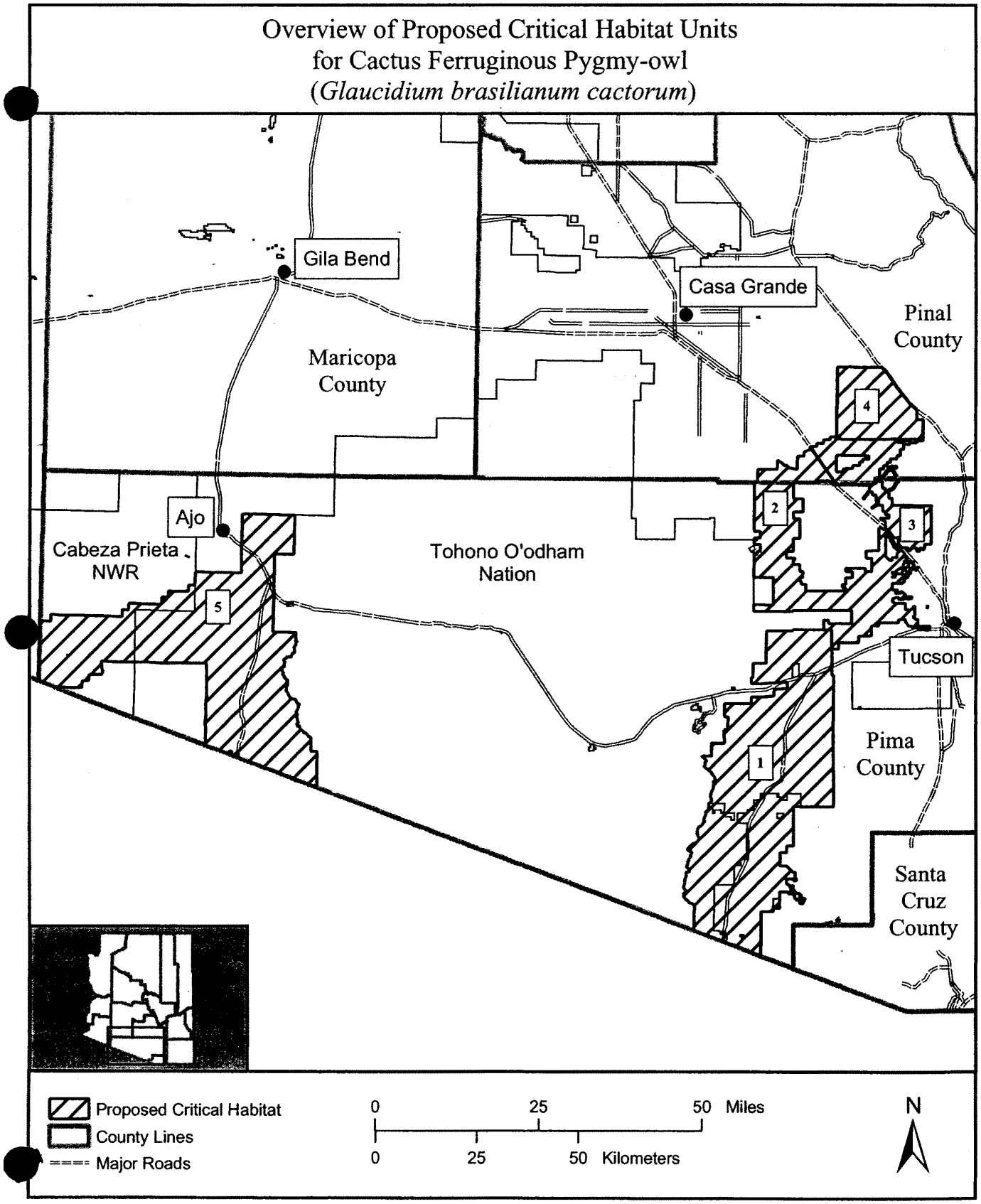
(iv) Vegetation providing mid-story and canopy level cover (this is provided primarily by trees greater than 2 m (6 ft) in height) in a configuration and density compatible with pygmy-owl flight and dispersal behaviors. Within 15-m radius plots centered on nests and perch sites, AGFD has documented the mean number of trees and average height of trees for Sonoran desertscrub and semidesert grassland areas. The mean number of trees per plot in Sonoran desertscrub plots was 12.5 with a mean height of 3.95 m. The mean number of trees in semidesert grassland was 28.5 with a mean height of 8.1 m (Wilcox *et al.* 2000). This AGFD information is based on a small sample size using a method designed to describe microhabitat characteristics. These numbers may have only limited applicability in project evaluations; and

(v) Habitat elements configured and human activity levels minimized so that unimpeded use, based on pygmy-owl behavioral patterns (typical flight distances, activity level tolerance, *etc.*), can occur during dispersal and within home ranges (the total area used on an annual basis).

(4) Critical habitat does not include non-Federal lands covered under the existing legally operative incidental take permit (Lazy K Bar Ranch) for the pygmy-owl issued under section 10(a) of the Act.

(5) Areas above 1,200 m (4,000 ft) and existing features and structures within proposed critical habitat, such as buildings; roads; cultivated agricultural land; residential landscaping (*e.g.,* mowed nonnative ornamental grasses); residential, commercial, and industrial developments; and other features, do not contain the primary constituent elements. Therefore, these areas are not considered critical habitat and are specifically excluded by definition.

(6) **Note:** Index map follows:

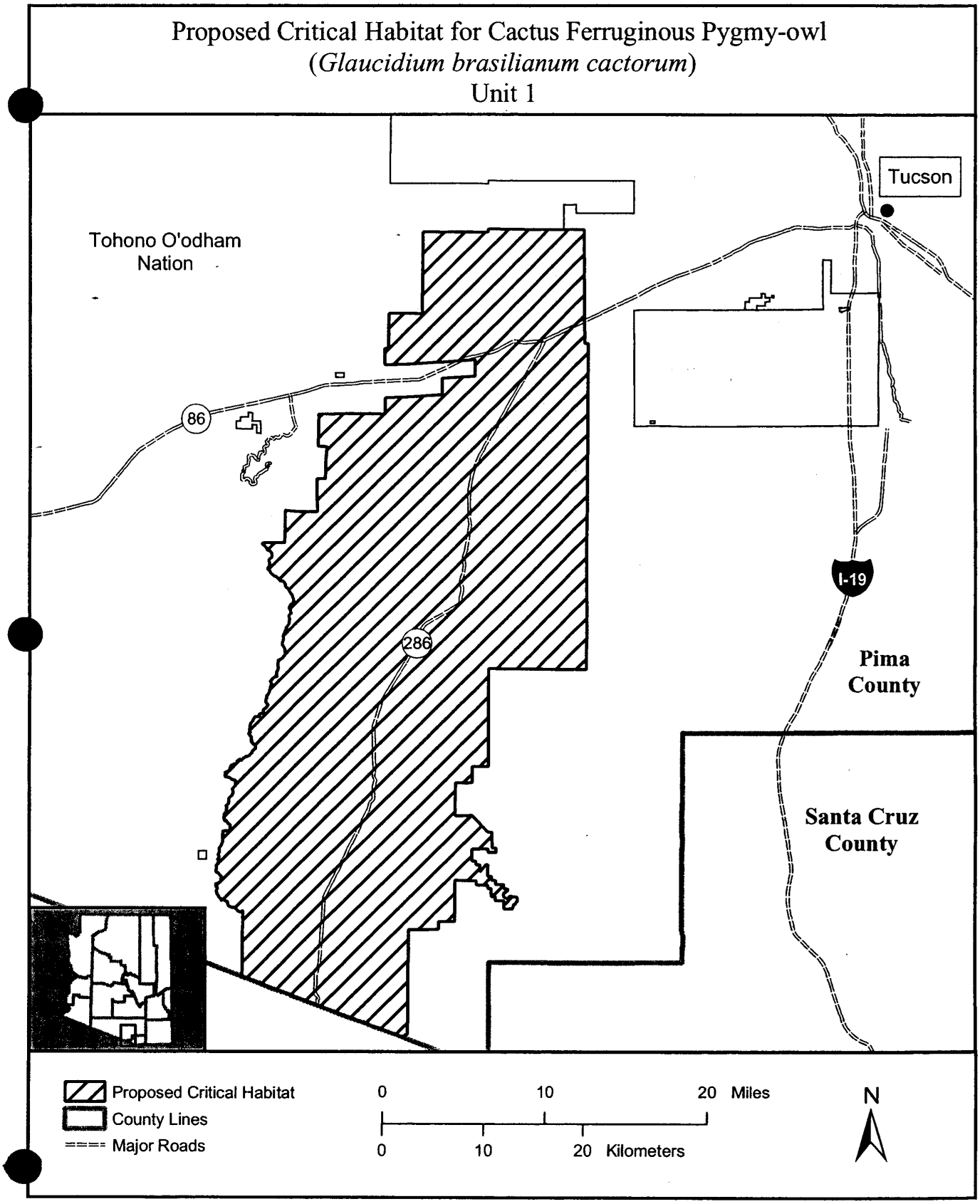


(7) Unit 1. Pima County, Arizona. From USGS Sells, Ariz. 1979; Atascosa Mts., Ariz. 1979.; and Silver Bell Mtns., 1994.

(i) Unit 1: Gila and Salt Principal Meridian, Arizona: T. 14 S., R. 9 E.,

secs. 33 to 36; T. 14 S., R. 10 E., secs. 31 to 36; T. 15 S., R. 9 E., secs. 1 to 4, 9 to 16, 21 to 36; T. 15 S., R. 10 E., secs. 1 to 36; T. 16 S., R. 8 E., secs. 25 to 28 and 33 to 36; T. 16 S., R. 9 E., secs. 1 to 6, 12 to 15 and 19 to 36; T. 16 S., R. 10 E., secs. 1 to 36; T. 17 S., R. 8 E., secs. 1 to 3, 10 to 16, 21 to 36, and E. ½ of secs. 4 and 9; T. 17 S., R. 9 E., secs. 1 to 36; T. 17 S., R. 10 E., secs. 1 to 36; T. 18 S., R. 7 E., secs. 1, 12, and those portions of 2, 11, 13 to 14, 24, 25 and 36 east of the Tohono O'odham Nation boundary; T. 18 S., R. 8 E., secs. 1 to 18, 20 to 36, and those portions of sec. 19 east of the Tohono O'odham Nation boundary; T. 18 S., R. 9 E., secs. 1 to 36; T. 18 S., R. 10 E., secs. 1 to 36; T. 19 S., R. 7 E., secs. 24, 25, 35, 36, and those portions of secs. 1, 12, 14, 23, 26, 33 and 34 east of the Tohono O'odham Nation boundary; T. 19 S., R. 8 E., secs. 1 to 36; T. 19 S., R. 9 E., secs. 1 to 36; T. 19 S., R. 10 E., secs. 1 to 12; T. 20 S., R. 7 E., secs. 1 to 2, 11 to 15, 22 to 27, 34 to 36, and those portions of secs. 3, 9 to 10, 16 to 17, 21, 28 to 29, 32 to 33 east of the Tohono O'odham Nation; T. 20 S., R. 8 E., secs. 1 to 36; T. 20 S., R. 9 E., secs. 1 to 12, 14 to 22, 27 to 34 and those portions of 13, 23 to 26, 36 within the boundary of the Buenos Aires N.W.R.; T. 21 S., R. 7 E., secs. 1 to 4, 9 to 16, 21 to 27, 34 to 36 and those portions of secs. 5, 8, 17, 20, 28, 29 east of the Tohono O'odham Nation boundary and the portion of sec. 33 north of the Tohono O'odham Nation boundary; T. 21 S., R. 8 E., secs. 1 to 36; T. 21 S., R. 9 E., secs. 1 to 11, 14 to 22, 27 to 33, N ½ of sec. 34, and those portions of 12, 13, and 24 within the boundary of the Buenos Aires N.W.R.; T. 21 S., R. 10 E., those portions of secs. 6, 7, 18 to 20, 29, 30 within the boundary of the Buenos Aires N.W.R.; T. 22 S., R. 7 E., secs. 1 to 3, 10 to 15, and those portions of secs. 22 to 24 north of Mexico; T. 22 S., R. 8 E., secs. 1 to 27 and those portions of secs. 28 to 30, 33 to 36 north of Mexico; T. 22 S., R. 9 E., secs. 6 to 7, 18 to 19, 30 to 31; T. 23 S., R. 8 E., the portion of sec. 1 north of Mexico; T. 23 S., R. 9 E., the portion of sec. 6 north of Mexico and within the boundary of the Buenos Aires N.W.R.

(ii) **Note:** Map of Unit 1 follows:

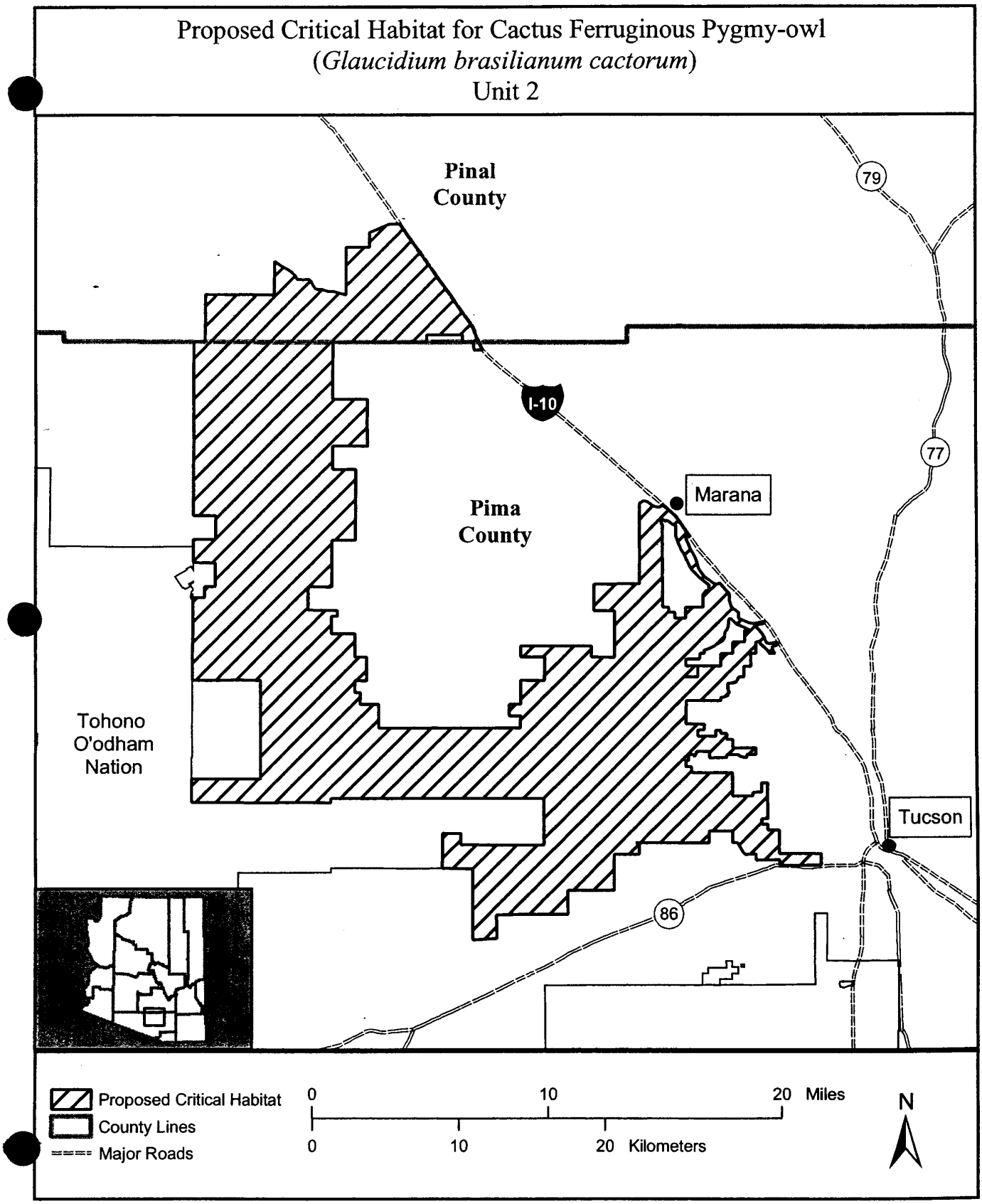


(8) Unit 2. Pima and Pinal counties, Arizona. From USGS Casa Grande, Ariz, 1994 and Silver Bell Mountains, Ariz., 1994 maps.

(i) Unit 2: Gila and Salt Principal Meridian, Arizona: T. 10 S., R. 9 E.,

secs. 25 to 36 and those portions of secs. 15 and 22 to 24 south and west of the Santa Cruz River's east channel and associated diversion; T. 10 S., R. 10 E., secs. 17 to 21, 27 to 33, the portions of sec. 8 south of Sasco Road, those portions of secs. 34 and 35 north of Pinal Air Park Road, and those portions of secs. 9, 15, 16, 22, 23, 25, 26, 36 west of west edge of pavement of I–10; T. 11 S., R. 9 E., secs. 1 to 36; T. 11 S., R. 10 E., secs 19 and 30, W. ½ of sec. 20, and W. ½ of sec. 29; T. 11 S., R. 11 E. that portion of sec. 6 west of west edge of pavement of I–10; T. 12 S., R. 9 E., secs. 1 to 17, 19 to 29, 32 to 35, and W ½ and SW¼ of sec 32; T. 12 S., R. 10 E., secs. 6 to 7 and 18; T. 12 S., R. 11 E., sec. 36; T. 12 S., R. 12 E., sec. 17, 20, 29, 31 to 32, and those portions of sec. 8 south of the edge of pavement of Avra Valley Road, that portion of sec. 9 west of edge of pavement of I–10 and south of the edge of pavement of Avra Valley Road, that portion of sec 15 east of the edge of pavement of Interstate 10, those portions of sec. 16 east of the west levee/bank of the Santa Cruz River, those portions of secs. 21 and 22 within the east and west levies of the Santa Cruz River, the portions of secs. 26 and 27 within the levees of the Santa Cruz River, E ½ of the SE ¼ of sec 34 and that portion of sec. 34 south and east of the south edge of pavement of Cortaro Road and the portion of sec. 34 within the levees of the Santa Cruz River, that portion of sec. 35 west of the east levee of the Santa Cruz River, and the portion of sec. 36 within the levees of the Santa Cruz River; T.13 S., R. 9 E., secs. 1 to 18, 22 to 27, and 34 to 36; T. 13 S., R.10 E., secs. 7, 18 to 19, 29 to 36, and NW ¼ of NW ¼ of sec. 6, W. ½ of sec. 17, W. ½ of the SW ¼ of sec. 20; T. 13 S., R. 11 E., secs. 13 to 15, 21 to 28, 31 to 36, S. ½ of sec. 9, S. ½ of sec. 10, and S. ½ of sec. 11, and N.E.¼ of sec. 29; T. 13 S., R. 12 E., sec.1 north of the edge of pavement of Silverbell Road and west of the east levee of the Santa Cruz River, sec. 2 except that portion south and east of Abington Road., sec. 3, SE ¼ of sec. 4 and the portions of sec. 4 within Saguaro N.P., secs. 5 to 9, those portions of secs. 10 to 11 north and west of Abington Road, NE ¼ and S ½ of sec. 12, W ½ of the NE ¼ and W ½ of sec. 13, E ½ and SW ¼ of sec. 14, N ½ of the NW ¼ and NW ¼ of the NE ¼ and S ½ of sec. 15, secs. 16 to 22, W ½ of sec. 23 and that portion of sec. 23 north and west of W. Paseo de las Estrallas to N. Calle del Risco to W. Placita del Risco to N. Paseo del Barranco to W. Calle de la Busca, and the portion of sec 24 north and west of W. Calle de la Busca and Tortolita Road, secs. 28 to 33, and that portion of secs. 34 and 35 within saguaro N.P. administrative boundary; T. 13 S., R. 13 E., sec. 6 within the channel of the Santa Cruz River and Canada del Oro and sec. 7 within the channel of the Santa Cruz River and the Rillito River; T. 14 S., R. 9 E., secs. 1 to 3 and 6 to 12; T. 14 S., R. 10 E., secs. 1 to 12, 25, and those portions of secs. 23, 24 and 26 outside the boundary of Tohono O'odham Nation; T. 14 S., R. 11 E., secs. 1 to 15, 22 to 36; T. 14 S., R. 12 E., secs. 4 to 11, 13 to 22, 24, N. ½ of 23, N. ½ of 30, and those portions of secs. 1 to 3, 12, and 25 within Tucson Mountain County Park; T. 14 S., R. 13 E., those portions of secs. 7, 18, 19, and 28 to 30 within Tucson Mountain County Park; T. 15 S., R. 11 E., sec. 3 to 7.

(ii) **Note:** Map of Unit 2 follows:

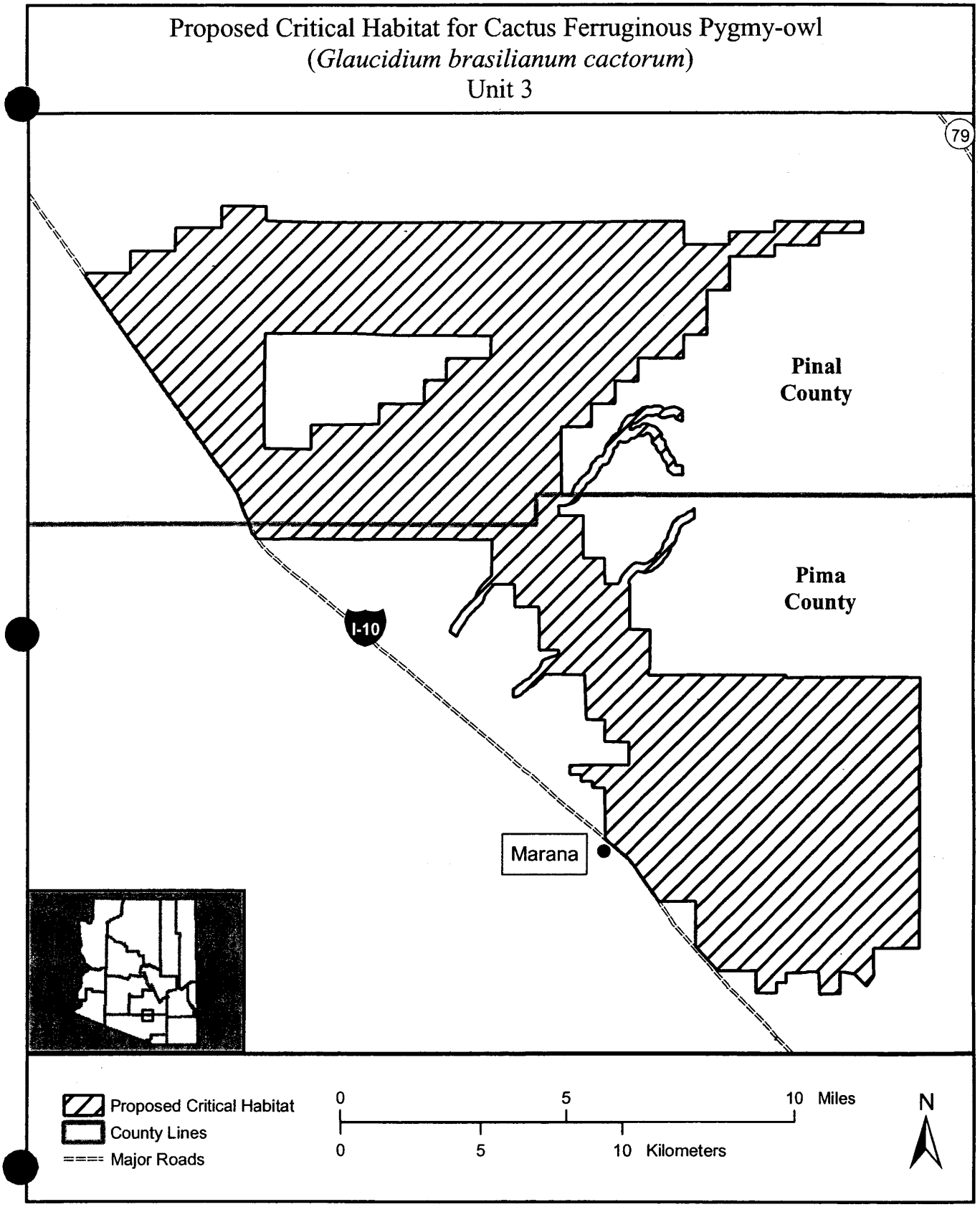


(9) Unit 3. Pima and Pinal counties, Arizona. From USGS Silverbell Mountains, Ariz., 1994; Casa Grande, Ariz., 1994 maps.

(i) Unit 3: Gila and Salt Principal Meridian, Arizona: T. 9 S., R. 10 E., sec.

36 and S ½ of sec. 35; T. 10 S., R. 10 E., secs. 1 to 3, 10 to 14, 24, those portions of secs. 9, 15, 22, 23, 25, 26, 36 east of east edge of pavement of I–10, and S ½ of sec. 4 east of the east edge of pavement of I–10; T.10 S., R.11 E., secs. 1 to 13, 23 to 27, 31 to 36, N ½ of sec. 14, N ½ of sec 15., N ½ of sec. 16, N ½ of sec. 17, N ½ of sec. 18, SE ¼ of sec. 22, S ½ and NE ¼ of sec. 28, and S¼ of sec. 29; T.10 S., R.12 E., Sec. 4 to 9, 16 to 19, N ½ of sec. 1, S ½ of N ½ of sec. 2 and the N ½ of S ½ of sec. 2, S ½ of sec. 3, N ½ and SW ¼ of sec 10, NW ¼ of sec. 15, N ½ and SW ¼ of sec 20, N ½ and SW ¼ of sec 30, W ½ of sec 31, and those portions of secs. 28, 29, 31, 32, and 33 within 150 m (495 ft.) of the center of Cottonwood Wash and its southern branch; T.11 S., R.11 E., secs. 1 to 5, the portion of sec. 6 east of the eastern edge of pavement of I–10, E ½ of sec. 12, and those portions of secs. 12, 13, 14 and 23 that are east of the Central Arizona Project Canal property and within 150 m (495 ft.) of the center of Cottonwood Wash; T.11 S., R.12 E., secs. 6, 7, 17, 20, 21, 25 to 28, 34 to 36, SW ¼ of sec. 5, W ½ and SE ¼ of sec. 8, W ½ of sec 16, E ½ and NW ¼ of sec. 18, NE ¼ of sec. 19, E ½ of Sec 29, E ½ and NW ¼ of sec. 33, that portion of sec. 5 within 150 m (495 ft.) of the center of Cottonwood Wash, and those portions of secs. 3, 9, 10, 19, and 30 within 150 m (495 ft) of the center of Cochie Wash; T.11 S., R.13 E., secs. 28 to 33; T.12 S., R.12 E., secs. 1 to 4, 10 to 14, 24, the E ½ of NE ¼ and the SE ¼ of the NE ¼ and the NE ¼ of the NW ¼ of sec 5, those portions of secs. 9, 15 to 16, 23 east of the east edge of pavement of I–10, N ½ of sec. 25 and the E 3/4 of the S ½ of sec 25 excluding the SE ¼ of the SE ¼, and the portions of sec. 26 north of the north edge of pavement of Cortaro Farms Road and east of the east edge of pavement of I–10; T12S, R13E, secs. 4 to 9, 16 to 21, N ½ and E ½ of the SE ¼ of sec 30, W ½ of the SW ¼ of sec. 29 and that portion of sec 29 north of Cortaro Farm Road and west of Shannon Road.

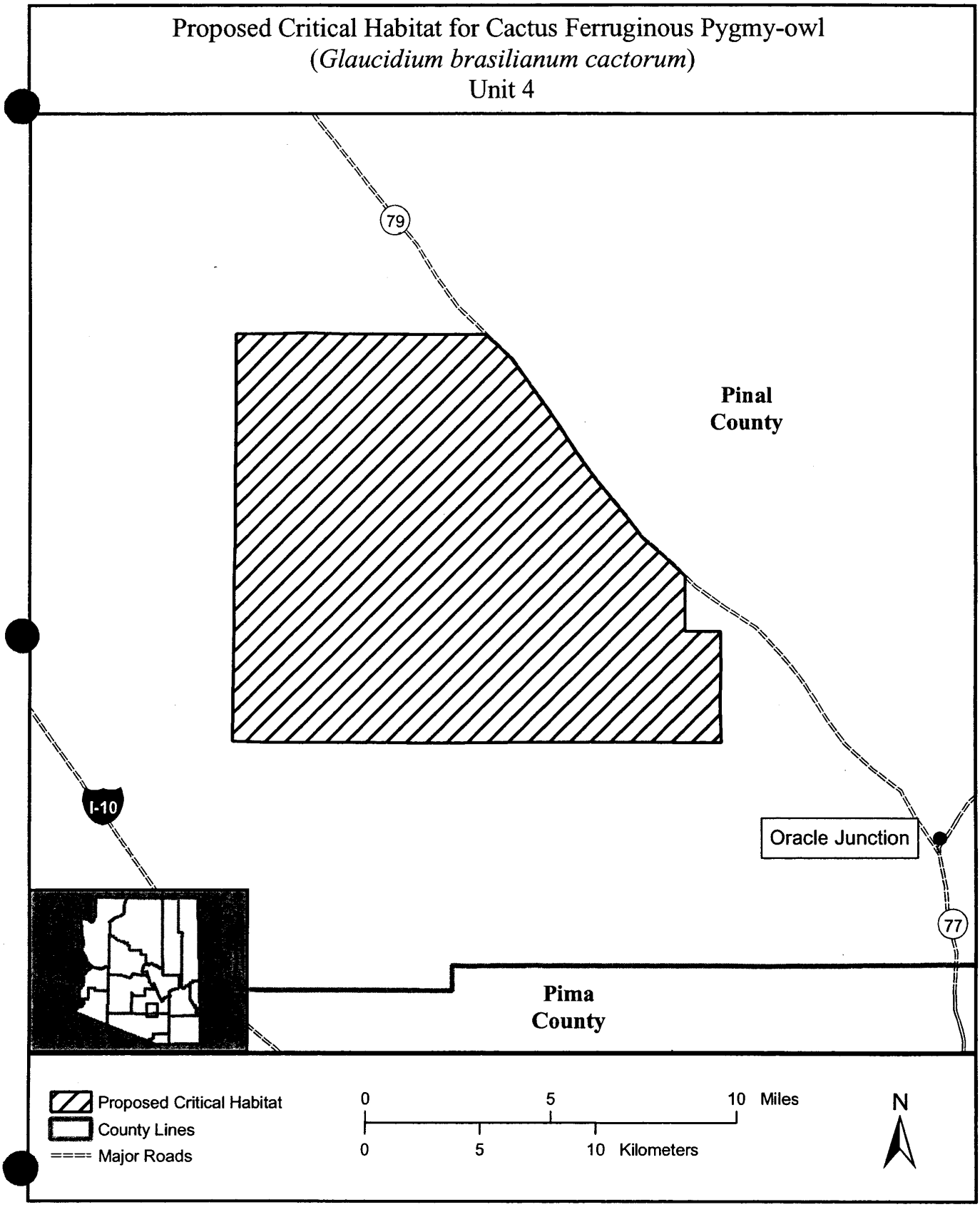
(ii) **Note:** Map of Unit 3 follows:


Proposed Critical Habitat for Cactus Ferruginous Pygmy-owl
(*Glaucidium brasilianum cactorum*)
Unit 3
79
Pinal
County
Pima
County
I-10
Marana
Proposed Critical Habitat
County Lines
Major Roads
0
5
10 Miles
0
5
10 Kilometers
N

(10) Unit 4. Pinal County, Arizona. From USGS Casa Grande, Ariz., 1994 and Mammoth, Ariz., 1986 maps.

(i) Unit 4: Gila and Salt Principal Meridian, Arizona: T. 8 S., R. 11 E., secs. 7 to 36; T. 8 S., R. 12 E., secs. 18 to 20, 29 to 33, and those portions of secs. 7, 8, 16,17, 21, 22, 27, 28, 34 and 35 west of edge of pavement of State Route 79; T. 9 S., R. 11 E., secs. 1 to 36; T. 9 S., R. 12 E., secs. 3 to 11, 13 to 36, and those portions of secs. 1, 2, and 12 west of edge of pavement of State Route 79; T. 9 S., R. 13 E., secs. 19, 32 and 33.

(ii) **Note:** Map of Unit 4 follows:

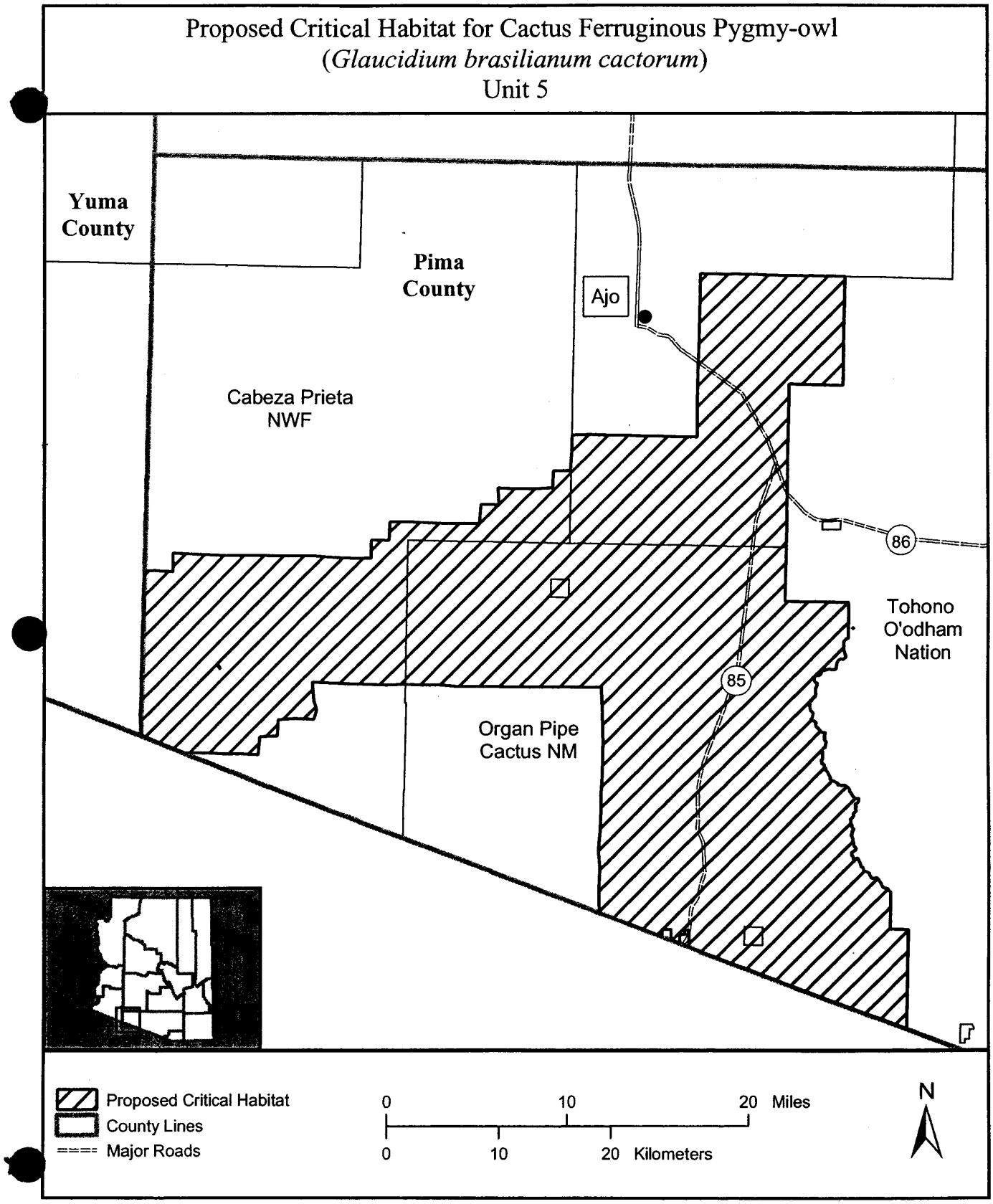


(11) Unit 5. Pima County, Arizona. From BLM Gila Bend, Ariz., 1981; Ajo, Ariz., 1980; Dateland, Ariz., 1980; Cabeza Prieta Mountains, Ariz., 1980; and USGS Lukeville, Ariz.—Sonona,

1994 and Quitobaquito Hills, Ariz.—Sonora, 1994 maps.

(i) Unit 5: Gila and Salt Principal Meridian, Arizona: T. 12 S., R. 5 W., secs. 1 to 5, 8 to 17, 20 to 29, 32 to 36; T. 12 S., R. 4 W., secs. 4 to 9, 16 to 21, 28 to 33; T. 13 S. R. 7 W. sec. 36; T. 13 S., R. 6 W., secs. 19 to 36; T. 13 S., R. 5 W., secs. 1 to 5, 8 to 17, and 19 to 36; T. 14 S., R. 10 W., secs. 25 to 28, 32 to 36, and the portions of sec. 31 within Pima County, Arizona; T. 14 S., R. 9 W., secs. 25 to 36; T. 14 S., R. 8 W., secs. 13 to 16 and 20 to 36; T. 14 S., R. 7 W., secs. 1 to 4, and 8 to 36; T. 14 S., R. 6 W., secs. 1 to 36; T. 14 S., R. 5 W., secs. 1 to 36; T. 15 S., R. 10 W., secs. 1 to 5, 8 to 17, 20 to 29, 32 to 36, and those portions of secs. 6, 7, 18, 19, 30, and 31 within Pima County, Arizona; T. 15 S., R. 9 W., secs. 1 to 34; T. 15 S., R. 8 W., secs. 1 to 30; T. 15 S., R. 7 W., secs. 1 to 30; T. 15 S., R. 6 W., secs. 1 to 30 and 33 to 36; T. 15 S., R. 5 W., secs. 1 to 36; T. 15 S., R. 4 W., secs. 4 to 9, 16 to 19, 30 to 31 and those portions of 3, 10, 15, 20 to 22, 29, 32 west of the Tohono O'odham Nation boundary; T. 16 S., R. 10 W., secs. 1 to 5, 8 to 14, those portions of 15 to 18 north of Mexico, and those portions of secs. 6, 7 and 18 within Pima County, Arizona; T. 16 S., R. 9 W., secs. 3 to 8, and sec. 18; T. 16 S., R. 6 W., secs. 1 to 4, 9 to 16, 21 to 28, and 33 to 36; T. 16 S., R. 5 W., secs. 1 to 36; T. 16 S., R. 4 W., secs. 6 to 7, 17 to 20, 29 to 33, and those portions of 5, 8 to 9, 16, 21, 26 to 28, 34, 35 west of Tohono O'odham Nation boundary; T. 17 S., R. 6 W., secs. 1 to 4, 9 to 16, 21 to 28, and 35, 36, those portions of secs. 33 and 34 north of Mexico.; T. 17 S., R. 5 W., secs. 1 to 36; T. 17 S., R. 4 W., secs. 4 to 9, 16 to 22, 25 to 36, and those portions of secs. 3, 10, 11, 14, 15, 23, 24 west of Tohono O'odham Nation; T. 18 S., R. 6 W., those portions of secs. 1 to 3 within Organ Pipe Cactus N.P. and north of Mexico; T. 18 S., R. 5 W., secs, 1 to 5, 11, 12 and those portions of 6 to 10, 13 to 15 within Organ Pipe Cactus N.P. and north of Mexico; T. 18 S., R. 4 W., secs, 1 to 17, 23, 24 and those portions of secs. 18 to 22, and 25 to 28 north of Mexico; T. 18 S., R. 3 W., secs. 6, 7, 18, 19, and 30, and the portions of sec. 31 north of Mexico.

(ii) Note: Map of Unit 5 follows: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Dated: November 15, 2002.

Paul Hoffman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29617 Filed 11–26–02; 8:45 am]

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Federal Register

Wednesday,
November 27, 2002

Part VI

The President

Proclamation 7630—National Family Week, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7360 of November 22, 2002

National Family Week, 2002

By the President of the United States of America

A Proclamation

Families provide a loving environment where children can flourish; and they help ensure that cultural traditions and timeless values are passed on to future generations. During National Family Week, we reaffirm the importance of families as a vital source of strength, confidence, and compassion for all of our citizens.

Strong families play a critical role in developing the character of our Nation. They teach children important standards of conduct such as accepting responsibility, respecting others, and distinguishing the difference between right and wrong. By helping America's youth to grow into mature, thoughtful, and caring citizens, families help make our communities and our Nation safer and more civilized.

Raising a child requires sacrifice, commitment, and time; and we must expand our efforts to strengthen and empower families so that they can prepare children more effectively for the challenges of adulthood. We know that by helping couples to build and sustain strong, two-parent families, we will contribute to the well-being of our children and the strength of our society. Many single parents, grandparents, and others also raise their children in difficult circumstances, and these dedicated individuals deserve our respect and support.

My Administration is firmly committed to helping our Nation's youth reach their full potential; and one of the most important ways to do this is by strengthening America's families. Earlier this year, I signed bipartisan legislation to expand the Promoting Safe and Stable Families Program, which provides States with vital resources to help families stay together and to promote adoption. The Program seeks to prevent child abuse and neglect, avoid removing children from their homes, support family reunification services, and help those children who are unable to return home by providing crucial adoption and post-adoptive services. These important resources benefit families across our Nation and hold the promise of a bright future for countless young people.

My welfare reform agenda also will strengthen families. We plan on continuing to provide historically high levels of support for childcare and child support enforcement. And we will continue to encourage strong marriages and two-parent married families as a worthy policy goal.

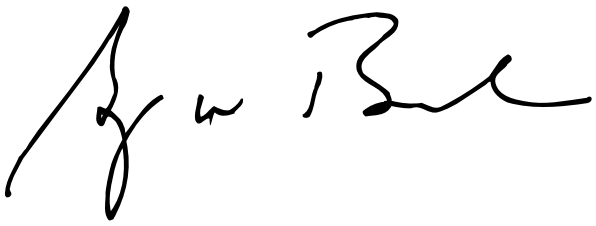
No marriage or family is perfect. But through education and counseling programs that our faith-based, charitable, and government communities can provide, we will support couples as they work to build and sustain healthy marriages and strive to provide a better quality of life for their children. By promoting responsible child-rearing and strong families, my Administration will work towards the goal that every child has the opportunity to grow up in a safe and loving home.

As families come together to celebrate this Thanksgiving, I encourage every member of a family in America to recognize the important role every other family member plays in making their lives whole and more complete. And as we give thanks for the love, commitment, and encouragement our families

provide, we must recommit ourselves to strengthen our Nation by strengthening our families in ways that government never can.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 24 through November 30, 2002, as National Family Week. I invite the States, communities, and people of the United States to join together in observing this day with appropriate ceremonies and activities to honor our Nation's families.

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



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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 124/P.L. 107–294

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Nov. 23, 2002; 116 Stat. 2062)

S. 1214/P.L. 107–295

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