2–19–03 Wednesday
Vol. 68 No. 33 Feb. 19, 2003
Pages 7897–8152

Federal Register

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Specification for Voice Frequency Loading Coils

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding the current issue of RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26. This specification has become outdated because of advancements made in the delivery of telecommunications services to rural subscribers.

DATES: *Effective date:* March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250–1598, telephone (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is exempt from the Office of Management and Budget (OMB) review for the purposes of Executive Order 12866 and, therefore has not been reviewed by OMB.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Loan documents between RUS and its telecommunications borrowers require borrowers to comply with certain standards and specifications for the construction of telecommunications facilities financed with RUS loan funds. This rule rescinds the requirements that borrowers comply with an outdated RUS Specification for Voice Frequency Loading Coils. This rule relieves borrowers of a requirement that no longer represents best practices in the telecommunications industry and consequently will not have a significant impact on the affected entities.

Information Collection and Recordkeeping Requirements

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. Telephone (202) 512–1800.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS issues publications titled ''bulletins'' which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for construction of telecommunications facilities financed with RUS loan funds. After review of RUS's bulletin and specification issuances, RUS has decided to rescind the outdated RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26, issued January 19, 1989. This bulletin is incorporated by reference at 7 CFR 1755.97.

RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26, specifies the technical requirements for voice frequency loading coils that are used in aerial, direct burial, and underground plant installations. Since RUS borrowers are designing and constructing new plant facilities capable of handling both voice and data transmission which require that loop lengths be shorter than 18,000 feet, the installation of voice frequency loading coils in these new transmission facilities using these shorter loop lengths is no longer required.

Therefore RUS is rescinding this bulletin because of obsolescence.

On January 31, 2002, RUS published a proposed rule (67 FR 4679) to rescind RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26, because of obsolescence. Comments on this proposed rule were due by April 1, 2002. One comment was received by this due date. The commenter agreed with RUS that the bulletin should be rescinded because of obsolescence. Since the commenter agreed with RUS, RUS will rescind RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION.

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry ''RUS Bulletin No. 345–22'' from the table.

Dated: January 3, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–3746 Filed 2–18–03; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

Regulation K; Docket No. R–1143; International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board of Governors of the Federal Reserve System has issued an interpretation concerning the underwriting by foreign banks of securities to be distributed in the United States. The interpretation clarifies that a foreign bank that wishes to engage in such activity must either be a financial holding company or have authority to engage in underwriting activity under section 4(c)(8) of the Bank Holding Company Act.

EFFECTIVE DATE: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Ann Misback, Assistant General Counsel (202/452–3788), or Michael Waldron, Counsel (202/452–2798), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: A number of foreign banks that are subject to the Bank Holding Company Act (''BHC Act''), but do not have authority to engage in underwriting activity in the United States, have participated as co-managers in the underwriting of securities that are to be distributed in the United States. The foreign banks use U.S. offices or affiliates to engage in activities conducted in support of the underwriting transaction for which the U.S. offices or affiliates are compensated by the foreign bank. The foreign bank becomes a member of the underwriting syndicate but does not distribute any of the securities in the United States or elsewhere. The foreign banks take the position that they are not engaged in underwriting in the United States because any underwriting obligation is booked outside the United States.

A foreign bank that is subject to the BHC Act may engage in underwriting activities in the United States only if it has been authorized under section 4 of that Act. Section 225.124 of the Board's Regulation Y states that a foreign bank will not be considered to be engaged in the activity of underwriting in the United States if the shares to be underwritten are distributed outside the United States. In the transactions in question, all of the securities were distributed in the United States.

Regulation K defines ''engaged in business'' and ''engaged in activities'' to mean conducting an activity through an office or subsidiary in the United States. In 1985, however, the Board amended another provision of Regulation K to clarify that, with respect to securities activities, the location of the prohibited activity was not dependent on being conducted through an office or subsidiary in the United States. Section 211.23(f)(5)(ii) of Regulation K states that a foreign banking organization shall not:

> Directly underwrite, sell, or distribute, nor own or control more than 10 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States, except to the extent permitted bank holding companies;

In adopting the provision, the Board stated in part that it was intended to clarify that no part of the prohibited underwriting process may take place in the United States. Thus, the prohibition did not depend on the activity being conducted through a U.S. office or subsidiary. The definition of ''engaged in business'' in Regulation K is not intended to operate as authority to allow banking organizations to avoid regulatory restrictions in the United States by conducting activities from abroad, as the 1985 revision of § 211.23(f)(5)(ii) made clear.

Technological and regulatory changes since the Regulation K definition of ''engaged in business'' was adopted in 1979 have eliminated some of the barriers to the delivery of cross-border services into the United States. Many of the services that can now be provided on a cross-border basis, including securities and insurance, were not permissible activities for banking organizations to conduct in the United States prior to the enactment of the Gramm-Leach-Bliley Act (''GLB Act'') and generally can be conducted by banking organizations in the United States today only in conformance with the requirements of that Act. To allow activities to be conducted in the United States from abroad would undermine the careful framework adopted in the GLB Act, which is available to both domestic and foreign banking organizations.

As a result, the Board believes it would be appropriate to issue this interpretation in order to clarify the scope of existing restrictions on underwriting by foreign banks. Specifically, the Board wishes to clarify that the underwriting by a banking organization subject to the BHC Act of securities to be distributed in the United States is an activity that is considered to be conducted in the United States. Such activity may only be conducted by a banking organization that is a financial holding company under the GLB Act or has so-called section 20 authority under section 4(c)(8) of the BHC Act.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR Part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. Part 211 is amended by adding a new § 211.605 to read as follows:

§ 211.605 Permissible underwriting activities of foreign banks.

(a) Introduction. A number of foreign banks that are subject to the Bank Holding Company Act (''BHC Act'') have participated as co-managers in the underwriting of securities to be distributed in the United States despite the fact that the foreign banks in question do not have authority to engage in underwriting activity in the United States under either the Gramm-Leach-Bliley Act (''GLB Act'') or section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)). This interpretation clarifies the scope of existing restrictions on underwriting by such foreign banks with respect to securities that are distributed in the United States.

(b) Underwriting transactions engaged in by foreign banks. (1) In the transactions in question, a foreign bank typically becomes a member of the underwriting syndicate for securities that are registered and intended to be distributed in the United States. The lead underwriter, usually a registered U.S. broker-dealer not affiliated with the foreign bank, agrees to be responsible for distributing the securities being underwritten. The underwriting obligation is assumed by a foreign office or affiliate of the foreign bank.

(2) The foreign banks have used their U.S. offices or affiliates to act as liaison with the U.S. issuer and the lead underwriter in the United States, to prepare documentation and to provide other services in connection with the underwriting. In some cases, the U.S. offices or affiliates that assisted the foreign bank with the underwriting receive a substantial portion of the revenue generated by the foreign bank's participation in the underwriting. In other cases, the U.S. offices receive ''credit'' from the head office of the foreign bank for their assistance in generating profits arising from the underwriting.

(3) By assuming the underwriting risk and booking the underwriting fees in their foreign offices or affiliates, the foreign banks are able to take advantage of an exemption under U.S. securities laws; a foreign underwriter is not required to register in the United States if the underwriter either does not distribute any of the securities in the United States or distributes them only through a registered broker-dealer.

(c) Permissible scope of underwriting activities. (1) A foreign bank that is subject to the BHC Act may engage in underwriting activities in the United States only if it has been authorized under section 4 of the Act. The foreign banks in question have argued that they are not engaged in underwriting activity in the United States because the underwriting activity takes place only outside the United States where the transaction is booked. The foreign banks refer to Regulation K, which defines ''engaged in business'' or ''engaged in activities'' to mean conducting an activity through an office or subsidiary in the United States. Because the underwriting is not booked in a U.S. office or subsidiary, the banks assert that the activity cannot be considered conducted in the United States.

(2) The Board believes that the position taken by the foreign banks is not supported by the Board's regulations or policies. Section 225.124 of the Board's Regulation Y (12 CFR 225.124(d)) states that a foreign bank will not be considered to be engaged in the activity of underwriting in the United States if the shares to be underwritten are distributed outside the United States. In the transactions in question, all of the securities to be underwritten by the foreign banks are distributed in the United States.

(3) Regulation K (12 CFR part 211) was amended in 1985 to provide clarification that a foreign bank may not own or control voting shares of a foreign company that directly underwrites, sells or distributes securities in the United States (emphasis added). 12 CFR 211.23(f)(5)(ii). In proposing this latter provision, the Board clarified that no part of the prohibited underwriting process may take place in the United States and that the prohibition on the activity does not depend on the activity being conducted through an office or subsidiary in the United States. Moreover, in the transactions in question, there was significant participation by U.S. offices and affiliates of the foreign banks in the underwriting process. In some transactions, the foreign office at which the transactions were booked did not have any documentation on the particular transactions; all documentation was maintained in the United States office. In all cases, the U.S. offices or affiliates provided virtually all technical support for participation in the underwriting process and benefitted from profits generated by the activity.

(4) The fact that some technological and regulatory constraints on the delivery of cross-border services into the United States have been eliminated since the Regulation K definition of ''engaged in business'' was adopted in 1979 creates greater scope for banking organizations to deal with customers outside the U.S. bank regulatory framework. The definition in Regulation K, however, does not authorize foreign banking organizations to evade regulatory restrictions on securities activities in the United States by directly underwriting securities to be distributed in the United States or by using U.S. offices and affiliates to facilitate the prohibited activity. In the GLB Act, Congress established a framework within which both domestic and foreign banking organizations may underwrite and deal in securities in the United States. The GLB Act requires that banking organizations meet certain financial and managerial requirements in order to be able to engage in these activities in the United States. The Board believes the practices described above undermine this legislative framework and constitute an evasion of the requirements of the GLB Act and the Board's Regulation K. Foreign banking organizations that wish to conduct securities underwriting activity in the United States have long had the option of obtaining section 20 authority and now have the option of obtaining financial holding company status.

(d) Conclusion. The Board finds that the underwriting of securities to be distributed in the United States is an activity conducted in the United States, regardless of the location at which the underwriting risk is assumed and the underwriting fees are booked. Consequently, any banking organization that wishes to engage in such activity must either be a financial holding company under the GLB Act or have authority to engage in underwriting activity under section 4(c)(8) of the BHC Act (so-called ''section 20 authority''). Revenue generated by underwriting bank-ineligible securities in such transactions should be attributed to the section 20 company for those foreign banks that operate under section 20 authority.

Dated: By order of the Board of Governors, February 7, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–3643 Filed 2–18–03; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–43–AD; Amendment 39–13051; AD 2003–04–03]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, TB 21, and TB 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe AEROSPATIALE (Socata) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This AD requires you to repetitively inspect the aileron control gimbal joint for correct alignment and correct operation, and replace any misaligned or defective gimbal joint. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on April 7, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all Socata Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. The DGAC reported an incident involving a Model TB 9 airplane. During flight, the pilot experienced loss of aileron control. Loss of aileron control resulted because the gimbal joint became disconnected from the aileron.

The gimbal joint became disconnected from the aileron because the safety pin broke. The cause of the safety pin breaking is being investigated by the manufacturer. The result of the investigation may result in a future design change.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Socata Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 15, 2002 (67 FR 69154). The NPRM proposed to require you to repetitively inspect the aileron control gimbal joint for correct alignment and correct operation, and replace any misaligned or defective gimbal joint.

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

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

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

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

Is there a modification I can incorporate instead of repetitively inspecting the aileron control gimbal joint? The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with Socata in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 346 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
2 workhours × $60 per hour = $120	No parts required for inspection	$120	$120 × 346 = $41,520

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

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

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 per hour = $360	$469	$360 + $469 = $829

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–03 SOCATA—Groupe Aerospatiale: Amendment 39–13051; Docket No. 2002–CE–43–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the aileron control gimbal joint for correct alignment and correct operation.	Upon accumulating 300 hours time-in-service (TIS) on the aileron control gimbal joint or within the next 30 hours TIS after April 7, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS.	In accordance with the Accomplishment Instructions in Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002.
(2) Replace misaligned or defective gimbal joints found during any inspection required in paragraph (d)(1) of this AD.	Prior to further flight after the inspection where a misaligned or defective gimbal joint was found. The inspection requirements of paragraph (d)(1) start over after each replacement.	In accordance with the Accomplishment Instructions in Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002, and the applicable maintenance manual.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French AD 2002–225(A), dated May 15, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on April 7, 2003.

Issued in Kansas City, Missouri, on February 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3614 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–14–AD; Amendment 39–13055; AD 2003–04–07]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This AD requires you to repetitively inspect the horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage). If damage is found, this AD also requires you to repair or replace the damaged parts. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct damage on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

DATES: This AD becomes effective on April 7, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that, during regular scheduled maintenance, an operator discovered fretting corrosion on the horizontal and vertical stabilizer attachment bolts on an in-service Jetstream Series 4100 airplane. The Jetstream Series 4100 airplane has a similar structural layout in the affected area to those affected by this action. The corrosion is occurring on the eye bolt shanks and the horizontal and vertical stabilizer forward and rear attachment fitting lugs on the contact faces. There have been 10 reported cases of corrosion found on Jetstream Series 3101 and Jetstream Model 3201 airplanes.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in failure of the horizontal and vertical stabilizer attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on December 10, 2002 (67 FR 75819). The supplemental NPRM proposed to require you to repetitively inspect the forward and rear horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage). The supplemental NPRM also proposed to require you to, if damage is found during any inspection, repair or replace the damaged parts.

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

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

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

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

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 250 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × $60 = $7,200.	No parts required	$7,200	$7,200 × 250 = $1,800,000

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator will incur over the life

of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage will vary on each airplane.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is ''upon accumulating 8 calendar years on the airframe or within the next 12 months after the effective date of this AD, whichever occurs later.''

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS). This will allow the owners/operators to work the inspection into regularly scheduled maintenance.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–07 British Aerospace: Amendment 39–13055; Docket No. 2002–CE–14–AD.

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

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion and/or wear (damage) on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

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

Actions	Compliance	Procedures
(1) Visually inspect the forward and rear horizontal stabilizer attachment bolts and associated hardware for corrosion (i.e., pitting or a change of color in the surface) and wear (damage).	Initially inspect upon accumulating 8 years on the airframe or within the next 12 calendar months after April 7, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(2) If corrosion or wear is found during any inspection required in paragraph (d)(1) of this AD, replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin.	Prior to further flight after the inspection in which the damage was found.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(3) Visually inspect the forward and rear horizontal and vertical stabilizer attachment fittings and the forward eye bolts of the vertical stabilizer for corrosion or damage at the lug faces.	Initially inspect upon accumulating 8 years on the airframe or within the next 12 calendar months after April 7, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(4) If corrosion or damage is found during any inspection required in paragraph (d)(3) of this AD:. (i) Replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin; or (ii) If damage exceeds the limits defined in the manufacturer's service bulletin, obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (iii) Incorporate this repair scheme	Prior to further flight after the inspection in which the damage was found.	Repair in accordance with the repair scheme obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA92RW, Scotland. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

Note 1: Although not required by this AD, FAA highly recommends you accomplish *Highly Recommended Corrosion Prevention Tasks* in British Aerospace Jetstream Service Bulletin 55–JA020544, Original Issue: October 24, 2002, upon accomplishing the initial inspection of this AD and during repetitive inspections if damage is found.

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

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

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

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

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

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(i) *When does this amendment become effective?* This amendment becomes effective on April 7, 2003.

Issued in Kansas City, Missouri, on February 7, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3613 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–04–AD; Amendment 39–13050; AD 2003–04–02]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–12–10 and AD 99–21–23, which currently apply to APEX Aircraft (APEX) Model CAP 10B airplanes. AD 98–12–10 requires installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spars for structural cracking, and, if any cracks are found, repairing the cracks in accordance with a repair method. AD 99–21–23 requires restricting the entry speed for performing flick maneuvers to 97 knots, inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual, and fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. This AD retains the wing modification and repair requirements from AD 98–12–10. This AD also incorporates new repetitive inspection procedures, further reduces the flick maneuver speed specified in AD 99–21–23, and temporarily reduces the load factor limits prior to the initial inspection. The actions specified by this AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on April 4, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 4, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992, as listed in the regulations as of July 23, 1993 (58 FR 31342, June 2, 1993).

ADDRESSES: You may get the service information referenced in this AD from APEX Aircraft, Direction Technique, Route de Troyes, F21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–04-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified FAA that it was receiving reports of cracks on the upper and lower surfaces of the wing spar. The DGAC reported that the cracking was occurring as a result of exceeding the load limit determined for the airplane, executing snap roll maneuvers outside the envelope for which the airplane is certificated, and experiencing repetitive hard landings. This 1 condition caused us to issue AD 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988). AD 98–12–10 requires the following on Model CAP 10B airplanes, all serial numbers through 263:

—Installing an inspection opening in the wing;

—Repetitively inspecting the upper and lower wing spars for structural cracking; and

—If any cracks are found, repairing the cracks.

Accomplishment of these actions is required in accordance with Avions Mudry Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, and Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992.

The DGAC also reported that there was no airspeed limitation for performing flick maneuvers during

aerobatic flight. The speeds listed in sections 4 and 7 of the CAP 10B flight manual are only recommendations instead of required speeds.

Without required entry speeds for flick maneuvers when performing aerobatic flight, the pilot could use excessive speed and cause the wing to separate from the airplane. This situation caused us to issue AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999). AD 99–21–23 requires the following on Model CAP 10B airplanes, all serial numbers:

—Restricting the entry speed for performing flick maneuvers to 97 knots;
—Inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual; and
—Fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view).

What has happened since AD 98–12–10 and AD 99–21–23 to initiate this action? The DGAC notified the FAA that an unsafe condition may still exist on all APEX Model CAP 10B airplanes, which created the need to change AD 98–12–10 and AD 99–21–23. The DGAC reports that additional fractures in the wing spar are being found that were not detected using the inspection procedures specified in AD 98–12–10.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all APEX Model CAP 10B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 2002 (67 FR 44404). The NPRM proposed to supersede AD 98–12–10 and AD 99–21–23 with a new AD that would require the following:

—Installing an inspecting opening in each wing;
—Temporarily reducing the load factor limits until completion of the initial inspection of the upper and lower surfaces of the wing spar and landing gear attachment blocks and are found free of cracks;
—Repetitively inspecting the upper and lower surfaces of the wing spar and the landing gear attachment blocks for cracks;
—Reducing the flick maneuver speed;
—Inserting a copy of the AD into the Limitation Section of the CAP 10B flight manual; and
—Fabricating and installing a placard that indicates the flick maneuver speed in the cockpit in the pilot's clear view. The placard will incorporate the following language:

''The Never-Exceed Airspeed for Positive or Negative Flick Maneuvers Is 160 KM/H (86 KTS)''

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Initial Compliance Time for Inspecting the Upper Wing Spar Cap, the Main Wing Spar Undersurface, and the Landing Gear Attachment Blocks

What is the commenter's concern? The commenter states that the initial inspection compliance time of within the next 50 hours TIS after the effective date of this AD should be increased to 55 hours TIS to coincide with French AD Number 2001–616(A) R1, dated May 29, 2002.

What is FAA's response to the concern? We concur with the commenter and will change the final rule AD action to incorporate this change.

Comment Issue No. 2: Change the Repetitive Inspection Compliance Time for the Landing Gear Attachment Blocks

What is the commenter's concern? The commenters are concerned that repetitively removing bolts to inspect the landing gear attachment blocks for cracks accelerates wear by elongating the bolt holes, which promotes block cracking. Requiring repetitive inspections at intervals not to exceed every 50 hours time-in-service (TIS) will ultimately do more harm than good. The commenters suggest that repetitive inspections be performed at each annual inspection.

What is FAA's response to the concern? We partially concur. We agree that the intervals for repetitive inspections of the landing gear attachment blocks should be increased. However, we cannot enforce a compliance time of ''at each annual inspection.'' The unsafe condition is directly related to use and not calendar time. Therefore, we are increasing the intervals for repetitive inspections of the landing gear attachment blocks to every 1,000 hours TIS.

We will change the final rule AD action to incorporate this change.

Comment Issue No. 3: Change the Repetitive Inspection Compliance Time for the Upper Wing Spar Cap and the Main Wing Spar Undersurface

What is the commenter's concern? The commenter states that the repetitive inspection compliance time of every 50 hours TIS after the initial inspection should be increased to 55 hours TIS to coincide with intermediate inspection requirements in French AD Number 2001–616(A) R1, dated May 29, 2002. This is for the upper wing spar cap and the main wing spar undersurface.

What is FAA's response to the concern? We concur with the commenter and will change the final rule AD action to incorporate this change.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for changing the compliance time for the repetitive inspection intervals and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 36 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the installation of the inspection opening:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
18 workhours × $60 per hour = $1,080	No parts required to make the inspection opening.	$1,080	$1,080 × 36 = $38,880

We estimate the following costs to accomplish the inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
15 workhours × $60 per hour = $300	No parts required to perform the inspection	$300	$300 × 36 = $10,800

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Accomplishing the flight manual and placard requirements of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this action is the time it will take each owner/operator of the affected airplanes to insert the information into the flight manual and fabricate and install the placard.

What is the difference between the cost impact of this AD and the cost impacts of AD 98–12–10 and AD 99–21–23? The only difference between this AD and AD 98–12–10 and AD 99–21–23 is the change of inspection procedures. The FAA has determined that the costs of these changes are minimal and does not increase the cost impact over that already required by the previous ADs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988), and AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999), and by adding a new AD to read as follows:

2003–04–02 Apex Aircraft (Avions Mudry et Cie previously held type certificate A36EU): Amendment 39–13050; Docket No. 2002–CE–04–AD; Supersedes AD 98–12–10, Amendment 39–10566, and AD 99–21–23, Amendment 39–11368.

(a) *What airplanes are affected by this AD?* This AD affects Model CAP 10B airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) For CAP 10 B airplanes, all serial numbers through 263, install a permanent inspection opening in the No. 1 wing rib. Inspection openings are incorporated during production for airplanes having a serial number of 264 or higher.	Within the next 100 hours time-in-service (TIS) after July 23, 1993 (the effective date of AD 93–10–11, which was superseded by AD 98–12–10), unless already accomplished.	In accordance with Avions Mudry Service Bulletin CAP10B No. 16 ATA (57–004), dated April 27, 1992.

Actions	Compliance	Procedures
(2) For all airplanes, accomplish the following: (i) Restrict the load factors limitation to +5 & −3 G's. (ii) Restrict the entry speed for performing flick maneuvers to 86 knots through the incorporation of the following information into the CAP 10B flight manual: ''The never-exceed airspeed for positive or negative flick maneuvers is 160 km/h (86 knots).'' (iii) Fabricate a placard that incorporates the following words (using at least ⅛-inch letters) and install this placard on the instrument panel within the pilot's clear view: ''THE NEVER EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK MANEUVERS IS 160 KM/H (86 KNOTS)''.	Within the next 25 hours TIS after April 4, 2003 (the effective date of this AD).	Accomplish the limitations of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD by inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this flight manual insertion and the placard requirements of paragraph (d)(2)(iii) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) Inspect the upper wing spar cap, the main wing spar undersurface, and the landing gear attachment blocks for cracks.	Initially inspect all areas within the next 55 hours TIS after April 4, 2003 (the effective date of this AD). Repetitively inspect the upper wing spar cap and the main wing spar undersurface thereafter at intervals not-to-exceed 55 hours TIS. Repetitively inspect the landing gear attachment blocks thereafter at intervals not-to-exceed 1,000 hours TIS.	In accordance with APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated February 4, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated February 4, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated February 4, 2002.
(4) If cracks are found during any inspection required in paragraph (d)(3) of this AD, accomplish the following: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; (ii) Incorporate this repair scheme; and (iii) The repair scheme will indicate whether or not you may raise the load factor limits.	Obtain and incorporate the repair scheme prior to further flight after the inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(3) of this AD.	In accordance with the repair scheme obtained from APEX Aircraft, Direction Technique, Route de Troyes, F21121, Darois, France. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) If no cracks are found during the initial inspection required in paragraph (d)(3) of this AD, you may raise load factor limits back to +6 & −4.5 G's.	Prior to further flight after the initial inspection required in paragraph (d)(3) of this AD in which no cracks were found.	Not applicable.

Note 1: The service information specified in paragraph (d)(3) of this AD is available on CD–ROM from the manufacturer. You may contact them at the address and phone number in paragraph (h) of this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

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

(2) Alternative methods of compliance approved in accordance with AD 98–12–10 and AD 99–21–23, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

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

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992; APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated February 4, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated February 4, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated February 4, 2002.

(i) The Director of the Federal Register approved this incorporation by reference of APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated February 4, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated February 4, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated February 4, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) The Director of the Federal Register previously approved the incorporation by reference of Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992, as listed in the regulations as of July 23, 1993 (58 FR 31342, June 2, 1993).

(2) You may get copies from APEX AIRCRAFT, Direction Technique, Route de Troyes, F21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–12–10, Amendment 39–10566 and AD 99–21–23, Amendment 39–11368.

Note 3: The subject of this AD is addressed in French AD Number 2001–616(A) R1, dated May 29, 2002.

(j) *When does this amendment become effective ?* This amendment becomes effective on April 4, 2003.

Issued in Kansas City, Missouri, on February 4, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3450 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–47–AD; Amendment 39–13056; AD 2003–04–08]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Piaggio Aero Industries S.p.A. (Piaggio) Model P–180 airplanes. This AD requires you to install a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing. This AD also requires you to incorporate a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent passengers from occupying the lavatory seat during takeoff and landing. The lavatory/cabin partition could fail and lead to passenger injury in an emergency situation.

DATES: This AD becomes effective on April 11, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 11, 2003.

ADDRESSES: You may get the service information referenced in this AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA of a manufacturing/installation defect on the lavatory/cabin partitions on certain Piaggio Model P–180 airplanes. The lavatory/cabin partitions were installed improperly and are not of sufficient strength. This condition was found during a quality control inspection.

What is the potential impact if FAA took no action? Occupying the lavatory seat during takeoff or landing could result in failure of the lavatory/cabin partition. Such failure could result in passenger injury in an emergency situation.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piaggio Model P–180 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 21, 2002 (67 FR 70187). The NPRM proposed to require you to install a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing; and incorporate a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM).

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

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 12 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the placard installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	$20	$80	12 × $80 = $960

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is ''within the next 30 days after the effective date of this AD, unless already accomplished.''

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this AD is presented in calendar time instead of hours TIS because the lavatory/cabin partitions are unsafe as a result of an improper installation. The unsafe condition has the same chance of

occurring on an airplane with 50 hours TIS as it does for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 30 days will:

- Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
- Not inadvertently ground any of the affected airplanes.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–08 Piaggio Aero Industries S.p.A.: Amendment 39–13056; Docket No. 2002–CE–47–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, serial numbers 1002, 1004, 1006 through 1037, 1039, 1040, 1042, 1043, and 1045, that are:

(1) Equipped with a toilet seat; and

(2) Are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent passengers from occupying the lavatory seat during takeoff and landing. The lavatory/cabin partition could fail and lead to passenger injury in an emergency situation.

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

Actions	Compliance	Procedures
(1) Fabricate a placard that incorporates the following words (using at least ¼-inch black letters on a white background) and install this placard on the inside of the lavatory door in front of the lavatory seat: ''LAVATORY SEAT CANNOT BE OCCUPIED DURING TAKEOFF AND LANDING''.	Within the next 30 days after April 11, 2003 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate and install the placard. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Incorporate into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM), page 4 of Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issue: September 10, 2001.	Within the next 30 days after April 11, 2003 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the POH/AFM manual insertion of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) As an alternative method of compliance to this AD, you may modify the lavatory/cabin partition.	At any time as terminating action for the placard and POH/AFM requirements of this AD.	In accordance with Piaggio Service Bulletin (Recommended) No. SB–80–0165, Original Issue: September 10, 2001.

Note 1: Information about fabricating and installing the placard and the POH/AFM manual insertion is referenced in Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issued: September 10, 2001.

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

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

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

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

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

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

(h) *Are any service bulletins incorporated into this AD by reference?* The POH/AM requirements of this AD must be done in

accordance with Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issue: September 10, 2001. The procedures for accomplishing the optional modification of this AD are contained in Piaggio Service Bulletin (Recommended) No. SB–80–0165, Original Issue: September 10, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD Number 2001–513, dated November 30, 2001.

(i) *When does this amendment become effective ?* This amendment becomes effective on April 11, 2003.

Issued in Kansas City, Missouri, on February 10, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3870 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–45–AD; Amendment 39–13053; AD 2003–04–05]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Robinson Helicopter Company (RHC) Model R44 helicopters that requires inspecting the tail rotor pitch control assembly for roughness or binding of the pitch control bearings (bearings) by hand-rotating the pitch control bearing housing (housing). If the housing does not rotate freely, the AD requires replacing the unairworthy pitch control assembly with an airworthy unit. This amendment is prompted by reports of failure of the tail rotor pitch control assembly due to improperly lubricated bearings on the RHC Model R22 helicopters. Although there have been no reported failures on the RHC Model R44 helicopters, the design of the tail rotor pitch control assembly makes it susceptible to the same failures as have occurred on the Model R22 helicopters. The actions specified by this AD are intended to detect corrosion of the bearings and to prevent bearing failure and subsequent loss of directional control of the helicopter.

DATES: Effective March 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified helicopters was published in the **Federal Register** on September 10, 2002 (67 FR 57351). That action proposed inspecting the pitch control assembly for roughness or binding of the bearings by hand-rotating the housing and if the housing does not rotate freely, replacing each unairworthy pitch control assembly with an airworthy unit.

The FAA has reviewed RHC Service Bulletin SB–43A, Revision A, dated June 10, 2002 (SB), which describes procedures for inspecting the pitch control assembly for roughness or binding of the bearings by hand-rotating the housing. If the housing does not rotate freely, the SB specifies replacing each unairworthy pitch control assembly, part number (P/N) A031–1, with an airworthy unit in accordance with the maintenance manual.

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

One commenter, the manufacturer, requests a change to the summary information to indicate that bearing failures have been reported only on RHC Model R22 helicopters, and there are no reports of failed bearings on Model R44 helicopters. The FAA agrees and has changed the preamble information to indicate that the bearing failures have occurred on the RHC Model R22 helicopters only.

The same commenter requests a change to the summary and the discussion sections to revise the failure sequence to indicate that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The commenter states that in all three of the bearing failures, the failed bearing caused the pitch control linkage to fail and the tail rotor to go to flat pitch but none of the failures resulted in an accident. The commenter also states that there was no breakup of the tail rotor assembly, no tail rotor contact of the tailboom, and no loss of control resulting in an accident. The FAA agrees that the failed bearing has not resulted in breakup of the tail rotor assembly and contact with the tailboom, and the likelihood of such a breakup and contact with the tailboom may be remote. Therefore, we have removed the reference to the breakup of the tail rotor assembly and contact with the tailboom from the failure sequence. We do not agree that the failure sequence should state that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The loss of directional control associated with this type of failure could result in loss of control of the helicopter, and a successful power-off landing may not be possible. The term ''loss of control of the helicopter'', however, may be understood to mean an almost certain catastrophic event, such as loss of cyclic or pitch control. That is not our intent when we use the failure sequence in our AD's. That sequence states what could happen not necessarily what will happen. Our intent is to convey the sequence of events that we intend to prevent by issuing the AD to correct the unsafe condition. Therefore, we have changed the failure sequence to state that loss of ''directional'' control can result.

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

The FAA estimates that this AD will affect 440 helicopters of U.S. registry, that it will take approximately 2.3 work hours per helicopter to inspect and replace each pitch control assembly, and that the average labor rate is $60 per

work hour. Required parts will cost approximately $1145 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $564,520, assuming the pitch control assembly is replaced on the entire fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–05 Robinson Helicopter Company: Amendment 39–13053. Docket No. 2001–SW–45–AD.

Applicability: Model R44 helicopters, up to and including serial number 1208, except serial numbers 1143, 1165, 1183, 1189, 1192, 1196, 1197, 1198, 1200, 1203, and 1204, with pitch control assembly, part number (P/N) C031–1, Revision G or prior, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect corrosion of a tail rotor pitch control bearing (bearing) and to prevent bearing failure and subsequent loss of directional control of the helicopter, accomplish the following:

(a) Within 20 hours time-in-service (TIS) and thereafter at intervals not to exceed 300 hours TIS or 12 months, whichever occurs first, inspect the pitch control assembly for roughness or binding of the pitch control bearings by hand rotating the pitch control bearing housing (housing) in accordance with Robinson Helicopter Company Service Bulletin SB–43A, Revision A, dated June 10, 2002. If the housing does not rotate freely, before further flight, replace the unairworthy pitch control assembly with an airworthy unit.

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

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

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

(d) The inspection of the pitch control assembly shall be done in accordance with Robinson Helicopter Company Service Bulletin SB–43A, Revision A, dated June 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 26, 2003.

Issued in Fort Worth, Texas, on February 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3773 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–44–AD; Amendment 39–13052; AD 2003–04–04]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Robinson Helicopter Company (RHC) Model R22 helicopters that requires inspecting the tail rotor pitch control assembly for roughness or binding of the pitch control bearings (bearings) by hand-rotating the pitch control bearing housing (housing). If the housing does not rotate freely, the AD requires replacing the unairworthy pitch control assembly with an airworthy unit. This amendment is prompted by reports of failure of the tail rotor pitch control assembly due to improperly lubricated bearings on the RHC Model R22 helicopters. The actions specified by this AD are intended to detect corrosion of the bearings and to prevent bearing failure and subsequent loss of directional control of the helicopter.

DATES: Effective March 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification

Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified helicopters was published in the **Federal Register** on September 10, 2002 (67 FR 57349). That action proposed inspecting the pitch control assembly to determine roughness or binding of the bearings by hand-rotating the housing. If the housing does not rotate freely, it proposed replacing each unairworthy pitch control assembly with an airworthy unit.

The FAA has reviewed RHC Service Bulletin SB–90A, Revision A, dated June 10, 2002 (SB), which describes procedures for inspecting the pitch control assembly to determine roughness or binding of the bearings by hand-rotating the housing. If the housing does not rotate freely, the SB specifies replacing each unairworthy pitch control assembly, part number (P/N) A031–1, with an airworthy unit in accordance with the maintenance manual.

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

One commenter, the manufacturer, requests a change to the summary information to indicate that bearing failures have been reported only on RHC Model R22 helicopters, and they have received no reports of failed bearings on Model R44 helicopters. The FAA agrees and has changed the summary to indicate that the bearing failures have occurred on the RHC Model R22 helicopters only.

The same commenter requests a change to the summary and the discussion sections to revise the failure sequence to indicate that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The commenter states that in all three of the bearing failures, the failed bearing caused the pitch control linkage to fail and the tail rotor to go to flat pitch, but none of the failures resulted in an accident. The commenter also states that there was no breakup of the tail rotor assembly, no tail rotor contact of the tailboom, and no loss of control resulting in an accident. The FAA agrees that the failed bearing has not resulted in breakup of the tail rotor assembly and contact with the tailboom, and the likelihood of such a breakup and contact with the tailboom may be remote. Therefore, we have removed the reference to the breakup of the tail rotor assembly and contact with the tailboom from the failure sequence. We do not agree that the failure sequence should state that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The loss of directional control associated with this type of failure could result in loss of control of the helicopter, and a successful power-off landing may not be possible. The term ''loss of control of the helicopter'', however, may be understood to mean an almost certain catastrophic event, such as loss of cyclic or pitch control. That is not our intent when we use the failure sequence in our AD's. That sequence states what could happen not necessarily what will happen. Our intent is to convey the sequence of events that we intend to prevent by issuing the AD to correct the unsafe condition. Therefore, we have changed the failure sequence to state that loss of ''directional'' control can result.

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

The FAA estimates that this AD will affect 1300 helicopters of U.S. registry, that it will take approximately 2.3 work hours per helicopter to inspect and replace each pitch control assembly, and that the average labor rate is $60 per work hour. Required parts will cost approximately $800 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,219,400, assuming the pitch control assembly is replaced on the entire fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–04 Robinson Helicopter Company: Amendment 39–13052. Docket No. 2001–SW–44–AD.

Applicability: Model R22 helicopters, up to and including serial number 3328, except serial numbers 3167, 3326, and 3327, with pitch control assembly, part number (P/N) A031–1, Revision J or prior, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect corrosion of a tail rotor pitch control bearing (bearing) and to prevent bearing failure and loss of directional control of the helicopter, accomplish the following:

(a) Within 20 hours time-in-service (TIS) and thereafter at intervals not to exceed 300 hours TIS or 12 months, whichever occurs first, inspect the pitch control assembly for roughness or binding of the pitch control bearings by hand-rotating the pitch control bearing housing (housing) in accordance with Robinson Helicopter Company Service

Bulletin SB–90A, Revision A, dated June 10, 2002. If the housing does not rotate freely, before further flight, replace the unairworthy pitch control assembly with an airworthy unit.

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

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

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

(d) The inspection of the pitch control assembly shall be done in accordance with Robinson Helicopter Company Service Bulletin SB–90A, Revision A, dated June 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on March 26, 2003.

Issued in Fort Worth, Texas, on February 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3772 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14075; Airspace Docket No. 02–AAL–7]

Establishment of Class E Airspace; Wasilla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA published in the **Federal Register** of January 2, 2003 (68 FR 44), Docket Number FAA 2002–14075; Airspace Docket Number 02–AAL–7, a final rule for the establishment of Class E Airspace for the Wasilla Airport, AK. The coordinates of the Airport Reference Point (ARP) for the Wasilla Airport were wrong. This action corrects the coordinates.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.ctr.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION: **Federal Register** Document 02–33129, Docket Number FAA 2002–14075; Airspace Docket Number 02–AAL–7, published on January 2, 2003 (68 FR 44) established the Class E airspace area at Wasilla, AK. The coordinates for the ARP read ''Wasilla Airport, AK (lat. 61° 34′ 08″ N, long. 149° 32′ 25″ W).'' This should read ''Wasilla Airport, AK (lat. 61° 34′ 17″ N, long. 149° 32′ 26″ W).'' This action corrects the coordinates that were wrong.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Wasilla Airport, AK as published in the **Federal Register** (68 FR 44), and in corporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

In the rule FR Document 02–33129, published on January 2, 2003 make the following correction to page 45.

* * * * *

AAL AK E5 Wasilla, AK [Corrected]

Wasilla Airport, AK

(Lat. 61° 34′ 17″ N., long. 149° 32′ 26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wasilla Airport excluding Big Lake Class E Airspace.

* * * * *

Issued in Anchorage, AK, on February 5, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–3962 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14428; Airspace Docket No. 03–ACE–8]

Modification of Class E Airspace; Ankeny, IA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Ankeny, IA revealed a discrepancy in the Ankeny Regional Airport, IA airport reference point used in the legal description for the Ankeny, IA Class E airspace. This action corrects the discrepancy by modifying the Ankeny, IA Class E airspace and by incorporating the current Ankeny Regional Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal 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–2003–14428/ Airspace Docket No. 03–ACE–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Ankeny, IA. It incorporates the current airport reference point for Ankeny Regional Airport, IA and brings the legal description of this airspace

area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environment, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14428/Airspace Docket No. 03–ACE–8''. The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

ACE IA E5 Ankeny, IA

Ankeny Regional Airport, IA
(Lat. 41°41′28″N., long. 93°33′59″W.)
COSED Waypoint
(Lat. 41°46′40″N., long. 93°33′59″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Ankeny Regional Airport, and within 2 miles each side of the 045° bearing from the airport extending from the 7-mile radius to 8.9 miles northeast of the airport, and within 2 miles each side of the 015° bearing from COSED Waypoint to 5.8 miles northeast of the waypoint, excluding that portion within the Des Moines, IA, Class C and E airspace areas.

* * * * *

Issued in Kansas City, MO on February 5, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3967 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14426; Airspace Docket No. 03–ACE–6]

Modification of Class E Airspace; Lebanon, MO

AGENCY: Federal Aviation Administration (FAA)DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Lebanon, MO has revealed discrepancies in the Lebanon, Floyd W. Jones Airport, MO airport reference point used in the legal description for the Class E airspace. This action corrects those discrepancies by incorporating the current Lebanon, Floyd W. Jones Airport, MO airport reference point in the Class E legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal 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–2003–14426/Airspace Docket No. 03–ACE–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone

1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies Class Class E airspace at Lebanon, MO. It also brings the legal descriptions of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14426/Airspace Docket No. 03–ACE–6.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

ACE MO E5 Lebanon, MO

Lebanon, Floyd W. Jones Airport, MO
(Lat. 37°38′54″ N., long. 92°39′09″ W.)
Lebanon NDB, MO
(Lat. 37°34′17″ N., long. 92°39′30″ W.)

That airspace extending upward form 700 feet above the surface within a 6.5-mile radius of Floyd W. Jones Airport and within 2.6 miles each side of the 184° bearing from the Lebanon NDB extending from the 6.5-mile radius to 9.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on February 5, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3968 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14427; Airspace Docket No. 03–ACE–7]

Modification of Class E Airspace; Ames, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Ames, IA has revealed a discrepancy in the Ames Municipal Airport, IA airport reference point used in the legal description for the Ames, IA Class E airspace. Additional discrepancies were identified in the name and location of the NDB serving Ames Municipal Airport. This action corrects these discrepancies by modifying the Ames IA Class E airspace and by incorporating the current Ames Municipal Airport, IA airport reference point and the correct name and location of the NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal 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–2003–14427/ Airspace Docket No. 03–ACE–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329+2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Ames, IA. It incorporates the current airport reference point for Ames Municipal Airport, IA, corrects the name and location of the NDB serving Ames Municipal Airport and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14427/Airspace Docket No. 03–ACE–7'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40129; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended];

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

ACE IA E5 Ames, IA

Ames Municipal Airport, IA
(Lat. 41°59′31″ N., long. 93°37′19″ W.)
Merle NDB
(Lat. 41°54′10″ N., long. 93°39′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Ames Municipal Airport, and within 2.1 miles each side of the 197° bearing from the Merle NDB extending from the 6.6-mile radius to 7.4 miles south of the airport, and within 2 miles each side of the 136° bearing from the airport extending from the 6.6-mile radius to 10 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on February 5, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3969 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13413; Airspace Docket No. 02–ACE–6]

Realignment of Federal Airways V–72 and V–289; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on January 16, 2003 (68 FR 2187). In that rule, the radials for Federal Airway 72 (V–72) and Federal Airway 289 (V–289) northeast of the Dogwood, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) were inadvertently published in magnetic values rather than the true radials. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On January 16, 2003, Airspace Docket No. 02–ACE–06 (68 FR 2187), was published amending the legal description of V–72 and V–289. The descriptions inadvertently provided magnetic values for the coordinates rather than the true radials. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal descriptions for V–72 and V–289, as published in the **Federal Register** on January 16, 2003, (68 FR 2187), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 2188, correct the legal descriptions of V–72 and V–289, to read as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 058° and Maples, MO, 236° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL. From Rosewood, OH; Mansfield, OH; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghampton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

* * * * *

V–289 [Revised]

From Beaumont, TX; INT Beaumont 323° and Lufkin, TX, 161° radials; Lufkin; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 058° and Maples, MO, 236° radials; INT Maples 236° and Vichy, MO, 204° radials; to Vichy.

* * * * *

Issued in Washington, DC, on February 5, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–3963 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–14369; Airspace Docket No. 03–AWA–1]

RIN 2120–AA66

Revision of Prohibited Area P–49 Crawford; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Prohibited Area 49 (P–49), over the President of the United States' residence at Crawford, TX. The FAA is modifying this airspace to enhance security in the immediate vicinity of the presidential residence, and to assist the United States Secret Service (USSS) in accomplishing its mission of providing security for the President of the United States.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 6, 2003, the USSS requested that the FAA modify the current description of P–49, to enhance the level of security provided for the President. Specifically, the USSS requested that we relocate the center of the prohibited area.

Under the provision of § 73.83 of Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73), no person may operate an aircraft within that area without permission from the using agency. This action responds to that request.

The Rule

This amendment to 14 CFR part 73 modifies P–49, Crawford, TX. Currently, the prohibited area extends from the surface to 5,000 feet above mean sea level (MSL) within a 3-nautical mile (NM) radius of latitude 31°34′57″ N., longitude 97°32′37″ W. This action relocates the center of the prohibited area approximately one-half nautical mile east-southeast of its current location to latitude 31°34′45″ N., longitude 97°32′00″ W. This action is a minor modification of the center coordinates for the airspace area. Flight within this area is prohibited unless permission is obtained from the using agency. Because of the immediate need to enhance the security of the President, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable.

Section 73.89 of 14 CFR part 73 was republished in FAA Order 7400.8K, dated September 26, 2002.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.89 [Amended]

2. § 73.89 is amended as follows:

* * * * *

P–49 Crawford, TX [Amended]

By removing ''Boundaries. That airspace within a 3 NM radius of lat. 31°34′57″ N., long. 97°32′37″ W.,'' and substituting ''Boundaries. That airspace within a 3 NM radius of lat. 31°34′45″ N., long. 97°32′00″ W.,'' in its place.

* * * * *

Issued in Washington, DC, on February 6, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–3964 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30354; Amdt. No. 440]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace Systems, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reason or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory change and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95 Airspace, Navigation (Air).

Issued in Washington, DC, on February 10, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

PART 95—[AMENDED]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 440 Effective Date March/20/2003]

From	To	MEA
§ 95.6001 Victor Routes-U.S. § 95.6072 VOR Federal Airway 72 is Amended to Read in Part		
Dogwood, MO VORTAC	Gobey, MO Fix	3,400
Gobey, MO Fix	Maples, MO VORTAC	3.400
§ 95.6142 VOR Federal Airway 142 is Amended to Read in Part		
Malad City, ID VOR/DME	Fort Bridger, WY VOR/DME	12,000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 440 Effective Date March/20/2003]

From	To	MEA
§ 95.6289 VOR Federal Airway 289 is Amended to Read in Part		
Dogwood, MO VORTAC	GOBEY, MO FIX	3,400
GOBEY, MO FIX	Pekle, MO FIX	3,400
Pekle, MO FIX	Vichy, MO VOR/DME	3,000

[FR Doc. 03–3970 Filed 2–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 03N–0008]

RIN 0910–AA01

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) ophthalmic drug products are generally recognized as safe and effective and not misbranded. This amendment clarifies the active ingredient in OTC eyewash drug products and the labeling of the active ingredient and its purpose. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date*: This rule is effective March 21, 2003.

Compliance Dates: The compliance dates are either February 21, 2005, or the date of the first major labeling revision after the effective date of March 21, 2003.

Comment Dates: Submit written or electronic comments by April 21, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA issued a final monograph for OTC ophthalmic drug products (part 349 (21 CFR part 349)). Section 349.20 of that monograph states that eyewashes contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA issued a final rule establishing standardized format and content requirements for the labeling of OTC drug products (§ 201.66 (21 CFR 201.66)). Section 201.66(c)(2) requires the labeling to state the established name of each active ingredient and the quantity in each dosage unit stated in the directions for use. Section 201.66(c)(3) requires the labeling to state the purpose of each active ingredient, which is the general pharmacological category or the principal intended action of the drug. When an OTC drug monograph contains a statement of identity, the pharmacological action described in the statement of identity shall also be stated as the purpose of the active ingredient. Section 201.66(c)(8) requires a listing of the established name of each inactive ingredient.

II. Clarification

Manufacturers of OTC eyewash drug products have requested clarification on how to list the active and inactive ingredients for these products to comply with § 201.66(c)(2) and (c)(8). The agency has determined that the active ingredient of these eyewash drug products is water, and that tonicity, hydrogen-ion concentration (pH) and buffering, and preservative agents should be listed as inactive ingredients. Based on the statement of identity in § 349.78(a), the agency has also determined that the purpose of the water may be stated as either ''eyewash'' or ''eye irrigation.''

Section 502(e)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)(A)(i)) (the act) requires the label of a drug to bear the established name of the drug to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula). The established name of the drug is defined as

> * * *(A) the applicable official name designated pursuant to section 508 [of the act], or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient * * *.

(21 U.S.C. 352(e)(3))

Section 508 of the act (21 U.S.C. 358) authorizes FDA to designate an official name for any drug if FDA determines ''that such action is necessary or desirable in the interest of usefulness and simplicity'' (21 U.S.C. 358(a)). FDA does not, however, routinely designate official names for drug products under section 508 of the act (21 CFR 299.4(e)). In the absence of designation by FDA of an official name, interested persons may rely on the current compendial name as the established name (§ 299.4(e)). FDA has not designated an official name for water. The current compendial name for water is ''purified water,'' which should appear in product labeling.

III. The Technical Amendment

The agency is revising § 349.20 to state: ''The active ingredient of the product is purified water. The product also contains suitable tonicity agents to establish isotonicity with tears, suitable agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.'' The agency is also revising the statement of identity for eyewash drug products in § 349.78(a) to delete ''eye lotion'' and replace it with ''eye irrigation.'' The agency does not consider the term ''eye lotion'' fully informative to consumers in stating the purpose of the water in the eyewash drug product. Manufacturers should state the purpose of the water as either ''eyewash'' or ''eye irrigation.''

Section 201.66(c)(2) requires the labeling to state the quantity of each active ingredient. For products marketed without discrete dosage

directions, such as eyewashes, the labeling should state the proportion of each active ingredient. For eyewashes, the quantity of water should be stated as the percentage of the total product, which is likely to be 98 to 99 percent. It is not necessary to state ''in each bottle'' or an amount per dosage unit.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of agency procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million. No further analysis is required under the Regulatory Flexibility Act because the agency has determined that this final rule will not have a significant effect on a substantial number of small entities.

As discussed previously, FDA is implementing this action to clarify the final monograph for OTC ophthalmic drug products. This will facilitate compliance with the labeling provisions in § 201.66. OTC ophthalmic drug products were supposed to be in compliance with this section by May 16, 2002. The agency believes that while some products may have already incorporated the labeling format described in this technical amendment, other products have not.

The agency believes 25 manufacturers produce approximately 40 eyewash products, which are represented by up to 60 stock keeping units (SKUs). To minimize any impacts on any of these manufacturers not currently in compliance, the agency is providing them with up to 24 months (or the date of the first major labeling revision of the product after the effective date of this final rule, whichever occurs first) to relabel their products. The agency believes the cost of a label change to a particular SKU will not exceed $3,000. Based on this information, the total one-time costs of relabeling would be $180,000 ($3,000 per SKU x 60 SKUs). The average cost per manufacturer would be $7,200 ($180,000 / 25 manufacturers). These estimates likely overstate the true burden of this rule, as the agency believes some manufacturers may already be in compliance and would incur no additional costs. Also, some manufacturers might be able to make these changes during the implementation period as part of routinely scheduled label revisions.

The Regulatory Flexibility Act requires the agency to analyze whether a rule may have a significant impact on a substantial number of small entities. According to the Small Business Administration, manufacturers of OTC ophthalmic drug products, as part of the North American Industry Classification System (NAICS) code 325412 (pharmaceutical preparations), are small entities if they have fewer than 750 employees. The agency has reviewed information on the manufacturers of OTC eyewash drug products and believes 22 of the 25 manufacturers are small entities. These small entities have average annual revenues of $10.7 million. The cost of the rule per affected small entity would be 0.067 percent ($7,200 / $10.7 million) of average annual revenues.

The two smallest of these small entities have reported annual revenues of approximately $1 million. The agency believes one of these manufacturers to have three SKUs. The total cost of the final rule for this particular small entity would be 0.9 percent (3 SKUs x $3,000 per SKU / $1 million). Thus, the impact on any of the small entities would be less than 1 percent of annual revenues. The agency therefore certifies that this final rule will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

The agency concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

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

VII. Federalism

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

VIII. Opportunity for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or three hard copies

of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 349

Labeling, Opthalmic goods and services, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 349 is amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.20 is revised to read as follows:

§ 349.20 Eyewashes.

The active ingredient of the product is purified water. The product also contains suitable tonicity agents to establish isotonicity with tears, suitable agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.

3. Section 349.78 is amended by revising paragraph (a) to read as follows:

§ 349.78 Labeling of eyewash drug products.

(a) *Statement of identity*. The labeling of the product identifies the product with one or more of the following terms: ''eyewash,'' ''eye irrigation,'' or ''eye irrigating solution.''

* * * * *

Dated: January 31, 2003.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 03–3926 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 636

[FHWA Docket No. FHWA–2000–7799]

RIN 2125–AE79

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule on design-build contracting published in the **Federal Register** on December 10, 2002 (67 FR 75902). The FHWA is correcting a typographical error concerning the relative weight of evaluation factors other than cost or price.

EFFECTIVE DATE: The final rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1562. For legal information: Mr. Harold Aikens, Office of the Chief Counsel (HCC–30), (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the final rule, the NPRM, and all comments received by the U.S. Dockets Facility, Room PL–410, may be viewed through the Docket Management System (DMS) at *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days a year. Electronic submission and retrieval help and guidelines are available under the help section of this web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara.*

Background

Section 1307 of the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178, 112 Stat. 107 (1998)) amends 23 U.S.C. 112 to allow the design-build contracting method after the FHWA promulgates a regulation prescribing the Secretary's approval criteria and procedures on qualified projects. The TEA–21 defined qualified projects as projects that comply with the criteria in this regulation and whose total costs are estimated to exceed: (1) $5 million for intelligent transportation system projects, and (2) $50 million for any other project. It also provides certain key requirements that the FHWA must address in the development of these regulations.

On December 10, 2002, at 67 FR 75902, the FHWA published a final rule on Design-Build Contracting that implemented the regulations for design-build contracting as mandated by section 1307 of TEA–21. The regulations list the criteria and procedures that will be used by the FHWA in approving the use of design-build contracting by the State transportation departments. The regulation does not require the use of design-build contracting, but allows State transportation departments to use it as an optional technique in addition to traditional contracting methods.

After publication of the final rule, we realized that § 636.211(b)(2)(i) and (b)(2)(iii) read word for word identical to say, ''Significantly less important than cost or price.'' However, § 636.211(b)(2)(i) should read, ''Significantly more important than cost or price.'' This was stated clearly in the preamble to the final rule in the section-by-section analysis; however, when the rule language was typed in, both sections were identical, and the word ''less'' appeared in both sections. The FHWA is correcting § 636.211(b)(2)(i) to replace the word ''less'' with the word ''more.''

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, or within the meaning of the U.S. Department of Transportation's regulatory policies and procedures because it is merely a correction of a minor mistake in the regulatory language. This correction will not adversely affect, in a material way, any section of the economy.

In addition, this correction to the rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that the final rule will not have a significant economic impact on a substantial number of small entities and hereby certifies that this correction to the final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This action will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*). This action makes a ministerial correction to the final rule that allows STDs to use a contracting method that has only been used in the Federal-aid highway program on an experimental basis to date.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a Federal assessment. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the minor correction will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. The final rule does not address issues that are related to tribal operations. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Action Concerning Regulation 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 it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this rule and determined that it does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and has determined that this rule will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

List of Subjects in 23 CFR Part 636

Design-build, Grant programs-transportation, Highways and roads.

Issued on: February 13, 2003.

James A. Rowland,

Chief Counsel, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 636, as follows:

PART 636—DESIGN–BUILD CONTRACTING

1. The authority citation for 23 CFR part 636 continues to read as follows:

Authority: Sec. 1307 of Pub. L. 105–178, 112 Stat. 107: 23 U.S.C. 110, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

§ 636.211 [Corrected]

2. Correct paragraph (b)(2)(i) of § 636.211 to remove the word ''less'' and replace it with the word ''more''.

[FR Doc. 03–3987 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 157 and 602

[TD 9042]

RIN 1545–BB24

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the manner and method of reporting and paying the nondeductible 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The Victims of Terrorism Tax Relief Act of 2001 added this excise tax to the Internal Revenue Code of 1986. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective February 19, 2003.

Applicability Date: For dates of applicability, *see* § 157.5891–1T(e).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz at 202–622–8488 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1824. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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.

Background

This document adds a new part 157, Excise Tax on Structured Settlement Factoring Transactions, to title 26 of the Code of Federal Regulations. The temporary regulations under part 157 provide guidance on the proper manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The temporary regulations reflect the addition to the Internal Revenue Code (Code) of chapter 55 and section 5891 by section 115 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107–134 (115 Stat. 2427, 2436–2439).

Explanation of Provisions

Section 5891of the Internal Revenue Code imposes an excise tax on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The tax is equal to 40 percent of the factoring discount with respect to the factoring transaction.

The temporary regulations set forth the manner and method of paying the excise tax imposed under section 5891 of the Code. Generally, the term *structured settlement factoring transaction* is defined as a transfer of structured settlement payment rights made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration. If a taxpayer is liable for the tax imposed by section 5891, the excise tax must be reported on Form 8876, Excise Tax on Structured Settlement Factoring Transactions. Generally, the temporary regulations require that the excise tax return be filed and the tax paid on or before the later of the ninetieth day following the day the taxpayer receives any structured settlement payment rights (including portions of structured settlement payments) or May 20, 2003. The temporary regulations provide rules relating to the Service's authority to extend the time for payment of any amount shown or required to be shown on the return.

The temporary regulations do not address the method of determining the proper amount of the excise tax imposed by section 5891 of the Code. Issues related to the determination of the amount of the excise tax may be addressed by future regulations.

The temporary regulations will be effective generally for structured settlement factoring transactions entered into on or after February 22, 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Shareen Soltanzadeh Pflanz, Attorney, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 157

Excise taxes, Structured settlement factoring transactions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

1. Part 157 is added to read as follows:

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A—Tax on Structured Settlement Factoring Transactions

Subpart B—Procedure and Administration

Authority: 26 U.S.C. 7805.

Section 157.6001T also issued under 26 U.S.C. 6001.
Section 157.6011T also issued under 26 U.S.C. 6011.
Section 157.6061T also issued under 26 U.S.C. 6061.
Section 157.6071T also issued under 26 U.S.C. 6071.
Section 157.6091T also issued under 26 U.S.C. 6091.
Section 157.6161T also issued under 26 U.S.C. 6161.

Subpart A—Tax on Structured Settlement Factoring Transactions

§ 157.5891–1T Imposition of excise tax on structured settlement factoring transactions.

(a) *In general.* Section 5891 imposes on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount with respect to such factoring transactions.

(b) *Exceptions for certain approved transactions*—(1) In general. The excise tax shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) *Qualified order dispositive.* A qualified order shall be treated as dispositive for purposes of this exception.

(c) *Definitions*—(1) Applicable state statute means—(i) A statute that is enacted by the state in which the payee of the structured settlement is domiciled and that provides for the entry of an order, judgment, or decree described in paragraph (c)(4)(i) of this section; or

(ii) If there is no such statute, a statute that is enacted by the state in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business and that provides for the entry of such an order, judgment, or decree.

(2) Applicable state court means, with respect to any applicable state statute, a court of the state that enacted such statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, the term also includes a court of the state in which the payee is domiciled.

(3) Factoring discount means an amount equal to the excess of—

(i) The aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over

(ii) The total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(4) Q*ualified order* means a final order, judgment, or decree that—

(i) Finds that the transfer of structured settlement payment rights does not contravene any federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

(ii) Is issued under the authority of an applicable state statute by an applicable state court, or is issued by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(5) *Responsible administrative authority* means the administrative authority that had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

(6) *State* includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) *Structured settlement* means an arrangement—

(i) That is established by—

(A) Suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2); or

(B) Agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and

(ii) Under which the periodic payments are——

(A) Of the character described in section 130(c)(2)(A) and (B); and

(B) Payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(8) *Structured settlement factoring transaction* means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration other than—

(i) The creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or

(ii) A subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(9) *Structured settlement payment rights* means rights to receive payments under a structured settlement.

(d) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) *No withholding of tax.* The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(e) *Effective dates*—(1) *In general.* Section 5891 applies to structured settlement factoring transactions entered into on or after February 22, 2002. Section 5891(d) also applies to structured settlement factoring transactions entered into before February 22, 2002.

(2) *Transition rule.* In the case of a structured settlement factoring transaction entered into during the period beginning on February 22, 2002, and ending on July 1, 2002, no tax shall be imposed under section 5891(a) if—

(i) The structured settlement payee is domiciled in a state (or possession of the United States) that has not enacted an applicable state statute (as defined in section 5891(b)(3)); and

(ii) The person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction—

(A) The amounts and due dates of the payments to be transferred;

(B) The aggregate amount to be transferred;

(C) The consideration to be received by the structured settlement payee for the transferred payments;

(D) The discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520); and

(E) The expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

Subpart B—Procedure and Administration

§ 157.6001–1T Records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 55 (Structured

Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) must keep such complete and detailed records as are sufficient to enable the Internal Revenue Service (IRS) to determine accurately the amount of liability under chapter 55. (b) Notice by the IRS requiring returns, statements, or the keeping of records. The IRS may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not the person is liable for tax under chapter 55.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 157.6011–1T General requirement of return, statement, or list.

Every person liable for tax under section 5891 must file a return with respect to the tax in accordance with the forms and instructions provided by the Internal Revenue Service.

§ 157.6061–1T Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code or the regulations thereunder must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 157.6065–1T Verification of returns.

If a return, statement, or other document made under the provisions of chapter 55 of the Internal Revenue Code (chapter 55) or of subtitle F of the Code (subtitle F), or the regulations thereunder with respect to any tax imposed by chapter 55, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 55 or subtitle F, or the regulations thereunder, with respect to any tax imposed by chapter 55 may be required to contain or be verified by written declaration that is made under the penalties of perjury.

§ 157.6071–1T Time for filing returns.

(a) *In general.* Except as provided in paragraph (b) of this section, returns required by § 157.6011–1T (relating to returns of tax with respect to structured settlement factoring transactions) must be filed on or before the ninetieth day following the receipt of structured settlement payment rights in a structured settlement factoring transaction.

(b) *Returns relating to structured settlement payment rights received before February 19, 2003.* Returns required by § 157.6011–1T that relate to structured settlement payment rights received on or before February 19, 2003, must be filed on or before May 20, 2003.

§ 157.6081–1T Extension of time for filing the return.

(a) *Application for extension.* An application for an extension of time for filing the return required by § 157.6011–1T (relating to returns of tax with respect to structured settlement factoring transactions) must be completed in accordance with the forms and instructions provided by the Internal Revenue Service. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of the extension.

(b) *Filing of return.* If an extension of time for filing the return is granted, a return must be filed before the period of extension expires.

§ 157.6091–1T Place for filing returns.

The return required by § 157.6011–1T (relating to returns of tax with respect to structured settlement factoring transactions) must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

§ 157.6151–1T Time and place for paying of tax shown on returns.

The tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code shown on any return must, without assessment or notice and demand, be paid at the time and place specified in the forms and instructions provided by the IRS. For provisions relating to the time and place for filing such return, see § 157.6071–1T and § 157.6091–1T. For provisions relating to the extension of time for paying the tax, see § 157.6161–1T.

§ 157.6161–1T Extension of time for paying tax.

(a) *In general*—(1) *Tax shown or required to be shown on return.* The Internal Revenue Service may, at the request of the taxpayer, grant a reasonable extension of time for payment of the amount of any tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) and shown or required to be shown on any return. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax, except that in the case of a taxpayer that is abroad, such extension may exceed 6 months.

(2) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply.* The provisions of § 1.6161–1(b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 55 of the Internal Revenue Code.

§ 157.6165–1T Bonds where time to pay tax has been extended.

If an extension of time for payment is granted under section 6161, the Internal Revenue Service may, if it deems necessary, require a bond for the payment, in accordance with the terms of the extension, of the amount with respect to which the extension is granted. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to the form of bonds, see the regulations under section 7101 contained in part 301 (Regulations on Procedure and Administration) of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

2. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

3. In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB control No.
* * * * *	
157.6001–1T	1545–1824
157.6011–1T	1545–1824
157.6081–1T	1545–1824
157.6161–1T	1545–1824
* * * * *	

David Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 17, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–3864 Filed 2–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–03–010]

RIN 2115–AA97

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

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary safety and security zones in portions of the waters around La Guardia and John F. Kennedy airports in Queens, NY, the New York City Police Department (NYPD) ammunition depot on Rodman Neck in Eastchester Bay, and the Port Newark and Port Elizabeth, NJ, commercial shipping facilities in Newark Bay. This action is necessary to safeguard critical port infrastructure and coastal facilities 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: This rule is effective from February 4, 2003 until September 1, 2003. Comments and related material must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–010) and are 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 (CGD01–03–010), 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 temporary 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**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The Captain of the Port conducts an ongoing assessment of the maritime domain security needs within the port and has determined that the temporary safety and security zones established by this rule are necessary to provide for the protection of critical port infrastructure and coastal facilities. This determination was reached after due consideration of various warnings publicly disseminated by the Federal Bureau of Investigation and other law enforcement agencies, threatening statements attributed to the al Qaeda organization, terrorist attacks upon civil aviation in Kenya, Africa, and requests received from the police departments of New York City and the Port Authority of New York and New Jersey. In view of the urgent need to adequately safeguard critical coastal facilities and infrastructure from potential terrorist attack, any delay encountered by normal notice and comment rulemaking procedures would be contrary to the public interest.

For the same reasons, the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

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 13273 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).

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions within Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing

intention to conduct armed attacks on U.S. interests worldwide.

The Captain of the Port New York recently established six new safety and security zones throughout the New York Marine Inspection Zone and Captain of the Port Zone. (68 FR 2890, January 22, 2003). Subsequently, the Captain of the Port has determined that the safety and security zones established by this rule are urgently required to meet critical maritime domain security needs that were not addressed by the earlier rule. The Captain of the Port will consider any public comments submitted with respect to the temporary zones established in this rule before commencing notice and comment rulemaking to develop any permanent successor rule that may be required to meet the security needs of the port.

The Coast Guard is establishing temporary safety and security zones around La Guardia and John F. Kennedy airports, the New York City Police Department ammunition depot, and the Port Newark/Port Elizabeth commercial shipping facilities. These safety and security zones are necessary to provide for the safety of the port and to ensure that vessels, facilities, airports, or ammunition depots, 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.

Discussion of Temporary Rule

This rule establishes the following temporary safety and security zones:

La Guardia Airport, Bowery and Flushing Bays, Queens, NY.

The Coast Guard is establishing a temporary safety and security zone in all waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′52.8″ N, 073°53′09.3″ W, thence to 40°46′54.8″ N, 073°52′54.2″ W, thence to 40°46′59.3″ N, 073°52′51.3″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′10.6″ N, 073°52′06.7″ W, thence to 40°47′01.9″ N, 073°52′02.4″ W, thence to 40°46′50.4″ N, 073°52′08.1″ W, thence to 40°46′26.8″ N, 073°51′18.5″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′51.2″ N, 073°50′59.6″ W, thence to 40°45′49.5″ N, 073°51′07.2″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′02.3″ N, 073°51′20.1″ W, thence to 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) thence along the shoreline to the point of origin.

Within the boundaries of the above-described zone, the Coast Guard is establishing another temporary safety and security zone in all waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′50.6″ N, 073°53′07.3″ W, thence to 40°46′53.0″ N, 073°52′50.9″ W, thence to 40°46′57.6″ N, 073°52′47.9″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′07.9″ N, 073°52′09.2″ W, thence to 40°47′01.4″ N, 073°52′06.1″ W, thence to 40°46′50.0″ N, 073°52′14.6″ W, thence to 40°46′22.2″ N, 073°51′16.0″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′52.4″ N, 073°51′00.2″ W, thence to 40°45′50.6″ N, 073°51′07.9″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′04.0″ N, 073°51′23.3″ W, thence to 40°45′51.2″ N, 073°51′38.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 200-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.* This regulatory framework provides the Captain of the Port with the tools to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

John F. Kennedy (JFK) Airport, Jamaica Bay, Queens, NY

The Coast Guard is establishing four temporary safety and security zones in all waters near JFK Airport bound by the following points:

First, all waters of Bergen Basin north of 40°39′26.4″ N.

Second, all waters of Thurston Basin north of 40°38′21.2″ N.

Third, all waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′42.5″ N, 073°49′13.2″ W, thence to 40°38′00.6″ N, 073°47′35.1″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°37′59.4″ N, 073°47′32.6″ W, thence to 40°37′46.1″ N, 073°47′07.2″ W, thence to 40°37′19.5″ N, 073°47′30.4″ W, thence to 40°37′05.5″ N, 073°47′03.0″ W, thence to 40°37′34.7″ N, 073°46′40.6″ W, thence to 40°37′20.5″ N, 073°46′23.5″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′36.9″ N, 073°45′52.8″ W, thence to 40°38′00.8″ N, 073°44′54.9″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

Fourth, within the boundaries of the above-described 200 yard zone, all waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′45.1″ N, 073°49′11.6″ W, thence to 40°38′02.0″ N, 073°47′31.8″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°38′00.8″ N, 073°47′29.4″ W, thence to 40°37′47.4″ N, 073°47′02.4″ W, thence to 40°37′19.9″ N, 073°47′25.0″ W, thence to 40°37′10.0″ N, 073°47′03.7″ W, thence to 40°37′37.7″ N, 073°46′41.2″ W, thence to 40°37′22.6″ N, 073°46′21.9″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′40.0″ N, 073°45′55.6″ W, thence to 40°38′02.8″ N, 073°44′57.5″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 200-yard zone in Jamaica Bay that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of those two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.* This regulatory framework provides the Captain of the Port with both the authority to safeguard airport property

and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY

The Coast Guard is establishing two temporary safety and security zones in all waters of Eastchester Bay near the NYPD Ammunition Depot bound by the following points:

First, all waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

Second, within the boundaries of the above-described 150-yard zone, all waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 150-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.* This regulatory framework provides the Captain of the Port with the tools to safeguard Police Department property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

Port Newark/Port Elizabeth, Newark Bay, NJ

The Coast Guard is establishing a temporary safety and security zone that includes all waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

The zones described above are necessary to protect the La Guardia and John F. Kennedy airports, NYPD ammunition depot, and the Port Newark/Port Elizabeth commercial shipping facilities, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the airports, ammunition depot, and commercial shipping facilities that could potentially cause serious negative impact to vessels, the port, commercial ground shipments by vehicle or rail, airline traffic, or the environment and result in numerous casualties. 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. Vessels will still be able to transit around the safety and security zones at all times. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Any violation of any safety or security zone 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 established 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 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 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: The zones are temporary in nature; the zones implicate relatively small portions of the waterway; vessels will be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within that area; and the Captain of the Port will relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

Small Entities

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

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

temporary in nature; the zones implicate relatively small portions of the waterway; vessels will be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within that area; and the Captain of the Port will relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

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 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

Collection of Information

This temporary 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 temporary 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 temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Indian Tribal Governments

This temporary 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, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this temporary 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 temporary 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 amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From February 4, 2003 to September 1, 2003, in § 165.169 add new paragraphs (a)(7), (a)(8), (a)(9) and (a)(10) to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) * * *

(7) *La Guardia Airport, Bowery and Flushing Bays, Queens, NY.*—(i) *Location: 200-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′52.8″ N, 073°53′09.3″ W, thence to 40°46′54.8″ N, 073°52′54.2″ W, thence to 40°46′59.3″ N, 073°52′51.3″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′10.6″ N, 073°52′06.7″ W, thence to 40°47′01.9″ N, 073°52′02.4″ W, thence to 40°46′50.4″ N, 073°52′08.1″ W, thence to 40°46′26.8″ N, 073°51′18.5″ W, thence to

40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′51.2″ N, 073°50′59.6″ W, thence to 40°45′49.5″ N, 073°51′07.2″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′02.3″ N, 073°51′20.1″ W, thence to 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′50.6″ N, 073°53′07.3″ W, thence to 40°46′53.0″ N, 073°52′50.9″ W, thence to 40°46′57.6″ N, 073°52′47.9″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′07.9″ N, 073°52′09.2″ W, thence to 40°47′01.4″ N, 073°52′06.1″ W, thence to 40°46′50.0″ N, 073°52′14.6″ W, thence to 40°46′22.2″ N, 073°51′16.0″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′52.4″ N, 073°51′00.2″ W, thence to 40°45′50.6″ N, 073°51′07.9″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′04.0″ N, 073°51′23.3″ W, thence to 40°45′51.2″ N, 073°51′38.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(7) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(7)(i) of this section. That lies outside of the waters described in paragraph (a)(7)(ii) of this section: Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(7)(i) and (a)(7)(ii) of this section will be communicated by the Captain of the Port to the public by marine broadcast, or local notice to mariners, or notice posted at *http://www.harborops.com.*

(8) *John F. Kennedy Airport, Jamaica Bay, Queens, NY.*—(i) *Location: Bergen Basin.* All waters of Bergen Basin north of 40°39′26.4″ N.

(ii) *Location: Thurston Basin.* All waters of Thurston Basin north of 40°38′21.2″ N.

(iii) *Location: 200-Yard Zone.* All waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′42.5″ N, 073°49′13.2″ W, thence to 40°38′00.6″ N, 073°47′35.1″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°37′59.4″ N, 073°47′32.6″ W, thence to 40°37′46.1″ N, 073°47′07.2″ W, thence to 40°37′19.5″ N, 073°47′30.4″ W, thence to 40°37′05.5″ N, 073°47′03.0″ W, thence to 40°37′34.7″ N, 073°46′40.6″ W, thence to 40°37′20.5″ N, 073°46′23.5″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′36.9″ N, 073°45′52.8″ W, thence to 40°38′00.8″ N, 073°44′54.9″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iv) *Location: 100-Yard Zone.* All waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′45.1″ N, 073°49′11.6″ W, thence to 40°38′02.0″ N, 073°47′31.8″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°38′00.8″ N, 073°47′29.4″ W, thence to 40°37′47.4″ N, 073°47′02.4″ W, thence to 40°37′19.9″ N, 073°47′25.0″ W, thence to 40°37′10.0″ N, 073°47′03.7″ W, thence to 40°37′37.7″ N, 073°46′41.2″ W, thence to 40°37′22.6″ N, 073°46′21.9″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′40.0″ N, 073°45′55.6″ W, thence to 40°38′02.8″ N, 073°44′57.5″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(v) *Enforcement period.* The zones described in paragraphs (a)(8) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(8)(iii) of this section that lies outside of the waters described in paragraph (a)(8)(iv) of this section. Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(8)(iii) and (a)(8)(iv) of this section will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at http://www.harborops.com.

(9) *NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY.*—(i) *Location: 150-Yard Zone.* All waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(9) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(9)(i) of this section that lies outside of the waters described in paragraph (a)(9)(ii) of this section. Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(9)(i) and (a)(9)(ii) of this section will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.*

(10) *Port Newark/Port Elizabeth, Newark Bay, NJ.* All waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

* * * * *

Dated: February 4, 2003.

Craig E. Bone,

Captain, Coast Guard Captain of the Port, New York.

[FR Doc. 03–3980 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0273; FRL–7278–7]

Pelargonic Acid (Nonanoic Acid); Exemption from the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the pelargonic acid in or on all foods when applied used as a component of a food contact surface sanitizing solution in food handling establishments. Eco Lab Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 19, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0273, must be received on or before April 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAIC code 111)
- Animal production (NAIC code 112)
- Food manufacturing (NAIC code 311)
- Pesticide manufacturing (NAIC code 32532)

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–2002–0273. 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

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 and Statutory Findings

In the **Federal Register** of December 7, 2001 (66 FR 63534) (FRL–6737–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6193) by Eco Lab Inc., 370 N. Wabasha Street, St. Paul MN 55102. That notice included a summary of the petition prepared by Eco Lab, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1159 be amended by establishing an exemption from the requirement of a tolerance for residues of nonanoic acid. Nonanoic acid is a component of a proposed product KX-6116 in which this active ingredient is present at 6.49% in the formulation. The proposed sanitizer formulation is applied to food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, and beverage and food processing plants. The sanitizer is applied by immersion, coarse spray, or circulation technique as appropriate to the equipment. The solution, once applied, is allowed to drain and dry and there is no potable water rinse.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the

variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pelargonic acid (nonanoic acid) are discussed in this unit.

A. Acute Toxicity

As a result of a number of acute toxicity studies, technical pelargonic acid is placed in the following Toxicity Categories: Primary eye irritation (Toxicity Category II), primary eye irritation (Toxicity Category II), acute oral toxicity (Toxicity Category IV), acute dermal and inhalation toxicity (Toxicity Category III). Sensitization test results showed that pelargonic acid cannot be considered a dermal sensitizer.

B. Subchronic and Chronic Toxicity

In an oral toxicity study (conducted for 14-days), no systemic toxicity was observed with either sex even at the highest dose tested, 20,000 parts per million (ppm) (1,834 milligrams/kilogram/day (mg/kg/day)). In addition, pelargonic acid showed no adverse effects on survival, clinical signs, body weight gain, food consumption, hematology, clinical chemistry or gross pathology. For each dose, three animals per sex were tested. However, the study did not report organ weights and histopathology. This was considered a deficiency in this study. Nevertheless, the Agency determined that because no toxic effects were observed at a very high level of ~ 2,000 mg/kg, a 90–day oral study was not necessary.

A 28–day dermal toxicity study conducted on rabbits was submitted to the Agency under TSCA section 8(e). Five male and five female New Zealand white rabbits were dermally treated with pelargonic acid present in mineral oil. In all, 10 applications were made (5 per week) at a dose level of 500 mg/kg/day. A 2–week recovery period was allowed for selected rabbits. During the first and second week of treatment, slight body weight loss and decreased food consumption were observed. One female rabbit showed ocular discharge and hypoactivity during the second week of treatment. All rabbits dermally treated with pelargonic acid by day 14 showed signs of severe erythema and moderate edema. Dermal reactions consisting of moderate desquamation, moderate fissuring, eschar, exfoliation and necrosis were also observed at day 14. By day 29, all dermal reactions had reversed. It was evident that at the treatment level of 500 mg/kg/day of pelargonic acid, significant dermal signs of toxicity were observed but no significant systemic reaction.

A supplemental study on chronic toxicity/carcinogenicity in mice was conducted for 80 weeks. A dose of 50 mg of pelargonic acid was dermally applied to each mouse twice/day for 80 weeks. Histopathology showed no non-neoplastic or neoplastic lesions on skins and internal organs of mice. The Agency concluded that this study although not exactly conducted according to guideline, adequately assesses the chronic toxicity and the carcinogenic potential of pelargonic acid via the dermal route.

C. Developmental Toxicity

A development toxicity was conducted on a group of 22 pregnant Crl:COBS CD(SD)BR rats. These rats were treated with pelargonic acid in corn oil at a dose of 1,500 mg/kg on gestation days 6 through 15 (both days inclusive). Maternal body weight was not significantly affected during the treatment. Only 1 out of 22 animals showed signs of clinical toxicity. No significant histopathology signs were observed in the maternal animals. Pelargonic acid treatment did not have any significant effect on cesarean section observations. Four fetuses in one litter showed a higher incidence of cleft palate compared to the control mean. For maternal toxicity, the Agency has determined the no observed adverse effect level (NOAEL) to be greater than 1,500 mg/kg/day. Because fetal effects were observed at 1,500 mg/kg/day, the NOAEL for developmental toxicity was not determined. The Agency has determined that this dose is in excess of the Agency's limit dose for toxic effects. The type and level of exposure expected from the use of this chemical is much lower than the dose level shown in the study.

D. Mutagenicity/Carcinogenicity

Ames Test (Salmonella/reverse mutation assay) showed pelargonic acid to be non-mutgenic. Similarly, *in vivo* cytogenetics study using micronucleus assay gave a negative result. In a mouse lymphoma forward mutation study, pelargonic acid appears to induce a weak mutagenic response at or higher than 50 milligrams/milliliter (mg/mL) level. This was observed in the presence of increasing toxicity, and may be an indication of gross chromosomal changes or damage and not actual mutational changes within the thymidine kinese gene locus.

As described above, a summary of the results of a dermal carcinogenicity study in mice with pelargonic acid was submitted. Fifty mice were treated twice-weekly with 50 mg doses of undiluted pelargonic acid for 80 weeks. No evidence of severe dermal or systemic toxicity was seen. Histopathology revealed no tumors of the skin or the internal organs

E. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue of pelargonic acid (nonanoic acid) and to other related substances. In these considerations, the Agency has included dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for pelargonic acid's chemical residue and exposure from non-occupational sources. The Food and Drug Administration has cleared pelargonic acid as a synthetic food flavoring agent (21 CFR 172.515), as an adjuvant, production aid and sanitizer to be used in contact with food (21 CFR 178.1010(b)) and in washing or to assist in lye peeling of fruits and vegetables (up to 1%) (21 CFR 173.315). Pelargonic acid is also exempt from the requirement of a tolerance when used in or on all food commodities, as a plant regulator on plants, seeds, or cuttings after harvest in accordance with GAP. It is also exempt from a tolerance when used as a herbicide on all plant food commodities provided that allocations are not made directly to the food commodity except when used as a harvest aid or dessicant to any root or tuber vegetable, bulb, or cotton (40 CFR 180.1159). Applications of the proposed end-use products containing pelargonic acid will not directly contact edible portions of food commodities.

1. *Food*. For the proposed sanitizer uses, a worst case dietary exposure estimate has been calculated, assuming that all food consumed by an adult or child has contacted a sanitized surface using pelargonic acid, that a 1 mg/cm^2 sanitizer residue remains on the surface, and that 100% of the residue (170 ppm) is transferred to the food from the surface. Using these assumptions, in which all food contacts 4,000 cm^2 of sanitized non-porous food-contact surfaces a worst case dietary exposure of 680 µg/day is calculated. For a 70 kg adult this becomes 9.7 µg/kg/day and for

a 15 kg child, exposure is calculated as 45 µg/kg/day.

2. *Drinking water exposure*. KX-6116 as a sanitizer contains pelargonic acid as its active component and low concentrations of pelargonic acid could be expected to be introduced into drinking water. However, exposure through drinking water is expected to be low and not of significance.

3. *Other non-occupational exposure*. Based on the intended use of pelargonic acid in food handling establishments, exposure to pelargonic acid as a component of KX-6116 sanitizer through non-occupational, non-dietary sources is not likely to occur.

4. *Cumulative effects*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. Based on the information discussed in Unit VII. EPA concluded that pelargonic acid is sufficiently non-toxic that EPA can determine that it does not share a common mechanism of toxicity with other substances.

F. Safety Factor for Infants and Children

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

Based on the considerations discussed in Unit III.G., EPA concluded that pelargonic acid was sufficiently non-toxic that a margin of safety analysis was not appropriate. For the same reason, EPA has not applied an additional margin of safety for the protection of infants and children.

G. Determination of Safety

Based on the following considerations, EPA concludes that pelargonic acid is unlikely to pose a risk under all reasonable exposure scenarios:

1. Fatty acids such as pelargonic acid are processed by known metabolic pathways within the body and contribute to normal physiological function.

2. Pelargonic acid is naturally present at levels up to 224 parts per billion (ppb) in apples, 385 ppm in the skin of grapes, and 143 ppm in grape pulp. It is present in a number of other foods as well. An average serving of grapes containing 385 ppm of pelargonic acid in the grape skins would result in exposure to pelargonic acid to an average consumer of 164 µg/kg/day. In comparison, a worst case estimate of dietary exposure to pelargonic acid as a result of its use as sanitizer is 9.7 µg/kg/day for a 70 kg adult and 45 µg/kg/day for a 15 kg child.

3. The Food and Drug Administration has cleared pelargonic acid as a synthetic food flavoring agent (21 CFR 172.515), as an adjuvant, production aid and sanitizer to be used in contact with food (21 CFR 178.1010(b)) and in washing or to assist in lye peeling of fruits and vegetables (up to 1%) (21 CFR 173.315). Pelargonic acid is also exempt from the requirement of a tolerance when used in or on all food commodities, as a plant regulator on plants, seeds, or cuttings after harvest in accordance with Good Agricultural Practices (GAP). It is also exempt from a tolerance when used as a herbicide on all plant food commodities provided that allocations are not made directly to the food commodity except when used as a harvest aid or dessicant to any root or tuber vegetable, bulb, or cotton (40 CFR 180.1159).

4. Dietary toxicity testing evidenced adverse reactions only at doses that were at or above limit doses. Dermal toxicity testing showed no significant systemic reaction.

5. The estimated exposures to pelargonic acid and other fatty acids from direct or indirect addition to food as well as sanitizer uses are well below the doses administered in animal studies that are required to elicit an adverse effect. Accordingly, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to pelargonic acid.

IV. Other Considerations

A. Analytical Method(s)

Because an exemption from the requirement of a tolerance without numerical limitation for residues in food is being granted for pelargonic acid, an enforcement analytical method is not needed. However, an analytical method is available in cases of gross misuse. The analytical method is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, (703) 308–8253.

B. Existing Tolerances

1. *40 CFR 180.1159*. Pelargonic acid is exempted from the requirement of a tolerance on all food commodities when used as a plant regulator on plants, seeds, or cuttings and all food commodities after harvest in accordance with GAP or as a herbicide when applications are not made directly to the food commodity except when used as a harvest aid or dessicant to: any root and tuber vegetables, bulb vegetable or cotton. When pelargonic acid is used as a harvest aid or dessicant, application must be made no later than 24 hours prior to harvest.

2. *21 CFR 178.1010(c)(37)*. Pelargonic acid is permitted in food contact sanitizing solutions at a level up to 90 ppm.

3. *21 CFR 172.515*. Pelargonic acid may be safely used as synthetic food flavoring substances and adjuvants in food in the minimum quantity required to reproduce the intended effect.

4. *21 CFR 173.315*. Pelargonic acid may be used in an aliphatic acid mixture for washing or to assist in the peeling of fruits and vegetables. The aliphatic acid mixture may be used at a level not to exceed 1% in the lye peeling solution.

C. International Tolerances

No codex maximum residue levels have been established for the pelargonic acid.

V. Conclusion

An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of pelargonic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of pelargonic acid up to 170 ppm per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants. The sanitizer shall be applied by immersion, coarse spay, or circulation technique as appropriate to the equipment or utensil. No potable

water rinse is required following the use of the sanitizer.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0273 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0273, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 21, 2003.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1159 is amended by adding paragraph (c) to read as follows:

§ 180.1159 Pelargonic acid; exemption from the requirement of a tolerance.

* * * * *

(c) An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of pelargonic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of pelargonic acid up to 170 ppm per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants.

[FR Doc. 03–3842 Filed 2–18–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0272; FRL–7278–6]

Decanoic Acid; Exemption from the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of decanoic acid (capric acid) in or on all foods when applied/used as a component of a food contact surface sanitizing solution in food handling establishments. Eco Lab Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of decanoic acid.

DATES: This regulation is effective February 19, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0272, must be received on or before April 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit X. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAIC code 111)
- Animal production (NAIC code 112)

- Food manufacturing (NAIC code 311)
- Pesticide manufacturing (NAIC code 32532)

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–2002–0272. 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml__00/Title__40/40cfr180_00.html, a beta site currently under development.

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 and Statutory Findings

In the **Federal Register** of December 7, 2001 (66 FR 63534) (FRL–6737–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6194) by Eco Lab Inc., 370 N. Wabasha Street, St. Paul, MN 55102. That notice included a summary of the petition prepared by Eco Lab Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance is established for residues of decanoic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of decanoic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of decanoic acid up to 170 parts per million (ppm) per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants. The sanitizer is applied by immersion, coarse spray, or circulation technique as appropriate to the equipment. The solution, once applied is allowed to drain and dry and there is no potable water rinse.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA assesses the hazards of the pesticide through examination and review of available toxicology data. Second, EPA examines the potential route(s) and duration(s) of exposure to the pesticide through food, drinking water, and through other exposures that can occur as a result of pesticide use in residential settings.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for an exemption from the requirement of a tolerance for residues of decanoic acid on all food up to 170 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available toxicology data from the open scientific literature as well as the data submitted in support of this action and has considered its validity, completeness and reliability and the relationship to human risk. EPA has also considered available information on potential differences in sensitivity to the toxicity of the pesticide in major identifiable subgroups of consumers, including infants and children. The natures of the toxic effects caused by decanoic acid (capric acid) are discussed in this unit.

B. Acute Toxicity

The acute oral toxicity of decanoic acid is low lethal dose (LD_{50} >10 grams/kilograms (g/kg) as is the acute dermal toxicity (LD_{50} > 5 g/kg). Decanoic Acid is a moderate too severe skin irritant when applied undiluted to intact or abraded rabbit skin for 24 hours. Decanoic acid is also a severe eye irritant when applied as a 5% solution.

C. Subchronic Toxicity

As reported in Patty's Industrial Hygiene and Toxicology, 4th ed., rats fed capric acid at 10% in the diet for 150 days showed no adverse effects from treatment. In another study, rats administered approximately 4 g decanoic acid /kg/day for 6 weeks showed reduced body weight gain and increased plasma triglyceride levels. In a longer term study in which rats were fed 2.5 g/kg/day decanoic acid for 47 weeks, no adverse toxicological effects were noted. Dogs administered 4.4 g/kg/day decanoic acid for 102 days showed no adverse effects of treatment.

D. Developmental and Reproductive Effects

In a study by Hendrich *et al.* (JAOCS, Vol. 70, no. 8, August 1993, pages 797–802), the potential reproductive effects of decanoic acid were examined in

CBA/2 and C57B1/6 mice. Groups of mice received diets containing either 17.2% beef tallow and 3.5% corn oil or 8.6% crude *Cuphea* oil and 3.5% corn oil. *Cuphea* oil is composed of 76% decanoic acid, 4.8% octanoic acid, 2.5% dodecanoic acid, 2.2% myristate, 3.4% palmitate, 0.7% stearate, 3.3% oleate, and 5.5% linoleate. Parental animals were fed for various times due to the short supply of *Cuphea* oil. C57B1/6 mice were fed for either 10 months, 8 months, or 5 months (F1, F2, and F3 generations), while the CBA/2 mice were fed for 11–12 months, 9–11 months, and 6–8 months (F1, F2, and F3 generations). Body weights, food intake, liver weights, and total serum cholesterol were analyzed as well as the number of pups born and surviving to weaning. Histopathology was performed on liver, left kidney, spleen, heart, lung, and one testis. The histopathology appears to have been done only on parental mice. Feeding of *Cuphea* oil containing decanoic acid to successive generations of two strains of mice had no effect on reproduction in either strain of mouse. In the F1 generation of the CBA/2 strain, the reported number of pups per female was decreased in the *Cuphea*-fed mice vs. the mice fed the basal diet without the *Cuphea* oil. However, this effect was not observed in any other generation of the CBA/2 strain or in any generation of the C57B1/6 strain and is therefore not interpreted as a treatment-related effect. Body weight in C57B1/6 and CBA/2 mice was reduced approximately 10% after 13 weeks of treatment but this effect was not observed in successive generations. Food intake was not consistently affected by treatment. Serum cholesterol was significantly increased in C57B1/6 mice after 3 months of treatment, and the increase was also observed after 5 and 12 months. Fatty vacuolization was observed in the liver of most mice after treatment. CBA/2 mice tended to accumulate fat as large vacuoles in periportal hepatocytes with smaller vacuoles in centrilobular hepatocytes. C57B1/6 mice had a more diffuse fatty change with large vacuoles in centrilobular areas.

E. Carcinogenicity/Mutagenicity

There are no published studies on carcinogenicity of decanoic acid, but available mutagenicity data indicate that decanoic acid is negative for mutagenic effects.

F. Physiological Effects

Decanoic acid was observed to enhance the permeability of the blood-brain in Wistar rats to several hydrophilic compounds when administered into the carotid artery (Ohnishi *et al.*, J. Pharm. Pharmacol. 51: 1015–1018, 1998).

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and drinking water (from ground water or surface water) and exposure through non-occupational pesticide use.

A. Dietary Exposure

1. *Food; existing tolerances and other clearances.* The Food and Drug Administration (FDA) has established a food additive clearance for decanoic acid at levels up to 234 ppm in sanitizing solutions (21 CFR 178.1010(c)(22), (30), (31), (34)), and has also cleared this chemical for direct addition to food for human consumption without limits.

Decanoic acid is also permitted for use in food as a lubricant, binder and as a defoaming agent as a component in the manufacture of other food-grade components, without limits, provided it meets the criteria as set forth in 21 CFR 172.860.

Worst case dietary exposures for the sanitizer use of decanoic acid have been calculated assuming that all food consumed by an adult or child has contacted a 4,000 cm^2 sanitized surface using decanoic acid, that a 1 milligram/centimeter $(mg/cm)^2$ sanitizer residue remains on the surface, and that 100% of the residue (28 ppm) is transferred to the food from the surface. Using these assumptions a worst case dietary exposure of 113 μg/day is calculated. For a 70 kg adult this becomes 1.6 μg/kg/day, and for a 15 kg child, intake is calculated as 7.5 μg/kg/day.

2. *Drinking water exposure.* The use of decanoic acid as a component of KX-6116 food surface sanitizer could result in the introduction of very low concentrations of decanoic acid into drinking water. However, this exposure through drinking water is expected to be minimal.

B. Non-Occupational Exposure

Based on the intended use of decanoic acid in food handling establishments, exposure to decanoic acid as a component of KX-6116 sanitizer through non-occupational sources is not likely to occur.

V. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. Based on the information discussed in Section VII below, EPA concluded that decanoic acid is sufficiently non-toxic that EPA can determine that it does not share a common mechanism of toxicity with other substances.

VI. Additional Safety Factor for the Protection of Infants and Children

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

Based on the considerations discussed in Unit VII. of this document, EPA concluded that decanoic acid was sufficiently non-toxic that a margin of safety analysis was not appropriate. For the same reason, EPA has not applied an additional margin of safety for the protection of infants and children.

VII. Determination of Safety for U.S. Population, Infants and Children

Based on the following considerations, EPA concludes that decanoic acid is unlikely to pose a risk under all reasonable exposure scenarios:

1. The fatty acids as a group including decanoic acid have a safe history of use as natural components of many foods, as direct food additives, and as cosmetic ingredients. Furthermore, fatty acids are processed by known metabolic pathways within the body and contribute to normal physiological function.

2. The Joint FAO/WHO Expert Committee on Food Additives did not establish a specific allowable daily intake (ADI) for decanoic acid (i.e. Reference dose (RfD)) based on the knowledge that the compound is already a component of the human diet, has a long history of use, and does not present with any significant toxicology concerns and therefore does not represent a health hazard.

3. The Food and Drug Administration has established a food additive clearance for decanoic acid at levels up to 234 ppm in sanitizing solutions (21 CFR 178.1010(c)(22), (30), (31), (34)),

and has also cleared this chemical for direct addition to food for human consumption without limits. Decanoic acid is also permitted for use in food as a lubricant, binder and as a defoaming agent as a component in the manufacture of other food-grade components, without limits, provided it meets the criteria as set forth in 21 CFR 172.860.

4. Evidence of adverse reactions to decanoic acid in dietary toxicity testing was observed only at doses that were at or above limit doses.

5. The estimated exposures to decanoic acid and other fatty acids from direct or indirect addition to food as well as sanitizer uses are well below the doses administered in animal studies that are required to elicit an adverse effect. For example, adverse effects in toxicity testing could only be achieved by doses in the range of several grams of decanoic acid per kilogram of body weight per day. A worst case dietary exposure for the sanitizer use estimated exposure for a 70 kg adult of 1.6 µg/kg/day, and for a 15kg child of 7.5 µg/kg/day.

Accordingly, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to pelargonic acid.

VIII. Other Considerations

A. Analytical Method(s)

Because an exemption from the requirement of a tolerance without numerical limitation for residues in food is being granted for decanoic acid, an enforcement analytical method is not needed. However, an analytical method is available in cases of gross misuse. The analytical method is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, (703) 308–8253.

B. International Tolerances

No codex maximum residue levels have been established for decanoic acid.

IX. Conclusion

An exemption from the requirement of a tolerance is established for residues of decanoic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of decanoic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of decanoic acid up to 170 ppm per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants. The sanitizer is applied by immersion, coarse spray, or circulation technique as appropriate to the equipment. The solution, once applied is allowed to drain and dry and there is no potable water rinse.

X. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0272 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0272, to: Public Information

and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

XI. Stautory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 21, 2003.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1223 is added to subpart D to read as follows:

§ 180.1223 Decanoic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of decanoic acid in or on all raw

agricultural commodities and in processed commodities, when such residues result from the use of decanoic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of decanoic acid (up to 170 ppm per application) on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants.

[FR Doc. 03–3843 Filed 2–18–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF ENERGY

41 CFR Part 109–6

RIN 1991–AB61

Official Use of Government Passenger Carriers Between Residence and Place of Employment

ACTION: Final rule.

AGENCY: Office of Management, Budget and Evaluation, Department of Energy (DOE).

SUMMARY: The Department of Energy publishes a final rule to remove from the DOE Property Management Regulation (DOE–PMR) certain overly broad restrictions regarding the use of government passenger carriers between an employee's residence and place of employment, and to update references to the Federal Management Regulation.

EFFECTIVE DATE: This rule is effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen J. Michelsen, Director, Office of Resource Management, Office of Procurement and Assistance Management, Department of Energy, (202) 586–1368, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The DOE–PMR at 41 CFR 109–6.4 sets forth rules that apply to the use of Government passenger carriers between a DOE employee's residence and place of employment. Section 109–6.402(b) restricts such use to the Secretary of Energy and persons ''engaged in field work,'' as determined by the Secretary. DOE today is eliminating this restriction from the DOE–PMR because it prevents certain uses by employees of Government passenger carriers between residence and place of employment that are authorized by statute and the implementing Federal Management Regulation. Other uses authorized by 31 U.S.C. 1344 include, but are not limited to: use by an officer or employee with regard to which the Secretary, has determined, that highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business; use by a single principal deputy to the Secretary if the Secretary determines appropriate; and use, when approved by the Secretary, by officers or employees when essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties. The rule being promulgated today harmonizes the DOE–PMR with the relevant statutory authority and allows Government vehicles to be used in the manner authorized by the statute. In addition, this rule updates DOE–PMR, 41 CFR 109–6.4, by replacing obsolete references to sections of the Federal Management Regulation which was revised in 2000 (65 FR 54966, September 12, 2000).

This rule is being promulgated as a final rule, without providing for a public comment period, or a 30 day effective date because it addresses a matter relating to agency management or personnel or to public property and therefore is not subject to the notice and comment requirements of the Administrative Procedures Act. *See* 5 U.S.C. 553(a).

Regulatory Review

A. Review Under Executive Order 12866

This final rule has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. DOE has determined that today's regulatory action would not impose a Federal mandate on State, local, or tribal governments or on the private sector.

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive Agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96–354, requires preparation of a regulatory flexibility analysis for any rule which is subject to notice and comment rulemaking requirements. As noted above, this rule addresses a matter relating to agency management or personnel or to public property and maybe is not subject to the notice and comment requirements of the Administrative Procedures Act.

E. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are imposed by today's regulatory action.

F. Review Under the National Environmental Policy Act

This rule eliminates certain restrictions on the official use of government passenger carriers by DOE employees between residence and place of employment. Implementation of this rule will not result in environmental

impacts because minimal additional use of vehicles is anticipated. DOE has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings amending existing regulations that do not change the environmental effect of the regulations being amended.

G. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it would not preempt State law and 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.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This final rule would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

K. Review Under Executive Order 13045

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks) contains special requirements that apply to certain rulemakings that are economically significant under Executive Order 12866. This final rule is not economically significant. Accordingly, Executive Order 13045 does not apply to this rulemaking.

List of Subjects in 41 CFR Part 109–6

Government property management, Motor vehicles.

Issued in Washington, DC, on Februrary 13, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Director,

Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set forth above, DOE amends 41 CFR Chapter 109 as follows:

PART 109–6—MISCELLANEOUS REGULATIONS

1. The authority citation for part 109–6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat 390 (40 U.S.C. 486(c)); 31 U.S.C. 1344(e)(1).

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 109–6.400 [Amended]

2. In 109–6.400(a) remove the reference ''41 CFR 101–6.4,'' and add in its place ''41 CFR part 102–5.''

§ 109–6.402 [Amended]

3. Section 109–6.402 is amended as follows:

a. In paragraph (a), remove the second sentence.

b. In paragraph (a), remove the reference ''41 CFR 101–6.4,'' and add in its place ''41 CFR part 102–5.''

c. Paragraph (b) is removed.

d. Paragraph (c) is redesignated as paragraph (b).

e. In redesignated paragraph (b), the reference ''41 CFR 101–6.402(f)'' is removed and ''41 CFR 102–5.105'' is added in its place.

f. Paragraph (d) is redesignated as paragraph (c).

[FR Doc. 03–3992 Filed 2–18–03; 8:45 am]

BILLING CODE 6450–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 302

[FTR Case 2003–302; FTR Amendment 2003–01]

RIN 3090–AH78

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables (2003 Update)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 2003 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 2003, and applies for RIT allowance payments made on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Calvin L. Pittman, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–1538. Please cite FTR case 2003–302, FTR Amendment 2003–01.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5724b of title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving expense reimbursements. Policies and procedures for the calculation and payment of a RIT allowance are contained in the Federal Travel Regulation (41 CFR part 302–17). The

Federal, State, and Puerto Rico tax tables for calculating RIT allowance payments are updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 302

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

Dated: February 6, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 302–17 as set forth below:

CHAPTER 302–17—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for 41 CFR part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Revise Appendixes A, B, C, and D to part 302–17 to read as follows:

Appendix A to Part 302–17—Federal Tax Tables for RIT Allowance

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2002

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 2002.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,137	$14,130	$14,743	$24,811	$20,219	$31,833	$11,770	$16,693
15	14,130	37,040	24,811	53,556	31,833	67,914	16,693	33,839
27	37,040	80,140	53,556	118,624	67,914	139,528	33,839	69,420
30	80,140	158,281	118,624	184,826	139,528	201,236	69,420	105,672
35	158,281	326,339	184,826	337,037	201,236	335,297	105,672	178,317
38.6	326,339		337,037		335,297		178,317	

Appendix B to Part 302–17—State Tax Tables For RIT Allowance

State Marginal Tax Rates by Earned Income Level—Tax Year 2002

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–17.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 2002.

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN [1, 2]

State (or district)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	2.87	3.2	3.74	5.04
Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
California	4	6	8	9.3
If single status [3]	6	8	9.3	9.3
Colorado	4.63	4.63	4.63	4.63
Connecticut	4.5	4.5	4.5	4.5
Delaware	5.2	5.55	5.95	5.95
District of Columbia	7	9	9	9
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	6.4	7.6	8.25	8.25
If single status [3]	7.6	8.25	8.25	8.25
Idaho	7.4	7.8	7.8	7.8
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.48	7.92	8.98	8.98
If single status [3]	6.8	7.92	8.98	8.98
Kansas	3.5	6.25	6.45	6.45
If single status [3]	6.25	6.45	6.45	6.45
Kentucky	6	6	6	6

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN [1, 2]—Continued

State (or district)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over
Louisiana	2	4	4	6
If single status [3]	4	4	6	6
Maine	4.5	7	8.5	8.5
If single status [3]	7	8.5	8.5	8.5
Maryland	4.75	4.75	4.75	4.75
Massachusetts	5.3	5.3	5.3	5.3
Michigan	4.1	4.1	4.1	4.1
Minnesota	5.35	7.05	7.05	7.85
If single status [3]	7.05	7.05	7.85	7.85
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	8	9	10	11
Nebraska	3.49	5.01	6.68	6.68
If single status [3]	5.01	6.68	6.68	6.68
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.4	1.75	2.45	6.37
If single status [3]	1.4	3.5	5.525	6.37
New Mexico	3.2	6	7.1	8.2
If single status [3]	6	7.1	7.9	8.2
New York	4.5	5.9	6.85	6.85
If single status [3]	5.25	6.85	6.85	6.85
North Carolina	6	7	7	7.75
North Dakota	2.1	3.92	4.34	5.04
If single status [3]	2.1	3.92	5.04	5.04
Ohio	3.715	4.457	5.201	6.9
Oklahoma	9	10	10	10
If single status [3]	10	10	10	10
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island [4]	25	25	25	25
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont [5]	24	24	24	24
Virginia	5.75	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.15	6.5	6.5	6.75
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (*e.g.*, $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–17.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii).

[5] The income tax rate for Vermont is 24 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii).

Appendix C to Part 302–17—Federal Tax Tables for RIT Allowance—Year 2

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2003

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2001, or 2002.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,274	$14,314	$15,005	$25,136	$20,977	$32,559	$10,958	$16,536
15	14,314	37,771	25,136	54,712	32,559	69,722	16,536	34,507
27	37,771	81,890	54,712	122,788	69,722	142,842	34,507	70,442
30	81,890	162,802	122,788	193,703	142,842	206,675	70,442	107,631
35	162,802	334,763	193,703	350,138	206,675	343,919	107,631	181,753
38.6	334,763	.....	350,138	.....	343,919	.....	181,753	.....

Appendix D to Part 302–17—Puerto Rico Tax Tables for RIT Allowance

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 2002

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–17.8(e)(4)(i).

Marginal tax rate	Single filing status		Any other filing status	
Percent	Over	But not over	Over	But not over
10				$25,000
15		$25,000		
28	$25,000	50,000	$25,000	50,000
33	50,000		$50,000	

[FR Doc. 03–3882 Filed 2–18–03; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–272; MM Docket No. 01–273, RM–10284; MM Docket No. 02–43, RM–10384; MM Docket No. 02–107, RM–10417; MM Docket No. 02–168, RM–10480; MM Docket No. 02–169, RM–10481; MM Docket No. 02–170, RM–10482; MM Docket No. 02–172, RM–10484; MM Docket No. 02–173, RM–10485; MM Docket No. 02–175, RM–10487; MM Docket No. 02–176, RM–10488; MM Docket No. 02–291, RM–10528; MM Docket No. 02–292, RM–10540; and MM Docket No. 02–293, RM–10541]

Radio Broadcasting Services; Alpena, MI; Arthur, NE; Milan, NM; Channing, TX; Eldorado, TX; Escobares, TX; Matador, TX; McLean, TX; Memphis, TX; Ozona, TX; Rotan, TX, Wellington, TX.; Wheeler, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants 13 proposals that allot new channels to Alpena, Michigan; Arthur, Nebraska; Milan, New Mexico; Channing, Texas, Eldorado, Texas; Escobares, Texas; Matador, Texas; McLean, Texas; Memphis, Texas; Ozona, Texas; Rotan, Texas; Wellington, Texas; and Wheeler, Texas. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective March 17, 2003. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–273, MM Docket No. 02–43, MB Docket No. 02–107; MB Docket No. 02–168, MB Docket 02–169, MB Docket No. 02–170, MB Docket No. 02–172; MB Docket No. 02–173, MM Docket No. 02–175, MM Docket No. 02–176, MM Docket No. 02–291; MM Docket No. 02–292, and MM Docket No. 02–293, adopted January 29, 2003, and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Commission, at the request of Linda Crawford, allots Channel 258C1 at Eldorado, Texas, as the community's third local FM transmission service. *See* 66 FR 52734, October 17, 2001. Channel 258C1 can be allotted at Eldorado in compliance with the Commission's minimum distance separation requirements with a site restriction 7.4 kilometers (4.8 miles) south to avoid a short-spacing to the licensed site of Station KYZZ(FM), Channel 261C2, San Angel, Texas. The coordinates for Channel 258C1 at Eldorado are 30–47–49 North Latitude and 100–37–29 West Longitude. Although Mexican concurrence has been requested for Channel 258C1 at Eldorado, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Eldorado herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

The Commission, at the request of Don Davis, allots Channel 270A at Milan, New Mexico, as the community's second local FM transmission service. *See* 67 FR 11970, March 18, 2002. Channel 270A can be allotted at Milan in compliance with the Commission's minimum distance separation requirements a city reference coordinates. The coordinates for Channel 270A at Milan are 35–10–11 North Latitude and 107–53–24 West Longitude.

The Commission, at the request of Northern Paul Bunyan Radio Company, allots Channel 289A at Alpena, Michigan as the community's third local FM transmission service. *See* 67 FR 11970, March 18, 2002. Channel 289A can be allotted to Alpena in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) northeast to avoid short-spacings to the licensed site of Station WKHQ–FM, Channel 290C1, Charlevoix, Michigan, and to the proposed site for Channel 292C2 at Rogers City, Michigan. The coordinates for Channel 289A at Alpena are 45–05–30 North Latitude and 83–21–48 West Longitude. Although Canadian concurrence has been requested for Channel 289A at Alpena, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified for Alpena herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement.''

The Commission, at the request of Linda Crawford, allots Channel 284A at Channing, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 284A can be allotted to Channing in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.0 kilometers (23.6 miles) northwest

to avoid a short-spacing to the licensed site of Station KQFX(FM), Channel 282C1, Borger, Texas, and Station KLGD(FM), Channel 285C1, Tulia, Texas. The coordinates for Channel 284A at Channing are 35–58–15 North Latitude and 102–33–43 West Longitude.

The Commission, at the request of Charles Crawford, allots Channel 284A at Escobares, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 284A can be allotted to Escobares in compliance with the Commission's minimum distance separation requirements 6.8 kilometers (4.2 miles) northeast to avoid a short-spacing to the licensed site of Station XHMF–FM, Channel 283C, Monterrey, Mexico. The coordinates for Channel 284A at Escobares are 26–26–29 North Latitude and 98–54–14 West Longitude. Although, Mexican concurrence has been requested for Channel 284A at Escobares, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Escobares herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.'' 1

The Commission, at the request of Linda Crawford, allots Channel 275C3 at Ozona, Texas, as the community's third local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 275C3 can be allotted at Ozona in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 275C3 at Ozona are 30–42–30 North Latitude and 101–12–06 West Longitude. Although Mexican concurrence has been requested for Channel 275C3 at Ozona, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Ozona herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

The Commission, at the request of Linda Crawford, allots Channel 290A at Rotan, Texas, as the community's first local aural transmission service. *See* 67 FR 47502 (July 19, 2002. Channel 290A can be allotted at Rotan in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel at Rotan are 32–51–07 North Latitude and 100–27–55 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 248A at Wellington, Texas, as the community's second local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 248A can be allotted at Wellington in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) northwest to avoid a short-spacing to the allotment site for Channel 248C1, Archer City, Texas, and to the construction permit site for Station KWEY–FM, Channel 247C1, Weatherford, Oklahoma. The coordinates for Channel 248A at Wellington are 34–56–51 North Latitude and 100–19–10 West Longitude.

The Commission, at the request of Katherine Pyeatt, we are allotting Channel 292A at Memphis, Texas, as the community's second local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 292A can be allotted at Memphis in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 292A at Memphis are 34–43–29 North Latitude and 100–32–01 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 227C3 at Matador, Texas, as the community's second local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 227C3 can be allotted at Matador in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.2 kilometers (11.9 miles) northeast to avoid a short-spacing to the licensed site of Station KRKZ(FM), Channel 228C2, Altus, Oklahoma, and to the vacant allotment site for Channel 226C2 at Aspermont, Texas. The coordinates for Channel 227C3 at Matador are 34–10–06 North Latitude and 100–43–57 West Longitude.

The Commission, at the request of Arthur Radio Broadcasting, allots Channel 300C1 at Arthur, Nebraska, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002 Channel 300C1 can be allotted at Arthur in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) northwest to avoid a short-spacing to the vacant allotment site for Channel 297C1 at Hershey, Nebraska. The coordinates for Channel 300C1 at Arthur are 41–37–10 North Latitude and 101–45–57 West Longitude.

The Commission, at the request of Robert Fabian, allots Channel 267C3 at McLean, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 300C1 can be allotted at McLean compliance with the Commission's minimum distance separation requirements with a site restriction of 21.4 kilometers (13.3 miles) southwest to avoid short-spacings to the licensed sites of Station KWOX (FM), Channel 266C, Woodward, Oklahoma, and Station KLAW (FM), Channel 267C1, Lawton, Oklahoma. The coordinates for Channel 267C3 at McLean are 35–05–01 North Latitude and 100–44–58 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 280C2 at Wheeler, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 280C2 can be allotted at Wheeler in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.1 miles) northeast to avoid short-spacings to the licensed sites of Station KKYN–FM, Channel 280C2, Plainview, Texas, and Station KHYM(FM), Channel 280C1, Copeland, Kansas. The coordinates for Channel 280C2 at Wheeler are 35–28–55 North Latitude and 100–12–56 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 289A at Alpena.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Arthur, Channel 300C1.

4. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 270A at Milan.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channing, Channel 284A; by adding Channel 258C1 at Eldorado; by adding Escobares, Channel 284A; by adding Channel 227C3 at Matador; by

adding McLean, Channel 267C3; by adding Channel 292A at Memphis; by adding Channel 275C3 at Ozona; by adding Rotan, Channel 290A; by adding Channel 248A at Wellington; and by adding Wheeler, Channel 280C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3954 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 33
Wednesday, February 19, 2003

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–06–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to inspect the pedestal leg assembly on aft facing passenger seats for correct configuration. If incorrectly configured, this proposed AD would require you to modify to the correct configuration. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct pedestal leg assemblies on aft facing passenger seats that are in nonconformance with manufacturing standards. Nonconforming passenger seats could result in passenger injury in an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 26, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–06-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain ''Docket No. 2003–CE–06–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–06–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, during manufacture of certain aft facing aircraft passenger seats (vendor part numbers (VPN) 403008–1 and 403008–2), the forward pedestal legs were installed in reverse order. One instance was found during the seat manufacturer's final quality control inspection. Pilatus found another instance.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in failure of the aircraft seat pedestal leg assembly. Such failure could result in passenger injury in an emergency situation.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.

What are the provisions of this service information? The service bulletin specifies inspecting the forward pedestal legs of certain aircraft aft facing passenger seats for correct configuration.

This service bulletin also references Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002, which includes procedures for accomplishing the inspection and procedures for modifying incorrectly configured seat assemblies to the correct configuration.

What action did the FOCA take? The FOCA classified these service bulletins as mandatory and issued Swiss AD Number HB 2002–658, dated November 30, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are

type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus PC–12 and PC–12/45 of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to inspect the pedestal leg assembly on aft facing passenger seats for correct configuration. If incorrectly configured, this proposed AD would require you to modify to the correct configuration.

What are the differences between this proposed AD, the service information, and the FOCA AD? The FOCA AD and the service information require an inspection of the identification tag on certain passenger seats to determine if the Pilatus part number correctly corresponds to the ERDA vendor part number. The identification tag may incorrectly identify the Pilatus part number; although the ERDA vendor part number is correct. If the corresponding part numbers are incorrect, the FOCA AD and the service information require affixing a new identification tag with the correct corresponding Pilatus part number. The procedures for accomplishing this inspection and modification are contained in Decrane Aircraft, ERDA, Inc., Service Bulletin SB02011, Revision A, June 3, 2002.

Because the ERDA part number is correct, we are not including this as part of the unsafe condition. However, we will include a note in this proposed AD recommending that you verify that the corresponding Pilatus part number is correct.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 280 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required to perform inspection	$60	$60 × 280 = $16,800

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120	$150	$270	$270 × 280 = $75,600

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is ''within the next 90 days after the effective date of this AD.''

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this proposed AD is presented in calendar time instead of hours TIS because the unsafe condition is a result of an improper installation. The unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 90 days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2003–CE–06–AD

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through 436 that:

(1) Incorporate a passenger seat, ERDA Vendor Part Number (VPN) 403008–1 or 403008–2 (also identified as Pilatus Part Number (P/N) 959.30.01.601, 959.30.01.602, 959.30.01.613, or 959.30.01.614) (or FAA-approved equivalent part number), with a serial number as specified in Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; and

(2) Are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct pedestal leg assemblies on aft facing passenger seats that are in nonconformance with manufacturing standards. Nonconforming passenger seats could result in passenger injury in an emergency situation.

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

Actions	Compliance	Procedures
(1) Inspect the forward pedestal legs on the aircraft aft facing passenger seat for correct configuration.	Within the next 90 days after the effective date of this AD.	In accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.
(2) If the legs are incorrectly configured, modify to the correct configuration.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.
(3) Do not install any affected seat specified in paragraph (a) of this AD unless it has been inspected as specified in paragraph (d)(1) of this AD and configured in accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.	As of the the effective date of this AD	In accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002

Note 1: Although not required by this AD, we recommend that you verify that the Pilatus part number correctly corresponds with the ERDA vendor part number on certain passenger seats. The procedures for accomplishing this action are contained in Decrane Aircraft, ERDA, Inc., Service Bulletin SB02011, Revision A, June 3, 2002.

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

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

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

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

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

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD Number HB 2002–658, dated November 30, 2002.

Issued in Kansas City, Missouri, on February 10, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3871 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–14368; Airspace Docket No. ASD 02–ASW–4]

RIN 2120–AA66

Proposed Revision of Jet Route; Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise segments of Jet Route 2 (J–2), J–138, and J–590 by realigning the routes to the north over the Baton Rouge, LA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is proposing this action to enhance the management of the aircraft operations over the Baton Rouge, LA, area.

DATES: Comments must be received on or before April 17, 2003.

ADDRESSES: Send comments on this proposal 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–2003–14368/Airspace Docket No. 02–ASW–4, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd.; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA 2003–14368/Airspace Docket No. 02–ASW–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA is conducting a comprehensive revision of the Houston terminal airspace area. As part of this effort, the FAA plans to revise certain segments of J–2, J–138, and J–590 over the new Baton Rouge, LA, VORTAC to promote the expeditious movement of aircraft through the Baton Rouge, LA, airspace area. The FAA believes that this action would enhance the management of air traffic operations in the area.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to revise segments of J–2 and J–138 between the Lake Charles, LA, VORTAC and the Semmes, AL, VORTAC; and J–590 between the Lake Charles, LA, VORTAC and the Greene County, MS, VORTAC, by realigning the routes to the north over the Baton Rouge, LA, VORTAC. This action is necessary to support the planned revision of the Houston terminal airspace area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–2 [Revised]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.

* * * * *

J–138 [Revised]

From Fort Stockton, TX, via Center Point, TX; San Antonio, TX; Hobby, TX; Lake Charles, LA; Baton Rouge, LA; to Semmes, AL.

* * * * *

J–590 [Revised]

From Lake Charles, LA, via Baton Rouge, LA; Greene County, MS; to Montgomery, AL.

* * * * *

Issued in Washington, DC, on February 12, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–3965 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 80N–145B]

RIN 0910–AA01

Over-the-Counter Ophthalmic Drug Products for Emergency First Aid Use; Proposed Amendment of Final Monograph for Over-the-Counter Ophthalmic Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) ophthalmic drug products to include OTC emergency first aid eyewash drug products. These products are used to flush or irrigate the eye to remove acid and alkali chemicals or particulate contamination. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by May 20, 2003. Submit written or electronic comments on the agency's economic impact determination by May 20, 2003. Please see section IX of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Marina Y. Chang, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA published a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). The monograph provides for eyewash drug products in § 349.20, but does not include emergency first aid eyewash drug products because there were no submissions or comments on these products during the rulemaking process.

After the final monograph was published, the agency received a request for an advisory opinion (Ref. 1) concerning the status of a product used for emergency first aid treatment of chemical burns of the eyes and skin. This product was described as a sterile phosphate buffered solution containing sodium phosphate, USP and monobasic potassium phosphate, NF, preserved with edetate disodium, USP 1:2,000 and benzalkonium chloride, USP 1:5,000, for use immediately following a chemical burn to thoroughly flush the eyes and skin for the express purpose of removing the chemical irritant, and to relieve the discomfort and burning caused by the irritating chemical prior to seeking medical treatment.

As a result, the agency published a request for data and information on this category of drugs in the **Federal Register** of December 5, 1989 (54 FR 50240). The agency stated that it was unaware of sufficient data to make a determination as to the safety, effectiveness, and proper labeling of these ophthalmic drug products. Specifically, the agency noted that the majority of these products: (1) Are not intended to be marketed directly to individual consumers; (2) are often packaged in large volume containers not normally found at the retail level of distribution, especially for OTC ophthalmic drug products; (3) may be stored for long periods of time under different environmental conditions; (4) may be marketed in different types of containers and closure systems; and (5) may be used with plumbed, nonplumbed, self-contained emergency eyewash, or shower equipment/stations. The agency noted it was not aware of all of the various labeling formats, labeling statements, and formulations of all the various emergency first aid eyewash products.

In response to the request for data and information, three manufacturers and one manufacturer's association provided submissions (Refs. 2 through 7) that included several journal articles in support of the safety and effectiveness of products that provide immediate emergency care by neutralization and dilution to the most serious burns due to strong acids and alkalis. The submitted literature explained that acid burns cause instantaneous coagulation of protein and result in limited damage, whereas strong alkalis penetrate the ocular tissues rapidly and produce damage that is widespread, uncontrolled, and progressive (Ref. 8). The literature (Ref. 2) included a quote from the National Institute of Occupational Safety and Health occupational health guidelines which states: ''If (chemical) gets into the eyes, wash eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately.'' The comment included an excerpt from the regulations of the Occupational Safety and Health Administration (OSHA) entitled ''Requirements for Medical and First Aid'' (42 CFR 1910.151). This portion of the OSHA regulations assures that workers exposed to injurious corrosive materials be provided with ''suitable facilities for quick drenching or flushing of the eye.'' One manufacturer also provided sample labeling of several marketed products (Ref. 5).

II. Comments Received and the Agency's Responses

A. Neutralization

Three comments addressed the term ''neutralization.'' One comment stated that it removed this term from the principal display panel of its product's labeling and replaced it with ''Wash/Flush'' because the latter term better expressed the action of the product. Another comment considered the term ''neutralization'' to be relative and not absolute. The third comment believed that neutralizing was part of the action of the product and provided a chart demonstrating the buffering capacity of a neutralizer solution towards strong acids and bases versus purified water (Ref. 7).

The agency reviewed available medical literature (Refs. 8 through 15) and found the treatment of choice for acid and alkali burns listed in this literature to be copious and continuous irrigation of the area with water or a pH balanced solution for at least 20 to 30 minutes. According to the American Academy of Ophthalmology (Ref. 8), ''Specific neutralizing agents are not useful; simple dilution (with water or saline solution) is the most effective and practical way of neutralizing strong chemicals.'' *Casarett and Doull's Toxicology: The Basic Science of Poisons* (Ref. 9) states: ''Attempts to obtain some special buffered solution or

mildly alkaline wash will only delay the start of treatment. Washing should begin as close in time and place to the site of the accident as possible.'' *Conn's Current Therapy 1990* (Ref. 10) states:

The severity of the chemical burn is related directly to length of time that a given agent is exposed to the skin * * *. Exact identification of the burning chemical may suggest appropriate specific measures; but an acid should not be neutralized with a base or vice versa.

The agency is concerned that attempts to adjust the pH of the affected area, such as by testing with litmus paper and then adding drops of neutralizing solution, would delay or, at a minimum, reduce the vigorous flushing needed to prevent further eye damage. Therefore, the agency tentatively concludes that initial treatment is best accomplished by copious and continuous amounts of water or saline solution. Any attempt to provide a corrective solution, if necessary, should be left to health care professionals following transport of the accident victim to the facility's first aid station or a hospital. Accordingly, the agency considers the term neutralization as inappropriate to describe the pharmacological action of these products.

B. Water Lavage

Four comments emphasized the importance of immediate and continuous water lavage for emergency care of the eye following chemical burns. The Tulane University Research Report (Ref. 7) compared administration of 50 milliliters (mL) of distilled water and a test product, called ''Neutralize'' (exact formulation not provided), to each eye 10 seconds after acid was dropped on the eye. The studies showed no significant difference in the rate of healing or in the final condition of both eyes.

The agency agrees that the medical literature and the American Academy of Ophthalmology support the use of copious amounts of fluid as the best approach for emergency eyewash care. The agency also recognizes the value of providing a sterile and stable product in large quantities in an industrial setting where flowing water may not be available.

C. Container Size and Ease of Opening

One comment referred to a 32-ounce (oz) container, intended for only one use, as having a closure that requires 1¼ turns. The comment explained that a 38-millimeter unrestricted opening is approximately the diameter needed to cover an average adult eye. The comment added that this product is easily opened by a small stature adult under stress. The comment noted that a tamper evident plastic heat shrink seal that breaks away easily is used.

All eyewash products must comply with the monograph standards in part 349. The products must also meet current good manufacturing practices (CGMPs) as stated in 21 CFR parts 210 and 211.

The agency believes that emergency eyewash products must contain enough fluid to permit adequate flushing of the eye. While a maximum volume may depend on the configuration of the container or the plumbing system, the minimum volume should be no less than 16 oz (473 mL (500 mL or 1/2 liter is acceptable)). Because of concerns about sterility, the product should be for a single individual's use unless it is part of a plumbing system with a one-way valve.

D. pH Adjustment

Several comments supported the pH range of 6.6 to 7.4 as appropriate for these products. One comment mentioned a lack of adverse event reports in the many years of use of these products as an indicator that the present pH is appropriate. Another comment stated it was unlikely that the pH of a product would have a clinically significant impact on the outcome of a chemical burn. One comment, however, felt that the agency should not require a specific range but define the requirement as ''needing to be at or near neutral pH, 6.6 to 7.4.''

The agency agrees that 6.6 to 7.4 is an appropriate pH range for emergency eyewash solutions. The agency believes this pH range provides sufficient flexibility for manufacturers to adjust agents to maintain stability, yet provides a solution that does not cause further harm or additional irritation to the accident victim. The agency, however, agrees that the pH within this range is not likely to impact on the outcome of a chemical burn. The agency believes that the inclusion of an antimicrobial preservative would aid the stability of the product.

Accordingly, the agency is proposing the following in new § 349.22 *Emergency first aid eyewashes*: ''These products contain water, agents to achieve the pH within a range of 6.6 to 7.4, and a suitable antimicrobial preservative agent.''

E. Buffering

One comment noted that buffering is an added feature to help neutralize the chemical burn but that both buffered and unbuffered solutions can be extremely beneficial to achieve dilution and neutralization because the main treatment is by dilution. Another comment added that buffers help ensure product integrity during storage in an industrial setting, while another comment was unaware of any superiority of either buffering or not buffering.

The product that led to the request for data was described as a sterile phosphate buffered solution (Ref. 1) for use immediately following a chemical burn to thoroughly flush the eyes and skin for the express purpose of removing the chemical irritant, and to relieve the discomfort and burning caused by the irritating chemical prior to seeking medical treatment. The comment provided excerpts from studies presented in a Tulane University Research Report (Ref. 7) to demonstrate the superiority of its product when compared to water as an emergency first aid eyewash to treat a caustic acid splash.

The agency notes that a medical dictionary (Ref. 16) defines ''buffering'' as ''a chemical system that prevents change in concentration of another chemical substance, e.g., proton donor and acceptor systems serve as buffers preventing marked changes in hydrogen ion concentration (pH).'' The agency acknowledges the buffer system contributes to the tonicity of the ophthalmic product but adds that the tonicity of the entire formulation should approximate lacrimal fluids.

The agency agrees with the comment that stated it was unaware of any superiority of either buffering or not buffering these products. Accordingly, the agency is proposing in § 349.22 that emergency first aid eyewash products may contain agents for buffering the pH.

F. Phosphate Treatment of Chemical Burns

One comment provided references to support ''phosphate therapy'' to treat burns caused by acidic or basic substances (Ref. 1). The references reported a phosphate buffer is prepared by dissolving 70 grams (g) of monobasic potassium phosphate (KH_2PO_4) and 180g of dibasic sodium phosphate ($Na_2HPO_4.12\ H_2O$) in 850 mL of water. The concentration of the solution is molar with respect to phosphate, but as the phosphates are physiologically occurring substances they can be safely employed in such high concentrations and provide prompt neutralization. The comment contended that some antidotes are too acidic or alkaline; that burns caused by acids or bases require different treatment; and that the phosphate buffer is neutral in its reaction, and thus is well suited for the treatment of injuries caused by acidic or basic chemicals.

At this time, the agency considers a phosphate buffered solution acceptable for emergency first aid eyewash products. The increased concentration of phosphates would not alter the pH range but could be more effective against an acid or alkali burn.

G. Industrial Glare

One comment briefly referred to emergency first aid eyewash solutions to treat industrial glare (i.e., from welder's arc) but did not provide any data to support this use. At this time, the agency is not including this use as an indication for these products without adequate supporting documentation. The agency requests interested parties to provide supporting data.

H. Five to 15-gallon Container Plus Preservative Concentrate

One comment explained that a 15-minute emergency eyewash requires 14 gallons (gal) of potable water and a 5-minute eyewash requires 9 1/2 gal of potable water. The comment stated that the unit would be filled with potable water and the preservative concentrate added. The comment offered that a concentrate will preserve 5 to 20 gal of potable water for up to 180 days. The comment further stated that potable eyewash units should be flushed and cleaned and the water and concentrate replaced every 60 days.

All emergency eyewash products must be able to meet monograph requirements, which include safety and effectiveness, a pH range of 6.6 to 7.4, and compliance with CGMPs. The agency is aware that there are preservative concentrates in the marketplace for use in potable eyewash units, as the comment noted. Under § 349.82(d)(3), the agency is proposing that the labeling contain the word ''concentrate'' in bold type. The labeling must provide adequate directions for adding the concentrate to potable water to obtain a solution that meets the requirements of § 349.22. The directions should also state that the concentrate should be added to potable water to have a fully constituted solution available in advance of an emergency. The agency is unaware of data to support the length of time that any particular preservative concentrate is safe and effective. Manufacturers of these products are advised to follow CGMPs.

I. Labeling

One comment proposed several labeling revisions under § 349.78. Under § 349.78(a), the comment added to the statement of identity the terms ''neutralizer'' and ''neutralizing solution.''

As stated in section II.A of this document, the agency does not believe that the term ''neutralize'' properly describes the action of these products and, therefore, is not proposing this term or any variation of this term in the monograph.

Under § 349.78(b)(1) and (b)(2), the comment added the terms ''acid'' and ''alkali.'' Under § 349.78(b)(5), the comment provided for indications for eyes that have been subjected to industrial glare such as welder's arc and ''other workplace irritants.'' The comment argued that demulcents have a long history of use for soothing the burning sensation associated with welder's arc and other workplace irritants that dry the eye. The comment explained that this indication is an extension of § 349.60(b)(2), which provides for temporary relief due to exposure to the sun.

The agency agrees that if an emergency first aid eyewash will assist in the prevention of permanent damage to the eye(s) due to industrial glare, this indication should be included in the uses section of the labeling. However, as stated in section II.G of this document, the agency needs supporting documentation for this use.

The agency believes the term ''particulate contamination'' is a general term that could include the comment's request for an indication for ''other workplace irritants.'' The agency agrees that there are potential instances in the industrial setting where particulate matter could cause eye damage and that an eyewash solution could alleviate the seriousness of the condition. Accordingly, the agency is proposing the terms ''acid,'' ''alkali,'' and ''particulate contamination'' in new § 349.82(b) as examples of causes of injury.

Under § 349.78(d)(3), the comment suggested the following directions for emergency first aid eyewash products:

For eyewash products packaged in a container that also serves as an eyecup. Remove safety seal and cap. Avoid contamination of rim of bottle. Place rim over affected eye, pressing tightly to prevent the escape of the liquid, and tilt the head backward. Open eyelid wide and rotate eyeball to ensure thorough bathing with the solution. Use only unopened bottle on the eyes.

The comment explained that many large volume (up to 32 oz) first aid eyewash solutions are packaged in containers with wide flanged rims that fit over the eye.

The agency agrees that containers that also serve as eyecups should be addressed in the monograph and is including this information, with a few modifications, in § 349.82(d)(1). The agency notes that eyecups generally promote retention of material that may be injurious to the eye instead of allowing the injurious material to be washed away and down the face. The use of eyecups in the setting of workplace irritants should be discouraged. The agency also obtained and reviewed representative current labeling for a number of these products (Ref. 17) to develop the labeling in this proposal.

III. The Agency's Proposal

The agency tentatively concludes that the references support the safety and effectiveness of emergency first aid eyewash drug products to remove acid or alkali chemicals and that, in particular, immediate flushing of the eye with fluid is urgently needed to lessen the impact of the alkalis. The agency also acknowledges that burns from alkalis penetrate the ocular tissues rapidly and produce damages that are widespread, uncontrolled, and progressive. However, the agency does not believe that a chemical irritant should be counteracted with another chemical. The agency believes that immediate and copious irrigation with fluid is the most important step and that the amount of time prior to irrigation is a critical factor in determining the amount of residual damage.

The effectiveness of an emergency eyewash appears dependent upon the steady flow of copious amounts of fluid to the injured eye(s). Emergency first aid eyewashes serve as an interim step in first aid care by providing immediate flushing of the eye and allowing the accident victim to be transported to the facility's first aid station or a hospital while the flushing treatment is in progress. Accordingly, the agency is proposing to amend the final monograph for OTC ophthalmic drug products to include a section on emergency first aid eyewashes.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the

Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted annually for inflation. The current inflation adjusted statutory threshold is approximately $110 million.

With respect to the Regulatory Flexibility Act, FDA does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities. However, the agency recognizes the uncertainty of its estimates with respect to the number of affected small entities as well as the economic impact of the rule on those small entities. The agency therefore requests detailed public comment regarding any substantial or significant economic impact that this rulemaking would have on manufacturers of OTC emergency first aid eyewash drug products.

The purpose of this proposed rule is to amend the final monograph for OTC ophthalmic drug products to include OTC emergency first aid eyewash drug products. This proposed rule may increase OTC availability of these products and may, as a result, lower the costs to industrial facilities and individuals that use such products.

Manufacturers of the affected products should incur only minor costs to relabel their products to meet the monograph requirements. These manufacturers can make the required changes whenever they are ready to order new product labeling within the 12 months after the final rule is issued. Manufacturers of products with annual sales of less than $25,000 will have 24 months to complete the required relabeling. The agency has been informed that this type of relabeling generally costs approximately $3,000 to $4,000 per stockkeeping unit (SKU) (i.e., individual products, packages, and sizes). The agency estimates that there are approximately 25 manufacturers or marketers of 40 to 45 products and 50 to 60 SKUs that would be affected by this proposed rule.

Based on this information, the total one-time costs of relabeling would be between $150,000 ($3,000 per SKU x 50 SKUs) and $240,000 ($4,000 per SKU x 60 SKUs). Assuming an equal distribution of these costs across the 25 affected entities results in an average cost burden of $6,000 to $9,600 per firm. The agency believes that actual costs would be lower for several reasons. First, most of the required changes will be made by private label manufacturers that tend to use relatively simple and less expensive labeling. Second, the agency is proposing a 12-month implementation period that would allow manufacturers to coordinate the required changes with routinely scheduled label printing and/or revisions. Labeling changes for these products would not be required until 12 months after the monograph amendment is issued as a final rule and becomes effective. Furthermore, products with less than $25,000 per year in sales would not need to be relabeled until 24 months after the rule becomes final. Thus, manufacturers would have time to use up existing labeling stocks and plan for new labeling, thereby mitigating some of the costs of this proposed rule. Third, manufacturers may be able to implement the new labeling required by this proposal at the same time that they implement the new standardized format and content labeling required by 21 CFR 201.66. Thus, the total relabeling costs associated with two different but related final rules may be reduced by implementing the required changes at the same time.

According to standards established by the Small Business Administration, a small pharmaceutical preparations manufacturer (NAICS code 325412) employs fewer than 750 people. FDA has determined that approximately 88 percent (22 out of 25) of OTC ophthalmic drug product manufacturers meet these criteria and can therefore be categorized as small entities. The average annual revenue of small entities affected by this rule was found to be approximately $10.7 million. Thus, the cost of the rule per affected small entity would be between 0.056 percent ($6,000 ÷ $10.7 million) and 0.09 percent ($9,600 ÷ $10.7 million) of average annual revenues. FDA is aware of one small entity that has average annual revenues of approximately $1 million and produces 3 SKUs. The total cost of the final rule for this small entity would be between 0.9 percent (3 SKUs x $3,000 per SKU ÷ $1 million) and 1.2 percent (3 SKUs x $4,000 per SKU ÷ $1 million) of annual revenues. Thus the economic impact of the proposed rule on the majority of small entities is expected to be much less than 1 percent of annual revenues. While these estimates are uncertain, it appears that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The agency considered but rejected several alternatives: (1) A shorter or longer implementation period, and (2) an exemption from the requirements for small entities. While the agency believes that industries and accident victims who use these products would benefit from having the new labeling in place as soon as possible, the agency also acknowledges that coordination of the labeling changes with implementation of the new OTC ''Drug Facts'' labeling may significantly reduce the costs associated with this proposed rule. Thus, an alternative specifying a shorter implementation period was rejected due to its inflexibility and potentially greater cost. A longer implementation period was also rejected because it would unnecessarily delay the benefits of new labeling and revised formulations, where applicable, to parties who use these OTC drug products. The agency also rejected an exemption for small entities because the new labeling and revised formulations, where applicable, would also generate benefits for parties who purchase products marketed by those entities. Furthermore, the vast majority of firms affected by this proposed rule can be classified as small entities. However, an additional year is being allowed for products with annual sales of less than $25,000 to implement the required changes in order to reduce the potential impact of the rule on small entities.

This proposed rule allows for continued marketing of affected products without the risk of regulatory action provided the following conditions are met: (1) The product or similarly formulated and labeled products were marketed as OTC drugs at the inception of the OTC drug review on May 11, 1972, a date that was later extended to on or before December 4, 1975 (see 21 CFR 330.13); (2) such product does not constitute a hazard to health; (3) the product formulation is not regarded to be a prescription drug within the meaning of section 503(b) of the Federal Food, Drug, and Cosmetic

Act (21 U.S.C. 353(b)); (4) the product is an OTC drug and does not bear claims for serious disease conditions that require the attention and supervision of a licensed practitioner.

Emergency first aid eyewash products and eye irrigating solutions that do not meet the previous criteria may not be marketed OTC pending evaluation of these products for the treatment of chemical burns and for irrigation of the eye(s) unless the product is the subject of an approved new drug application (NDA).

This analysis of impacts shows that the proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. This analysis of impacts, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required by the Regulatory Flexibility Act. The agency will reassess the economic impact of this rulemaking in the preamble to the final rule.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

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

VII. Federalism

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

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda. gov/dockets/ecomments* or three hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Proposed Effective Date

FDA is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**.

X. References

The following references are on display in the Dockets Management Branch (see **ADDRESSES**) under Docket No. 80N–145B and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. AP.
2. Comment 1.
3. Comment 2.
4. Comment 3.
5. Comment 4.
6. Comment 5.
7. Comment 6.
8. ''External Disease and Cornea,'' 1989–1990, *Basic and Clinical Science Course*, American Academy of Ophthalmology, San Francisco, CA, pp. 130–133, 1989.
9. Potts, A. M., ''Toxic Responses of the Eye,'' *Casarett and Doull's Toxicology*: *The Basic Science of Poisons*, 3d ed., Macmillan Publishing Co., New York, NY, pp. 478–485, 1986.
10. Raker, R. E., *Conn's Current Therapy 1990*, W. B. Saunders Co., Philadelphia, PA, p. 1035, 1990.
11. Dreisbach, R. H., and W. O. Robertson, ''Emergency Management of Poisoning,'' *Handbook of Poisoning: Prevention, Diagnosis & Treatment*, 12th ed., Appleton & Lange, Norwalk, CT, pp. 28–29, 1987.
12. Siverston, K. T., ''Ocular Toxicity,'' *Manual of Toxicologic Emergencies*, Year Book Medical Publishers, Inc., Chicago, IL, pp. 115–118, 1989.
13. Tapley, D. F. et al., ''The Eyes,'' *The Columbia University College of Physicians and Surgeons Complete Home Medical Guide*, Crown Publishers, Inc., New York, NY, pp. 696–697, 1989.
14. Behrman, R. E., and V. C. Vaughan, ''Injuries to the Eye,'' *Nelson Textbook of Pediatrics*, 13th ed., W. B. Saunders Co., Philadelphia, PA, pp. 1472–1473, 1987.
15. ''Occupational Health Guidelines for Ethyl Chloride,'' National Institute for Occupational Safety and Health, pp. 1–4, September 1978.
16. *Dorland's Illustrated Medical Dictionary*, 27th ed., W. B. Saunders Co., Philadelphia, PA, p.252, 1988, s.v. ''buffer.''
17. Comment 7.

List of Subjects in 21 CFR Part 349

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 349 be amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.22 is added to subpart B to read as follows:

§ 349.22 Emergency first aid eyewashes.

These products contain water, agents to achieve the pH within a range of 6.6 and 7.4, and a suitable antimicrobial preservative agent. Additionally, they may contain tonicity agents to establish isotonicity with tears and agents for buffering the pH.

3. Section 349.82 is added to subpart C to read as follows:

§ 349.82 Labeling of emergency first aid eyewash drug products.

(a) *Statement of identity.* The labeling of the product identifies the product with one of the following: ''Emergency first aid eyewash,'' ''First aid eye rinse,'' or ''Emergency eyewash.''

(b) *Indications.* The labeling of the product states, under the heading ''Uses'', ''for'' [select one of the following: ''flushing,'' or ''irrigating''] ''the eye to reduce chances of severe injury caused by acid, alkali, or particulate contamination''.

(c) *Warnings.* In addition to the warnings in § 349.50 (the ''Replace cap after using,'' warning in § 349.50(c)(1) should only be used if applicable), the labeling of the product contains the following warnings under the heading ''Warnings'' for all emergency eyewash products:

(1) ''Do not use [in bold type] [bullet][1] for injection [bullet] in intraocular surgery [bullet] internally [bullet] if

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

solution changes color or becomes cloudy''.

(2) ''Ask a doctor if you have [in bold type] [bullet] eye pain [bullet] changes in vision [bullet] redness or irritation of the eye after use [bullet] an injury caused by an alkali''.

(d) *Directions.* The labeling of the product states, as appropriate, under the heading ''Directions'', ''[bullet] do not dilute solution or reuse bottle [in bold type] [bullet] hold container a few inches above the eye [bullet] control rate of flow by pressure on bottle [bullet] flush affected area for a minimum of 20 minutes [bullet] continue flushing with water if necessary [bullet] obtain medical treatment''.

(1) *For products packaged in a container that also serves as an eyecup.* The labeling states ''[bullet] use only unopened bottle [bullet] remove safety seal and cap [bullet] avoid contamination of rim of bottle [bullet] place rim over affected eye [bullet] tilt head backward [bullet] open eyelids wide [bullet] throughly bathe eye with solution [bullet] allow solution to flow away from eye''. The directions in this paragraph shall be placed in sequence with the directions provided in paragraph (d) of this section, as appropriate.

(2) *For products intended for use with a nozzle applicator.* The labeling states ''[bullet] flush affected eye as needed [bullet] control flow of solution by pressure on bottle''.

(3) *For products that use a concentrate with potable water.* The word ''concentrate'' shall be in bold type. Labeling must provide adequate directions for adding the concentrate to potable water to obtain a solution that meets the requirements of § 349.22. The directions shall also state that the concentrate should be added to potable water to have a fully constituted solution available in advance of an emergency.

Dated: January 31, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3927 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 157 and 602

[REG–139768–02]

RIN 1545–BB14

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 20, 2003. Outlines of topics to be discussed at the public hearing scheduled for June 12, 2003, at 10 a.m. must be received by May 22, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–139768–02), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–139768–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Shareen S. Pflanz, 202–622–8488; concerning submissions of comments, Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by April 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §§ 157.6001–1T, 157.6011–1T, 157.6081–1T, and 157.6161–1T. This information is required by the IRS to verify that the excise tax imposed under section 5891 of the Internal Revenue Code is properly reported on Form 8876 and timely paid. This information will be used for that purpose. The collection of information is mandatory. The likely respondents and/or recordkeepers are individuals, business or other for-profit institutions, and small businesses and organizations. The reporting burden is also reflected on Form 8876.

Estimated total annual reporting and/or recordkeeping burden: 2 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 4.

Estimated annual frequency of responses (for reporting requirements only): On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add a new part 157 to title 26 of the Code of Federal Regulations. The temporary regulations set forth the manner and method of paying the excise tax imposed under section 5891. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the expectation that the excise tax imposed by section 5891 of the Code will apply to few structured settlement factoring transactions. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 12, 2003 beginning at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 22, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Shareen Soltanzadeh Pflanz, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 157

Excise taxes, Structured Settlement Factoring Transactions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

1. A new part 157 is added to read as follows:

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A—Tax on Structured Settlement Factoring Transactions

Sec.

Subpart B—Procedure and Administration

Authority: 26 U.S.C. 7805

Section 157.6001–1 also issued under 26 U.S.C. 6001.

Section 157.6011–1 also issued under 26 U.S.C. 6011.

Section 157.6061–1 also issued under 26 U.S.C. 6061.

Section 157.6091–1 also issued under 26 U.S.C. 6091.

Section 157.6161–1 also issued under 26 U.S.C. 6161.

Subpart A—Tax on Structured Settlement Factoring Transactions

§ 157.5891–1 Imposition of excise tax on structured settlement factoring transactions.

[The text of proposed § 157.5891–1 is the same as the text of § 157.5891–1T published elsewhere in this issue of the **Federal Register**].

Subpart B—Procedure and Administration

§ 157.6001–1 Records, statements, and special returns.

[The text of proposed § 157.6001–1 is the same as the text of § 157.6001–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6011–1 General requirement of return, statement, or list.

[The text of proposed § 157.6011–1 is the same as the text of § 157.6011–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6061–1 Signing of returns and other documents.

[The text of proposed § 157.6061–1 is the same as the text of § 157.6061–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6065–1 Verification of returns.

[The text of proposed § 157.6065–1 is the same as the text of § 157.6065–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6071–1 Time for filing returns.

[The text of proposed § 157.6071–1 is the same as the text of § 157.6071–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6081–1 Extension of time for filing the return.

[The text of proposed § 157.6081–1 is the same as the text of § 157.6081–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6091–1 Place for filing returns.

[The text of proposed § 157.6091–1 is the same as the text of § 157.6091–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6151–1 Time and place for paying of tax shown on returns.

[The text of proposed § 157.6151–1 is the same as the text of § 157.6151–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6161–1 Extension of time for paying tax.

[The text of proposed § 157.6156–1 is the same as the text of § 157.6161–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6165–1 Bonds where time to pay tax has been extended.

[The text of proposed § 157.6165–1 is the same as the text of § 157.6165–1T published elsewhere in this issue of the **Federal Register**].

David Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–3865 Filed 2–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–03–024]

RIN 2115–AA97

Security Zone; St. Thomas, U.S. Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create moving and fixed security zones 50 yards around all cruise ships entering, departing, moored or anchored in the Port of Charlotte Amalie, St. Thomas, U.S. Virgin Islands. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port of San Juan or his designated representative.

DATES: Comments and related material must reach the Docket Management Facility on or before March 21, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office San Juan, P.O. Box 71526, San Juan, Puerto Rico 00936. You may also deliver them in person to Commanding Officer, Marine Safety Office San Juan, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, 00968. The U.S. Coast Guard Marine Safety Office maintains the public docket for this rulemaking. Comments and materials 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 the USCG Marine Safety Office between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, at (787) 706–2444.

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 (CGD07–03–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, 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 one by writing to the Commanding Officer U.S. Coast Guard Marine Safety Office 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

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charlotte Amalie, St. Thomas, U.S. Virgin Islands against cruise ships entering, departing, anchored and moored within the Port of Charlotte Amalie. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing temporary security zones around all cruise ships entering, departing and moored within the Port of Charlotte Amalie. We previously published a temporary final rule entitled ''Security Zones; St. Thomas, U.S. Virgin Islands'' in the **Federal Register** on February 1, 2002 (67 FR 4909), and on November 13, 2002 (67 FR 68760). Those temporary final rules contained similar provisions as those in this notice of proposed rulemaking.

Discussion of Proposed Rule

The security zone for a cruise ship entering the Port of Charlotte Amalie will be activated when a cruise ship passes: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the vessel passes any of these buoys on its departure from the Port of Charlotte Amalie. The security zones encompass all waters 50 yards around a cruise ship.

Persons and vessels are prohibited from entering into or transiting through a security zone unless authorized by the

Captain of the Port (COTP), or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port. The Captain of the Port will notify the public of these security zones through Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

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 because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

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.

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Port of San Juan when a cruise ship is entering, departing, moored or anchored in the Port of San Juan. 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 because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

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

Collection of Information

This 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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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 would 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.lD, this rule is categorically excluded from further environmental documentation because it is establishing safety 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. Add § 165.762 to read as follows:

§ 165.762 Security Zone; Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

(a) *Location.* Temporary moving and fixed security zones are established with a 50-yard radius surrounding all cruise ships entering, departing, moored or anchored in the Port of Charlotte Amalie, St. Thomas U.S. Virgin Islands. The security zone for a cruise ship entering port is activated when the vessel passes: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from the Port of Charlotte Amalie.

(b) *Regulations.* (1) Under general regulations in § 165.33 of this part, entering, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port of San Juan.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port via the Greater Antilles Section Operations Center at (787) 289–2041 or via VHF radio on Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

The Marine Safety Office San Juan will notify the maritime community of periods during which these security zones will be in effect by providing advance notice of scheduled arrivals and departures of cruise ships via a broadcast notice to mariners.

(c) *Definition.* As used in this section, cruise ship means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: February 6, 2003.

William J. Uberti,

Captain, Coast Guard, Captain of the Port, San Juan.

[FR Doc. 03–3978 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–015]

RIN 2115–AE84

Regulated Navigation Area; Fifth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Coast Guard, in an effort to continually update its regulations and to provide a useable service to the public, proposes to establish a Regulated Navigation Area (RNA) encompassing the entire Fifth Coast Guard District. This RNA would provide for the safety of life and property, help facilitate commerce, and would impose restrictions on vessels operating within the RNA when ice is a threat to navigation. The Coast Guard solicits comments from the public and industry on the questions listed in this request.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: You may mail comments and related material to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704. The Fifth Coast Guard District Waterways Management Section 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 the above mentioned office between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Anne Grabins, Aids to Navigation and Waterways Management Branch; phone: (757) 398–6559; *e-mail: agrabins@lantd5.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Information

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 (CGD05–02–015), 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, to the address listed under **ADDRESSES.** If you would like to know that your submission 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 the Fifth Coast Guard District Waterways Management Section 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

Executive Order No. 7521, 1 FR 2527, directed the Coast Guard to keep open to navigation, by means of ice-breaking operations, the waterways of the United States in accordance with the reasonable demands of commerce. On May 19, 1983, the Captain of the Port Baltimore exercised the provisions of a Regulated Navigation Area(RNA) published in the **Federal Register** (48 FR 22543) to manage vessel traffic in the event ice impedes navigation. The RNA imposed certain operational restrictions, established by the COTP, on vessels that

intended to operate within the Baltimore COTP zone. This RNA was repealed on February 27, 1998 (63 FR 9942), because it was believed that it was unnecessary to impose general continuous restrictions on all vessels through the winter months and that prudent mariners could make decisions about whether it was safe for their vessel to operate in ice.

Interest in a vessel management tool similar to the RNA previously in place in the Baltimore Captain of the Port Zone has been resurrected. It is anticipated that a RNA will decrease the administrative burden to the Coast Guard and industry, establish consistent policy throughout the Fifth Coast Guard District, and assist the management of the limited Coast Guard ice capable resources.

The ice navigation season historically begins in the Delaware and Chesapeake Bay regions as early as the first week in December and in Albemarle and Pamlico Sounds in North Carolina in January. Ice has historically ceased to be an impediment to all types of marine navigation interests by the first week in March. During a moderate or severe winter, frozen waterways can become a serious problem, impeding a vessel's ability to maneuver, and causing visual aids to navigation to be submerged, destroyed or moved off station. Vessel watertight integrity can also be compromised by ice abrasion and ice pressure with the greatest adverse affect on fiberglass and wood hulls and the least effect on steel or ice-reinforced hulls.

When ice conditions deteriorate to a point where independent vessel operations are not possible, convoy operations are required to enable vessels to transit. Coast Guard vessels built to operate in the ice typically conduct convoy operations. In recent years, the number of Coast Guard resources available to operate in ice has been reduced by 59%. In 1984, the Fifth Coast Guard District had 17 Coast Guard surface assets capable of working in various ice conditions. There are currently seven surface assets capable in the Fifth District to maintain aids to navigation, perform convoy missions in ice, and execute other Coast Guard missions that can be performed only by an ice capable vessel. These surface assets possess capabilities defined by their draft, horsepower, crew size, and their designed ability to break ice. Additionally, climatic, hydrographic, geographic, and operational constraints determine where and when these vessels may conduct convoy operations. Of the seven surface assets available to operate in ice, one has the capability to break 14 inches of ice at three knots; three have the capability to break up to nine inches at three knots; and three have the capability to break up to six inches of ice at three knots. The Coast Guard's ability to support convoy operations is finite, therefore, it behooves commercial traffic as well as the Coast Guard to effectively plan where and how surface assets are employed.

In addition to the deepwater ports of Hampton Roads, Baltimore, Richmond, and Philadelphia that support manufacturing and trade, many waterways of the Fifth Coast Guard District are used for the transport of fuels for residential and commercial use. The primary transportation method to deliver fuel oil for power generation and home heating is by barge, and convoy operations will ensure the reliable delivery of this essential commodity. In the event of a waterborne emergency during the ice season, the Coast Guard's available surface search and rescue (SAR) assets are limited to the same seven Coast Guard cutters capable of performing convoy duty. Establishing a method for the COTPs to regulate vessel traffic will enable the Coast Guard to better manage available resources and prioritize Coast Guard missions when ice is present on Fifth District waterways.

Captains of the Port have the authority (33 CFR part 160, subpart B) to restrict and manage vessel movement by issuing a COTP order. However, this authority may only be directed to a specific vessel, facility or an individual to restrict or stop vessel operations and cannot be issued to ''all vessels'' or a class of vessels. A Regulated Navigation Area (RNA) is a water area that allows the District Commander to control vessel operations to preserve the safety of adjacent waterfront structures, to ensure safe transit of vessels, or to protect the marine environment. RNA's are typically established when extensive vessel controls are needed over an extended period of time. A Regulated Navigation Area is, therefore, the more appropriate means to control vessel operations to ensure safe transit of vessels when conditions require higher standards of control than that provided by the Navigation Rules.

The Coast Guard recognizes that there are exceptions to every circumstance. With this in mind, the RNA would include a waiver process for vessel operators who may not meet the criteria of the operating restrictions but who may have the capability to operate in ice safely. This waiver would be granted at the discretion of the Captain of the Port.

Questions

Public response to the following questions will help the Coast Guard develop a more complete and carefully considered rulemaking. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question, please explain the reasons for each answer.

1. Would this type of rulemaking benefit commercial vessels operating within the Fifth Coast Guard District?

2. Are shaft horsepower, hull material, and convoys the best criteria to restrict vessel traffic when ice impedes navigation?

3. What are the most effective threshold levels to set shaft horsepower restrictions?

4. Are separate rules for each COTP zone required to effectively regulate vessel traffic when ice impedes navigation?

5. If a company is able to provide its own convoy escort service, should this be considered in the RNA?

6. What consideration should be given for various tug and barge towing configurations? Is it practical to apply the same shaft horsepower requirement for each towing configuration?

7. Should the horsepower rating for a tractor tug be considered differently than a traditional tug shaft horsepower?

8. Would a shaft horsepower/overall length or shaft horsepower/overall tonnage ratio be a better method of prescribing power requirements for towing vessels?

9. What, if any, elements of barge hull design should be considered?

10. Are there any other criteria that should be considered in developing this rulemaking?

Dated: February 4, 2003.

James D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–3981 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–192; MB Docket No. 03–24, RM–10636; MB Docket No. 03–25, RM–10637; MB Docket No. 03–26, RM–10638]

Radio Broadcasting Services; Apopka, Homosassa Springs, and Maitland, FL; Basin City and Othello, WA; and Shawnee and Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Cox Radio, Inc. pursuant to Section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of allotment and upgrade the license for Channel 237A at Apopka, Florida, to Channel 237C3 at Maitland, Florida, and to modify the license of WPYO(FM) accordingly. In order to facilitate those changes, petitioner further proposes to relocate the transmitter site of WXCV(FM), Homosassa Springs, Florida, and to modify the license for WXCV(FM). Channel 237C3 can be allotted to Maitland in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 km (9.2 miles) east of Maitland. The coordinates for Channel 237C3 at Maitland are 28–39–38 North Latitude and 81–13–02 West Longitude. Petitioner contends that the proposal does not require a *Tuck* analysis because it is relocating from one community in the Orlando, Florida Urbanized Area to another community also located within that Urbanized Area, but the petition nonetheless contains a *Tuck* analysis to establish that Maitland is independent of the Orlando Urbanized Area. *See* Supplementary Information *infra.*

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Kevin F. Reed, Elizabeth A. M. McFadden, and Nam E. Kim, Dow, Lohnes & Albertson, PLLC (counsel for Cox Radio, Inc.), 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036; Barry A. Friedman, Thompson Hine LLP (counsel for Wheeler Broadcasting, Inc.), 1920 N Street, NW., Suite 800, Washington, DC 20036–1600; and Mark N. Lipp and J. Thomas Nolan, Shook, Hardy & Bacon (counsel for Cumulus Licensing Corporation), 600 Fourteenth Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–24, 03–25, and 03–26; adopted January 29, 2003 and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Wheeler Broadcasting, Inc. pursuant to Section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of allotment and upgrade the license for Channel 248C3 at Othello, Washington, to Channel 248C2 at Basin City, Washington, as a first local service, and to modify the license of KZLN(FM) accordingly. Channel 248C2 can be allotted to Basin City in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 km (4.5 miles) north of Basin City. The coordinates sfor Channel 248C2 at Basin City are 46–39–26 North Latitude and 119–10–23 West Longitude. The proposal does not require a *Tuck* analysis because neither the existing Channel 248C3 facility at Othello nor the proposed Channel 248C2 facility at Basin City cover any part of any urbanized area within the 70 dBu contour.

The Commission further requests comment on a petition filed by Cumulus Licensing Corporation pursuant to Section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of allotment and downgrade the license for Channel 299C at Topeka, Kansas, to Channel 299C1 at Shawnee, Kansas, and to modify the license of KMAJ(FM) accordingly. Channel 299C1 can be allotted to Shawnee in compliance with the Commission's minimum distance separation requirements with a site restriction of 41.3 km (25.6 miles) west of Shawnee. The coordinates for Channel 299C1 at Shawnee are 39–09–06 North Latitude and 95–09–28 West Longitude. Petitioner contends that the proposal does not require a *Tuck* analysis because the proposal would move the station from one urbanized area to another, but the petition nonetheless contains a *Tuck* analysis to establish that Shawnee deserves a first local service preference.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Apopka, Channel 237A and by adding Maitland, Channel 237C3.

3. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 299C at Topeka and by adding Shawnee, Channel 299C1.

4. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Basin City, Channel 248C2 and by removing Othello, Channel 248C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3952 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–273; MB Docket No. 03–29, RM–10643; MB Docket No. 03–30, RM–10644]

Radio Broadcasting Services; Muldrow, OK and Trona, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two allotments in Muldrow, Oklahoma and Trona, California. The Commission requests comment on a petition filed by

David P. Garland proposing the allotment of Channel 286A at Muldrow, Oklahoma, as the community's first local service. Channel 286A can be allotted to Muldrow in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.02 km (6.52 miles) north of Muldrow. The coordinates for Channel 286A at Muldrow are 35–29–47 North Latitude and 94–36–04 West Longitude. See Supplementary Information *infra.*

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: David P. Garland, 1110 Hackney Street, Houston, Texas 77023; Dana J. Puopolo, 2134 Oak St., Unit C, Santa Monica, California 90405.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–29 and 03–30; adopted January 29, 2003 and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Dana J. Puopolo proposing the allotment of Channel 255A at Trona, California, as the community's first local service. Channel 255A can be allotted to Trona in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 km (4.2 miles) southeast of Trona. The coordinates for Channel 255A at Trona are 35–43–51 North Latitude and 117–18–28 West Longitude. Petitioner is required to submit sufficient information to establish that Trona qualifies as a community for FM allotment purposes.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Muldrow, Channel 286A.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Trona, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3953 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–266, MB Docket No. 02–27, RM–10631]

Radio Broadcasting Services; Cotulla and Dilley, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by IH–35 South Broadcasters proposing the allotment of Channel 264A to Cotulla, Texas, as a third local FM service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 229A for vacant Channel 264A at Dilley, Texas. Channel 264A can be allotted to Cotulla, Texas, consistent with the minimum distance separation requirement of the Commission's Rules at city reference coordinates. The coordinates for Channel 264A at Cotulla are 28–26–12 North Latitude and 99–14–05 West Longitude. Since Cotulla is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested. Channel 229A can also be allotted to Dilley, Texas, consistent with minimum distance separation requirements of the Commission's Rules provided there is a site restriction 6.3 kilometers (3.9 miles) south of the community. The coordinates for Channel 229A at Dilley are 28–36–56 North Latitude and 99–10–48 West Longitude. Since Dilley is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Harry C. Martin, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–27, adopted January 29, 2003, and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 264A at Cotulla and by removing Channel 264A and by adding Channel 229A at Dilley.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3955 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P 1

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–193, MB Docket No. 03–21, RM–10632]

Radio Broadcasting Services; Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Moira L. Ritch proposing the allotment of Channel 270C3 at Port St. Joe, Florida, as that community's second local service. The coordinates for Channel 270C3 at Port St. Joe, Florida are 29–47–45 NL and 85–17–27 WL. There is a site restriction 2.2 kilometers (1.4 miles) south to avoid short-spacing to the application site of Station WWAV, Channel 271C2, Santa Rose, Florida and license site of Station WBGE, Channel 270A, Brainbridge, Georgia.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Moira L. Ritch, P.O. Box 13599, Mexico Beach, Florida 32410.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–21, adopted January 29, 2003, and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 270C3 at Port St. Joe.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3950 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–194; MB Docket Nos. 03–22, 03–23; RM– RM–10597, RM–10633]

Radio Broadcasting Services; Conway and Vilonia, AR; Racine, OH and Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on proposals in two separate docketed proceedings in a multiple docket *Notice of Proposed Rule Making.* One, filed by Creative Media, Inc. (''Creative'') proposes to substitute Channel 224C3 for Channel 224A at Conway, Arkansas, and reallot Channel 224C3 from Conway to Vilonia, Arkansas as the community's first local aural transmission service, and modify the license for Station KASR(FM) to reflect the changes. Channel 22C3 can be reallotted from Conway to Vilonia, Arkansas at Creative's requested site12.7 kilometers (7.9 miles) east of the community at coordinates 35–05–02 NL and 92–04–59 WL. The other, filed by Legend Communications of West Virginia, LLC (''Legend'') to reallot Channel 226A from Ravenswood, West Virginia, to Racine, Ohio, as the community's first local aural transmission service, and modify the license for Station WPTM(FM) to reflect the change of community. Channel 226A can be reallotted from Ravenswood, West Virginia, to Racine, Ohio at Legend's requested transmitter site 14.4 kilometers (9 miles) southeast of the community at coordinates 38–53–36 NL and 81–46–52 WL.

DATES: Comments must be filed on or before March 24, 2003, and reply comments must be filed on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Legend Communications of West Virginia, LLC, c/o Christina T. Brumley, Esq., Jackson & Kelly PLLC, P.O. Box 553, Charleston, West Virginia 25322 (MB Docket No. 03–22). Creative Media, Inc., c/o Eugene T. Smith, Esq., P.O. Box 15541, Washington, DC 20003 (MB Docket No. 03–23).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–22 and 03–23, adopted January 29, 2003, and released January 31, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 224A at Conway and adding Vilonia, Channel 224C3.

3. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Racine, Channel 226A.

4. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Ravenswood, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3951 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020703D]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on March 4, 5, and 6, 2003, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday March 4, 5, and 6, 2003. The meeting will begin at 1:30 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Kennedy Plaza, Providence, RI 02903; telephone 401/412–0700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, March 4, 2003

Following introductions, the Council will address a number of groundfish fishery-related issues during this first afternoon session. There will be a briefing on the February 3–5, 2003 Groundfish Peer Review meeting, and a discussion about incorporation of those meeting results, including advice on biological reference points, into the Northeast Multispecies Fishery Management Plan (FMP) Amendment 13 Draft Supplemental Environmental Impact Statement (DSEIS).

Wednesday, March 5, 2003

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. The Groundfish Committee will report on and ask the Council to identify management alternatives for further development and inclusion in the Amendment 13 DSEIS. Their discussion also will relate to measures that would implement the U.S./Canada Resource Sharing Agreement, groundfish stock rebuilding time periods and modifications to alternatives as necessary to meet any revised fishing mortality targets. The Groundfish Committee report will continue until the end of the day.

Thursday, March 6, 2003

The third day of the meeting will begin with a presentation by NMFS staff on the agency's new coastwide initiative to collect recreational fishing data. The report will include details about the methodology that will be employed to collect catch and effort data from the for-hire recreational fleet. The presentation will be followed by a brief public comment period during which any member of the public may bring forward items relevant to Council business but not otherwise listed on the agenda for this meeting. The Habitat Committee will report on recommendations developed at the recent Groundfish, Scallop and Monkfish Joint Advisors meeting on habitat alternatives for Council consideration in Amendment 10 to the Atlantic Sea Scallop FMP and in Amendment 13 to the Northeast Multispecies FMP. The Habitat Committee also will identify a preferred alternative for Scallop Amendment 10. Finally, the Council will review the habitat section, with all alternatives and analyses, of the Northeast Multispecies Amendment 13 DSEIS, select a preferred alternative and conduct a final vote to approve this element of the DSEIS. The Council meeting will adjourn following the conclusion of any other outstanding business. Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 11, 2003.

Richard W. Surdi,

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

[FR Doc. 03–3990 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 33
Wednesday, February 19, 2003

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 COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on March 6, 2003 at 9 a.m. in Room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

1. Introductions and opening remarks.
2. Approval of minutes from previous meeting.
3. Presentation of papers or comments by the public.
4. Review of proposals submitted by the MPETAC.
5. Discussion on 5-axis issues.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230.

For more information contact Lee Ann Carpenter at 202–482–2583.

Dated: February 13, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–3988 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817]

Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measure on Certain Cut-to-Length Carbon-Quality Steel Plate Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 129 of the Uruguay Round Agreements Act, which governs administrative actions following World Trade Organization Panel reports, the Department of Commerce is issuing a second determination with respect to the antidumping duty investigation on cut-to-length carbon-quality steel plate from India. This determination is in conformity with the findings of a World Trade Organization Panel report, as adopted by the World Trade Organization Dispute Settlement Body.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5193.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to Department of Commerce's regulations are references to the provisions codified at 19 CFR Part 351 (2001). Citation to ''section 129'' refers to section 129 of the Uruguay Round Agreements Act, codified at 19 U.S.C. 3538.

Background

On December 29, 1999, the Department of Commerce (Commerce) published a final determination of sales at less than fair value in the antidumping duty investigation on cut-to-length carbon-quality steel plate (subject merchandise) from India.[1] During this proceeding, the sole Indian respondent, the Steel Authority of India, Ltd. (SAIL), acknowledged serious deficiencies with respect to its home market sales, cost of production, and constructed value information. However, SAIL argued that Commerce should use its submitted U.S. sales price information in the margin calculation, by comparing the prices of these sales to information concerning normal value from the petition.[2] Commerce rejected this request and based the dumping margin on total facts available.[3] In determining to reject the partial information submitted by SAIL and rely entirely on the facts available, Commerce found that the information submitted did not meet any of the criteria established by section 782(e) of the Act. This included a finding, pursuant to section 782(e)(5), that the information could not be used without undue difficulties.[4] Commerce's explanation for this finding was that ''the U.S. sales database contained errors that, while in isolation were susceptible to correction, however when combined with the other pervasive flaws in SAIL's data lead us to conclude that SAIL's data on the whole is unreliable.''[5]

Subsequently, the Government of India requested the establishment of a World Trade Organization (WTO)

[1] *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from India,* 64 FR 73126 (December 29, 1999) (*Final Determination*). Following an affirmative injury determination issued by the United States International Trade Commission, Commerce issued an antidumping duty order on this product. See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-to-Length Carbon Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[2] *Final Determination* at 73128.

[3] Commerce selected, as facts available, the highest of the margins alleged in the petition, 72.49 percent.

[4] *Final Determination* at 73127. Section 782(e)(5) lists, as a factor to consider in determining whether to accept information that does not meet all applicable requirements, whether ''the information can be used without undue difficulties.'' The corresponding provision in the AD Agreement, which was the focus of the Panel ruling in this case, is at Annex II, paragraph 3.

[5] Id.

dispute settlement panel (the Panel) to consider, inter alia, Commerce's rejection of SAIL's U.S. sales data in this case. The Panel issued its report on June 28, 2002.[6] The WTO Dispute Settlement Body (DSB) adopted the findings in this report on July 29, 2002. On August 30, 2002, the United States informed the DSB that it would implement the recommendations of the DSB in a manner consistent with its WTO obligations.

On December 10, 2002, pursuant to section 129(b)(2) of the Uruguay Round Agreements Act (URAA), the U.S. Trade Representative (USTR) requested that Commerce issue a determination that would render its original antidumping determination in this matter not inconsistent with the findings of the Panel.

On December 26, 2002, Commerce issued its draft determination in this proceeding. *See* draft Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measure on Certain-Cut-to-Length Carbon-Quality Steel Plate Products from India (Draft Determination) which is on file in the Central Records Unit, room B–099 of the main Commerce building. On January 2, 2003, SAIL submitted comments regarding Commerce's Draft Determination. On January 6, 2003, Bethlehem Steel Corporation and United States Steel Corporation (Petitioners) submitted rebuttal comments. A summary of these comments and rebuttal comments, as well as Commerce's response are included in this determination. On February 3, 2003, the USTR held consultations with Commerce and the appropriate congressional committees with respect to this determination. On February 7, 2003, the USTR directed Commerce to implement this determination.

WTO Panel Findings and Conclusions

In its report, the Panel found that the U.S. statutory provisions concerning use of facts available are not inconsistent with Article 6.8 and paragraphs 3, 5, and 7 of Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement).[7] However, the Panel found that the application of these provisions in this case was inconsistent with Article 6.8 and paragraph 3 of Annex II of the AD Agreement.

Specifically, the Panel found that the United States had not provided a ''legally sufficient justification'' in the final determination for refusing to take into account U.S. sales price information submitted by SAIL and basing the dumping margin entirely on the facts available.[8] The focus of any such justification, according to the Panel, should be on whether the information met the requirements set forth in paragraph 3, Annex II, of the AD Agreement, taking into account the interrelationship between the partial data at issue (U.S. sales data) and the other elements of the dumping analysis, for which, both sides agree, SAIL did not submit reliable information. In this regard, the Panel noted ''we consider to be critical the question of whether information which itself may satisfy the criteria of paragraph 3 can be used without undue difficulties in light of its relationship to rejected information.''[9]

The Panel did not consider as sufficient the statement in the final determination, without elaboration, that the U.S. database could not be used without undue difficulties because the errors in that database, when combined with the other pervasive flaws in SAIL's data, indicate the unreliability of SAIL's data on the whole.[10] The Panel noted Commerce's acknowledgment that the errors in the U.S. database ''in isolation were susceptible to correction,''[11] and stated that, in light of this, Commerce needed to provide a more adequate explanation for its decision to reject this information: ''[W]e consider it imperative that the investigating authority explain, as required by paragraph 6 of Annex II, the basis of a conclusion that information which is verifiable and timely submitted cannot be used in the investigation without undue difficulties.''[12]

Although the United States explained, during the panel proceedings, why it could not use SAIL's data without undue difficulty, the Panel focused on the need for Commerce itself to provide the explanation in its antidumping determination. ''Even assuming we were persuaded by the United States'' arguments before us that USDOC could have made the decision posited [to reject the U.S. sales data as unduly difficult to use based on arguments made in dispute settlement], there is nothing in the record to indicate to us that it did make such a decision in the case.''[13]

The Panel refused a request by India that it suggest the United States implement this finding by recalculating the dumping margin taking into account the U.S. price data at issue, stating that ''[i]n this case, we see no particular need to suggest a means of implementation, and therefore decline to do so.''[14] The Panel added that ''the choice of means of implementation is decided, in the first instance, by the Member concerned.''[15] The Panel then issued a general recommendation that the DSB request the United States ''to bring its measure into conformity with its obligations under the AD Agreement,''[16] which the DSB subsequently adopted.

Implementation

In order to bring the measure at issue into conformity with the AD Agreement, in this section 129 determination, we are providing the ''legally sufficient explanation'' that the Panel found lacking in the initial determination regarding why the U.S. sales information at issue could not be used ''without undue difficulties'' in calculating a dumping margin under the AD Agreement. The following ''legally sufficient explanation'' fully explains why Commerce is under no obligation to take SAIL's U.S. sales transactions into account in establishing a dumping margin for SAIL. Nonetheless, in implementing the DSB's recommendation, Commerce has given careful attention to the Panel's reasoning and has determined that it is appropriate, under the particular facts of this case, to give consideration to the U.S. sales information in a limited manner in determining the appropriate facts available margin to assign to SAIL. Each of these aspects of our implementation is explained below.

In its report, the Panel defined the term ''undue difficulties'' as those that ''go beyond what is otherwise the norm in an anti-dumping investigation,''[17] as opposed to difficulties that arise routinely during the course of an investigation and which are within the ambit of the ''two-way process involving joint effort'' between investigating authorities and respondents established

[6] United States—Antidumping and Countervailing Measures on Steel Plate from India, WT/DS206/R (June 28, 2002) (Panel Report), full text available at www.wto.org).

[7] Panel Report, paragraph 8.2(a).

[8] Panel Report, paragraph 8.1.

[9] Panel Report, paragraph 7.61 (emphasis added). The Panel here refers to the ''undue difficulties'' standard contained in paragraph 3, Annex II of the AD Agreement. As noted, a corresponding standard is set forth at section 782(e)(5) of the U.S. antidumping law.

[10] Panel Report, paragraph 7.69.

[11] *Final Determination* at 73127. See also Panel Report, paragraph 7.71.

[12] Panel Report, paragraph 7.74.

[13] Panel Report, paragraph 7.69 (emphasis original).

[14] Panel Report, paragraph 8.8.

[15] *Id.*

[16] Panel Report, paragraph 8.6.

[17] Panel Report, paragraph 7.72.

by Annex II of the AD Agreement.[18] In situations involving the potential use of partial information submitted where other data has been rejected, the Panel focused on:

[W]hether a conclusion that some information fails to satisfy the criteria of paragraph 3, and thus may be rejected, can in any case justify a decision to reject other information submitted which, if considered in isolation, would satisfy the criteria of paragraph 3. We consider that the answer to this question is yes, in some cases, but that the result in any given case will depend on the specific facts and circumstances of the investigation at hand.[19]

While the Panel noted the fact-specific nature of this determination, it also discussed some general considerations regarding the interconnection between databases that could apply across cases. The Panel states, for instance, that:

We consider * * * that *the various elements, or categories, of information necessary to an antidumping determination are often interconnected,* and a failure to provide certain information may have ramifications beyond the category in which it falls. For instance, a failure to provide cost of production information would leave the investigating authority unable to determine whether sales were in the ordinary course of trade, and further unable to calculate a constructed normal value. Thus, a failure to provide cost of production information might justify resort to facts available with respect to elements of the determination beyond just the calculation of cost of production. *Moreover, without considering any particular ''categories'' of information, it seems clear to us that if certain information is not submitted, and facts available are used instead, this may affect the relative ease or difficulty of using the information that has been submitted and which might, in isolation, satisfy the requirements of paragraph 3 of Annex II.*[20]

The Panel's hypothetical example underscores the impact that the failure to provide one element of necessary information (*e.g.*, cost of production) can have on the usability of other elements. While the Panel does not take the view that a failure to provide one element of information automatically allows for disregarding all other information submitted,[21] it makes clear in the report that the absence of one element can result in the failure of other elements to meet the requirements of paragraph 3:

[I]t may indeed be the case that a failure to provide *one* element of information undermines the usability of information that is submitted, *making it unduly difficult to use the information submitted in making determinations.* * * * A panel reviewing such a decision must be able to conclude that the investigating authority considered the relationship between the missing information and the information submitted, and concluded in light of that relationship, the fact that one element of information was not submitted justified the conclusion that information submitted did not satisfy the criteria of paragraph 3 of Annex II.[22]

The Panel's concern with the impact that a single missing element of information can have on other elements of information is particularly relevant to the investigation at issue because, in this investigation, SAIL failed to provide usable information not just for one of the major elements of information required, but for three out of four major elements of information required in an antidumping proceeding, namely home market sales, cost of production, and constructed value information.[23] As a result, the question under the facts of this determination is not whether SAIL's failure to provide a single element renders unusable the remainder of the information, but whether SAIL's failure to provide potentially usable information for all elements except U.S. sales renders this sole remaining element unduly difficult to use.

In addressing this question, Commerce has considered both the Panel's definition of undue difficulties as those that go ''beyond what is otherwise the norm'' in an antidumping case and its hypothetical example involving the impact of missing cost of production information on the relative ease or difficulty of using home market sales data. While certain minor data deficiencies may be the norm in antidumping cases, the absence of any information regarding normal value and production costs far exceeds that norm and, therefore, the difficulties faced in dealing with the absence of such information are far beyond the norm. As the Panel noted, a lack of usable cost of production information ''*would leave the investigating authority unable* to determine whether sales were in the ordinary course of trade and further unable to calculate a constructed normal value. Thus, a failure to provide cost of production information might justify resort to facts available with respect to elements of the determination beyond just the calculation of cost of production.'' [24] In the hypothetical example posed by the Panel, the investigating authority would be unable to determine whether the partial information submitted satisfies the requirements of the AD Agreement (*e.g.*, whether home market sales are in the ordinary course of trade as required by Article 2.1). Thus, the hypothetical suggests that one missing element of the information required for an antidumping analysis may render other elements of information submitted ''unduly difficult'' to use in a way that turns fundamentally on whether it is possible to calculate a meaningful and accurate dumping margin under these circumstances, given the interrelationship between the elements involved and the requirements of the AD Agreement.[25]

Therefore, in considering whether it is unduly difficult to use SAIL's U.S. sales data under these circumstances, we have taken into account whether any such calculation would produce a meaningful and accurate result, in light of the interrelationship between elements in a dumping analysis, as well as the degree of difficulty that would be incurred in order to use the U.S. data to calculate a dumping margin in accordance with Article 2 of the AD Agreement. Applying these considerations to the facts of this case, we find that it is unduly difficult to use SAIL's U.S. data because it is not possible to calculate a dumping margin in the manner envisioned by the AD Agreement where the respondent has provided potentially usable information on only a single element of the dumping analysis, and where even that information has substantial flaws. Instead, any dumping margin determined under these circumstances is a facts available margin. We address this in more detail below.

In light of the relationship between SAIL's missing information (home market sales, cost of production, and constructed value data) and the information submitted (the U.S. sales data), SAIL's flawed U.S. data could not be used without undue difficulty in calculating a dumping margin in the manner envisioned by the AD Agreement.

In the context of the AD Agreement, which defines dumping based on a

[18] Panel Report, paragraph 7.73.

[19] Panel Report, paragraph 7.62.

[20] Panel Report, paragraph 7.60 (emphasis added).

[21] Id.

[22] Panel Report, paragraph 7.67 (emphasis added).

[23] We refer to normal value, export price, cost of production, and constructed value information as major ''elements'' of information for an antidumping analysis, consistent with statements by India and the Panel. See, *e.g.*, Panel Report , Paragraph 7.54–7.55.

[24] Panel Report, paragraph 7.60 (emphasis added).

[25] We note that the current proceeding represents a particularly extreme version of the scenario described by the Panel. In this proceeding, SAIL did not merely fail to provide cost of production information, rather it failed to provide any usable information for any of the required elements other than U.S. sales, and even its U.S. sales information is incomplete.

comparison of the export price with the normal value of sales made in the ordinary course of trade, the information necessary for conducting an antidumping analysis includes prices of the subject merchandise in the domestic market of the exporting country, export prices of the subject merchandise, and, where needed (such as this case), cost of production and constructed value information.[26] A competent authority conducting an antidumping analysis requires each of these elements of information in order to calculate a respondent's dumping margin. Thus, there is an explicit relationship between SAIL's U.S. sales database and the information that was absent in this case: SAIL's home market price, cost of production, and constructed value information.[27] With such fundamental aspects of data entirely absent—a scenario that goes well beyond the norm in an antidumping investigation—a fair and objective investigating authority could reasonably determine that SAIL's U.S. sales database could not be used without undue difficulty in calculating a dumping margin consistent with the AD Agreement.

The interrelationship between elements in a dumping analysis starts with the basic measure of dumping in Article 2.1 of the AD Agreement—export sales prices compared with normal value—and extends to the numerous requirements throughout Article 2 establishing the circumstances under which export prices and normal value may be compared. This interrelationship is underscored by the fact that the basic purpose of each of the four major data elements required for a dumping analysis that come into play under Article 2—comparison market prices, export prices, cost of production, and constructed value—is defined in terms of its comparison with other elements. None of these elements serves any purpose in isolation, separate from the other aspects of the dumping analysis, and each requires adjustments that take into account the element against which it is being compared.

First, upon selection of the appropriate comparison market, sales in that market must be analyzed to determine whether they are in the ordinary course of trade, as required by Article 2.1 of the AD Agreement. Most typically, this requires a comparison between the sales price element and the cost of production element in the comparison market, as governed by Article 2.2.1 and Article 2.2.1.1. As with other aspects of the analysis, this ''cost test'' does not concern the cost of production element alone but instead requires a comparison between major data elements, as illustrated by the hypothetical example discussed in the Panel Report. Where it is determined, under the criteria established in Article 2.2, that comparison market sales are not in the ordinary course of trade, constructed value may be used as normal value.

The prices of sales in the comparison market made in the ordinary course of trade must then be compared with sales prices to the export market. This in turn requires a comparison of a number of characteristics related to sales in each market, as described in Article 2.4. Sales in the two markets must be matched according to the physical characteristics of the products sold, and adjustment for any differences in physical characteristics must be made. Sales in the two markets must also be compared at the same level of trade, where possible, and an adjustment for any differences in level of trade must be made where such differences are demonstrated to affect price comparability. Article 2.4 requires that comparisons between markets be made at the ex-factory level, necessitating an adjustment for transportation and certain warehousing expenses in the two markets. Article 2.4 also requires that due allowance be made for a number of other differences that affect price comparability, including differences in terms and conditions of sale, taxation, quantities, and any other differences that affect price comparability. For instance, in the case of export price sales, such as the U.S. sales at issue, Commerce would normally adhere to the Article 2.4 requirement that an adjustment be made for differences in terms and conditions of sale by adding direct selling expenses incurred on export price sales to normal value, while deducting home market selling expenses. This adjustment would also be made when normal value is based on constructed value.[28] A proper comparison under Article 2 of the AD Agreement requires that we account for all such differences between the export and comparison markets in our analysis.

It is important to note that these provisions of the AD Agreement enable the investigating authority to arrive at an accurate determination of whether dumping is occurring in the export market. For example, it is often the case that selling to an export market involves a higher level of expenses than selling in the domestic market, and such differences in terms and conditions of sale must be taken into account in determining whether price discrimination between markets is occurring.

In this case, the absence of usable data for all elements other than U.S. sales, along with the deficiencies relating to SAIL's U.S. sales data, leaves Commerce unable to conduct a meaningful dumping analysis under the framework discussed above. There are no usable home market sales prices for SAIL. Moreover, the sales expense and production cost information relating to those sales are not usable. Therefore, it is not possible to compare any of SAIL's home market sales prices to its U.S. sales prices. Any analysis attempted without such data would leave the investigating authority unable to adjust for all differences in terms and conditions of sale between U.S. sales and normal value. Further, it is not possible to match sales at the same level of trade, or to adjust for differences in levels of trade where price comparability is affected. In fact, the types of difficulties encountered by Commerce in attempting to conduct an antidumping analysis, given the pervasive reporting failures in this case, may be illustrated by examining the Article 2.4 requirements with respect to level of trade.

In its questionnaire response SAIL claimed that it made home market sales at multiple levels of trade, some of which corresponded more closely to the U.S. level of trade than others.[29] In order to meet the Article 2.4 requirements regarding levels of trade, we normally would first seek to compare U.S. sales with home market sales made at the same level of trade. If price comparisons could not be made at the same level of trade, we would attempt to compare U.S. and home market sales at different levels of trade while considering whether a level-of-trade adjustment was appropriate. If we were unable to make any price comparisons (because, for instance, home market sales were below the cost of production) and had to rely on

[26] In this case, cost of production and constructed value information was needed because Commerce was conducting a cost investigation.

[27] In fact, the explicit linkages between each of these elements needed to calculate an accurate dumping margin are reflected in SAIL's own questionnaire responses. In SAIL's export price response, for example, SAIL referred Commerce to its cost of production response—which SAIL and the Government of India have conceded was never usable—for cost information needed to measure differences in physical characteristics between products. SAIL Section C Response, at C–45 and C–50 (May 10, 1999).

[28] Many of the same allowances and adjustments must be made when constructed value is used.

[29] SAIL section B questionnaire response, B32–B35 (May 10, 1999).

constructed value, we would still take level of trade into account in calculating the selling expense and profit elements of constructed value. None of these considerations with respect to the comparison between U.S. prices and normal value is possible because SAIL provided no usable home market sales, cost of production, or constructed value information. Under these circumstances, despite the investigating authority's efforts, there is no way of knowing the extent to which a dumping margin is affected, upward or downward, by comparisons made at different levels of trade. Simply put, it is not possible, under these facts, to engage in partial, selective ''gap-filling'' of the sort that would allow for a meaningful determination of dumping as defined in the AD Agreement.

SAIL's argument that a dumping margin should be calculated by comparing its U.S. prices to the constructed value offered in the petition does nothing to remedy the data deficiencies that make calculating a dumping margin in the manner envisioned by the AD Agreement impossible. Moreover, there is no way to know whether substituting the constructed value from the petition for SAIL's entire home market sales and cost databases would adequately represent SAIL's home market pricing practices. Because the use of SAIL's U.S. sales information with the constructed value in the petition would not result in a dumping calculation as outlined in the AD Agreement, it would represent a facts available margin.

The facts available nature of the dumping determination under these circumstances is further underscored by the substantial flaws in the sole element of information for which SAIL provided potentially usable data. SAIL's U.S. data excluded necessary information on variable and total costs of manufacturing and misreported information on matching criteria for a majority of U.S. sales. At a minimum, as envisioned by Article 2 of the AD Agreement, Commerce would need the missing cost information in order to adjust for any differences in physical characteristics between the products SAIL sold in the United States and the product for which constructed value was calculated in the petition.[30] Those physical characteristics include specification/grade, quality, thickness, and width of the subject merchandise. Differences in these physical characteristics affect both prices and costs of the subject merchandise. However, there is no way to make such adjustments using SAIL's reported data because the variable and total cost information is missing in its entirety from the U.S. database, and thus is not susceptible to correction. Moreover, while there were other errors in SAIL's U.S. sales database that ''in isolation were susceptible to correction * * *'' (*Final Determination* at 73127), correcting these errors would still leave the gap created by the missing U.S. cost information. This is because SAIL provided no usable cost of production or constructed value information anywhere on the record. This is not a case where Commerce could correct those errors that were susceptible to correction and fill the gap created by missing variable and total cost information on some U.S. sales by using accurate information provided on other U.S. sales. Nor can Commerce adapt cost information provided in the cost of production or constructed value portions of the response to fill the gap created by the missing information on U.S. sales, since there is no such information on the record that was capable of being verified. Thus, while some of the deficiencies in SAIL's U.S. sales information were correctable, these deficiencies, when combined with other missing U.S. sales information and an unusable home market sales and cost response made using SAIL's U.S. sales information in a dumping calculation unduly difficult. The lack of variable and total cost information for SAIL in this case leaves Commerce unable to calculate a dumping margin in accordance with the provisions of Article 2 of the AD Agreement (*e.g.*, unable to make adjustments for differences in physical characteristics), which is similar to the position in which the investigating authority would find itself in the hypothetical example provided by the Panel where ''a failure to provide cost of production information would leave an investigating authority unable to determine whether sales were made in the ordinary course of trade, and further unable to calculate a constructed normal value.'' [31]

Nevertheless, throughout the course of the dispute settlement proceeding, the Government of India—on behalf of SAIL—offered a variety of proposals for using SAIL's U.S. sales data in the dumping analysis, including corrections to the data that it suggested could be employed. As noted by Commerce in its statements before the Panel, the first of India's proposals employed methodologies that were contrary to the requirements of the AD Agreement, while its latter proposals conceded that no more than 30 percent of SAIL's U.S. sales was even potentially suitable for comparison to the normal value in the petition.[32] However, even if 30 percent of SAIL's U.S. sales was potentially suitable for comparison to the normal value in the petition because it matched the product for which the petition normal value was calculated, for the reasons noted above, any such comparison would not result in a dumping margin calculated in accordance with the provisions of Article 2 of the AD Agreement. Moreover, such a comparison would not account for the majority of SAIL's U.S. sales, and would require Commerce to determine the dumping margin for the majority of U.S. sales in a different manner. In light of these circumstances, the use of SAIL's U.S. sales data in calculating a dumping margin in accordance with the AD Agreement presented undue difficulties that Commerce was not obligated to undertake.

This position is reasonable, not only from the standpoint of satisfying the ''unduly difficult'' requirement of paragraph 3 of Annex II of the AD Agreement, but also when viewed in the broader context of the goals of the AD Agreement. The AD Agreement establishes certain requirements in making a comparison between export price and normal value in order to ensure that price discrimination is accurately measured. As explained above, a comparison of actual U.S. sales prices to a constructed value from the petition does not result in the accurate measurement of dumping envisioned by Article 2 because such a comparison

[30] Normally, adjustments for differences in physical characteristics would not need to be made when comparing U.S. prices to constructed values because respondents provide the constructed value for each product sold to the United States. In this case, however, we have a constructed value for only one product. Thus, any comparison of SAIL's U.S. sales prices to the constructed value in the petition would have to take into account the adjustment for differences in physical characteristics using SAIL's cost information, information which SAIL failed to provide.

[31] Panel Report, paragraph 7.60.

[32] Commerce explained that the initial proposal submitted by India is flawed in many respects. In addition to offering new facts not presented to Commerce in the underlying investigation, this proposal offers three flawed options: (1) An option that would have Commerce use a below-cost price as normal value, contrary to the requirement that sales be in the ordinary course of trade; (2) an option that would have Commerce compare export prices to a normal value based on a different product without making an adjustment for differences in physical characteristics, contrary to the requirement in Article 2.4 of the AD Agreement that such an adjustment be made; and (3) an option that would have Commerce calculate a margin for SAIL using a small subset of SAIL's U.S. database.

cannot meet the requirements established by that Article.

For these reasons, we conclude that a calculation that cannot be made in accordance with Article 2 of the AD Agreement cannot somehow be more accurate than resorting to facts available. The facts available used in the investigation in this case are based on information from the petition, as authorized by Annex II, paragraph 1 of the AD Agreement. While the facts available contained in the petition may not account for all of the adjustments described above because it is based on information ''reasonably available'' to the party preparing the petition, it is not appropriate to assume, as SAIL has done, that the dumping margin derived from the petition overstates the margin that Commerce would have calculated if SAIL had provided all of the information requested by Commerce. There is no basis for determining whether this assumption is true. For example, there is no basis to know whether the petition normal value exceeds—or is even as high as—SAIL's actual normal value. Given the limited information available to a petitioner, a petition may understate the appropriate margin for any given respondent.[33] Thus, there is no way to determine the actual dumping margin with any degree of accuracy, or to know whether the respondent may benefit by not providing reliable information regarding its prices and costs. In cases such as this, given the nature of the information available, it may be appropriate to rely on information that ensures the respondent has not benefitted from its failure to provide information that is under its control. This is particularly true in this case, where the limited amount of potentially usable data submitted by SAIL raises basic questions owing to the respondent's control of the information relating to a dumping proceeding.

Nevertheless, ultimately, as the Panel indicated,[34] the determination whether to use or disregard partial information is a fact-specific judgment that must be made from case to case. The circumstances surrounding our disregard of SAIL's information are set forth above, and are clearly distinguishable from the majority of Commerce's determinations involving facts available. In most cases, Commerce accepts imperfect, but adequate data supplied by respondents, and uses facts available to fill data gaps which are not so significant as to render a calculated dumping margin meaningless. Thus, in such cases where a respondent supplies information, Commerce does not, as a matter of practice, ''disregard all of the information submitted and base its determination exclusively on the facts available.'' [35] Rather, as the Panel notes, Commerce frequently relies on ''partial'' facts available with respect to some piece of information that is not submitted by a party.[36] In deciding whether the use of total or partial facts available is appropriate, it is necessary to consider all of the objectives of the AD Agreement, namely, to calculate dumping margins in accordance with the guidelines of Article 2, provide respondents with the procedural protections established by the Agreement, and at the same time provide the appropriate incentives for parties that control the information necessary to perform a dumping calculation to supply that information in the most timely and accurate manner possible. The application of these principles under these facts supports the conclusion that it was unduly difficult to use SAIL's substantially incomplete data in a dumping calculation consistent with the AD Agreement.

Accordingly, in determining SAIL's dumping margin, Commerce is not required to attempt to match SAIL's U.S. sales data to a normal value derived from the petition given the ''undue difficulties'' that such usage would present within the meaning of paragraph 3, Annex II of the AD Agreement. Therefore, the use of total facts available is appropriate and consistent with the AD Agreement.

At the same time, in selecting the most appropriate basis for facts available, we have considered the Panel's recognition of the positive aspects of SAIL's U.S. information relative to the complete reporting failure on all other elements.[37] In light of this aspect of the Panel's decision, and in response to comments submitted by the parties (see below), we have determined that under these circumstances it is appropriate to consider average U.S. pricing levels, as reported by SAIL, in selecting the most appropriate facts available, as described below.

The petition contains two sources of information on U.S. sales prices: (1) An offer for sale of subject merchandise (price quote); and (2) average unit values (AUVs) of subject merchandise based on U.S. import data provided by the Bureau of Census. In the final determination, Commerce relied solely on the price quote in deriving the dumping margin of 72.49 percent. However, upon reconsideration of this information in light of the minimum and average pricing levels of all Indian exports to the United States during the period of investigation (POI) (particularly the pricing levels of identical merchandise), which in this case are indicated by the U.S. sales information provided by SAIL since it accounted for virtually all Indian exports during the POI, we have determined that this price quote is atypical by comparison with all comparable prices. Therefore, it is appropriate under the circumstances of this case to consider the other information on the record regarding U.S. prices during the POI. Normally, in such circumstances, we would turn to the other source of petition information for use as facts available. However, in this case, the use of AUV data from the petition would benefit the respondent for its reporting failures because use of this data yields a lower margin compared with the flawed data submitted by SAIL. Accordingly, under the particular circumstances of this case, we have determined that it is appropriate, as facts available, to compare SAIL's average net U.S. price during the POI to the normal value provided in the petition. This average U.S. price is net of average movement expenses. *See* the memorandum Facts Available Analysis for the Section 129 Determination—Certain Cut-to-Length Carbon-Quality Steel Plate from India (Facts Available Memorandum), dated concurrently with this determination.

With respect to the facts available used for normal value, we note that SAIL's complete failure to report usable information for normal value leaves only one source of information appropriate for use in determining normal value, namely the constructed value information from the petition. The only other source of information on the record concerning normal value—home market price information from the

[33] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China,* 66 FR 33522, 33523 (2001) (petition margin understated margin calculated for respondent); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434, 40435 (1998) (same).

[34] Panel Report, paragraph 7.62.

[35] Panel Report, paragraph 7.60. The Panel here is summarizing its view of the U.S. position regarding what an investigating authority may do under the AD Agreement. In our view, it is important to emphasize that Commerce does not, in the majority of its cases, use any such discretion to disregard all information submitted.

[36] Panel Report, paragraph 7.92.

[37] Panel Report at paragraph 7.71. While the Panel explicitly declined to determine whether SAIL's U.S. sales information was unduly difficult to use, it did find that the information met other requirements of paragraph 3, Annex II, namely that it was ''capable of being verified'' and ''supplied in a timely fashion.''

petition—is inappropriate due to a properly documented allegation that home market sales were made below the cost of production. However, because, as acknowledged by SAIL, the constructed value from the petition is suitable for comparison with no more than 30 percent of the company's U.S. sales, it is appropriate to base the total facts available margin, in part, on a constructed value adjusted to account for physical differences for the remaining non-identical U.S. sales. In this case, an adjustment applied in accordance with the guidelines of Commerce's normal practice adequately accounts for the physical differences. Specifically, we increased the constructed value from the petition by 20 percent of the total cost of manufacturing included in that value. This is in keeping with Commerce's normal practice of considering products whose variable costs differ by no more than 20 percent of the cost of manufacturing to be comparable. Hence, we have adjusted the cost of manufacturing to account for the physical differences, and revised the constructed value used as total facts available for non-identical merchandise.

Therefore, the redetermined facts available margin is based on a comparison of SAIL's average net U.S. price with the constructed value from the petition, adjusted, where appropriate, for physical differences in merchandise. Due to the lack of usable information on the record, the dumping margin determined under these circumstances departs from our normal methodology in a number of respects. First, unlike a calculated dumping margin, this redetermined facts available margin is an aggregate calculation that does not involve model-specific comparisons between U.S. prices and normal value. Aside from the general classification described above regarding the percentage of SAIL's U.S. sales involving ''identical'' vs. ''similar'' merchandise compared with the product used in determining normal value, the calculation involves no analysis of product characteristics and no ''model match'' methodology, as is normally done in accordance with section 771(16) of the Act.[38] As such, there is no reliance on any of the individual product characteristic fields developed for this investigation and included in the antidumping questionnaire, such as specification/grade, quality, thickness, and width of the subject merchandise, since the lack of home market sales and cost information precludes comparisons made on the basis of these characteristics.

In addition, we have not matched sales by level of trade or otherwise adjusted for differences in levels of trade. As discussed above, the Department normally compares sales made at the same level of trade, where possible, pursuant to section 773(a)(1)(B)(i) of the Act. For comparisons involving different levels of trade, a level-of-trade adjustment is made pursuant to section 773(a)(7)(A) where it is established that any difference in levels of trade: (i) Involves the performance of different selling activities and (ii) is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined. While SAIL reported in the narrative portion of its questionnaire response that it made home market sales at multiple levels of trade, some of which corresponded more closely to the U.S. level of trade than others, the lack of any usable home market sales data precludes taking level of trade into account with respect to product matching and in determining whether a level-of-trade adjustment is appropriate.

Finally, while we were able to adjust SAIL's U.S. prices for inland freight expenses, thereby arriving at an ex-factory price as required by section 772(c)(2)(A) of the Act, the lack of any usable expense information relating to home market sales precluded making any adjustments for differences in circumstances of sale between the two markets, as required by section 773(a)(6)(C)(iii). *See* Facts Available Memorandum for more details on the dumping margin determined for SAIL in this section 129 determination.

While the margin determined for SAIL in this redetermination cannot, therefore, be considered a calculated margin in accordance with our normal methodology, we believe that this facts available margin reflects the Panel's recognition of the positive aspects of SAIL's participation in the investigation, while continuing to ensure that SAIL has not benefitted by its failure to provide usable information. The following section contains interested parties' comments and Commerce's response.

Interested Party Comments

Comment 1

SAIL argues that Commerce's Draft Determination fails to implement the DSB's rulings and recommendations. SAIL notes that Commerce states in its Draft Determination that the Panel Report found ''the United States had not provided a legally sufficient justification for its underlying determination.'' However, SAIL maintains that the actual Panel finding was that the United States had acted inconsistently with the AD Agreement by refusing to take SAIL's U.S. sales data into account and making its determination regarding SAIL's dumping margin solely on the basis of facts available. Therefore, to the extent that Commerce continues to calculate SAIL's dumping margin entirely on the basis of facts available, it fails to implement the DSB decision. According to SAIL, during the Panel process, the United States attempted to provide a ''legally sufficient justification'' for its original determination, but the Panel considered it *post hoc* rationalization. In SAIL's view, nothing in the Panel Report suggests that repeating this rationalization in greater detail could constitute adequate implementation of the DSB ruling.

Petitioners disagree with SAIL's representations. According to Petitioners, the Panel did not accept Commerce's rejection of SAIL's U.S. sales data based solely on the flaws in the other information submitted; nor did the Panel accept India's claim that if one category of information is submitted, it must be used. Rather, the Panel decided that categories of information may be interconnected such that failure to provide certain information may make it unduly difficult to use other data. Moreover, with respect to undue difficulties, Petitioners maintain that the Panel was not only referring to difficulties in physically calculating a margin, but ''to methodological difficulties that preclude the calculation of a dumping margin in a manner consistent with the AD Agreement.'' Petitioners note that the Panel found the issue of ''undue difficulties'' to be a highly fact-specific issue and stated that where these situations arise, the investigating authority is required to adequately explain why information that is timely and verifiable cannot, because of its relationship with rejected data, be used without undue difficulty. In this case, the Panel found Commerce failed to provide this explanation with respect to SAIL's U.S. sales data. Petitioners argue that the Panel would not have indicated that Commerce could provide a legally sufficient justification for rejecting the U.S. sales data if the Panel was requiring that those data be used. Moreover, in rejecting SAIL's request that the Panel instruct Commerce to recalculate the dumping

[38] The corresponding AD Agreement provision for comparisons and adjustments discussed in this section is Article 2.4.

margin using its reported U.S. sales data, the Panel left the decision regarding the manner of implementation to the United States and held open the option of explaining how in this case the rejected data undermined the usability of the company's U.S. sales data. Petitioners maintain that Commerce analyzed the facts of this case and concluded that ''the absence of usable data for all elements other than U.S. sales, along with deficiencies relating to the U.S. sales themselves, leaves Commerce unable to conduct a meaningful dumping analysis * * * .'' Therefore, according to Petitioners, Commerce's Draft Determination is in full compliance with the Panel's decision and should not be modified in any way.

Petitioners further urge Commerce to reject SAIL's contention that providing a legally sufficient justification constitutes an improper *post hoc* rationalization. According to Petitioners, the Panel described the justification for rejecting U.S. sales data offered by Commerce in its written submissions to the Panel as *post hoc* rationalization because this justification was not on the record of the investigation and was offered only in argument in written submissions to the Panel.

As described above, Petitioners maintain that the Panel's decision permits Commerce to implement the findings in this WTO proceeding by explaining why SAIL's U.S. sales data is not usable. Petitioners argue that the justification in the section 129 determination for rejecting the U.S. sales data is being provided by the investigating authority to explain its determination and cannot possibly be considered a *post hoc* rationalization.

Commerce's Position

The Panel stated that, under the AD Agreement, before rejecting an element of information submitted and resorting to facts available, the investigating authority must evaluate the element of information in question against the criteria of paragraph 3 of Annex II. Observing that ''the various elements, or categories of information necessary to an anti-dumping determination are often interconnected, and a failure to provide certain information may have ramifications beyond the category in which it falls,'' the Panel also acknowledged that the failure to provide one element of information can undermine the usability of information which, if considered in isolation, would satisfy the criteria of paragraph 3.[39] Further, the Panel took the view that the decision to reject, as unduly difficult to use, information that otherwise satisfies the criteria of paragraph 3 is a case-specific determination that is dependent upon the facts and circumstances of the investigation at hand. With respect to such a decision, the Panel noted that ''[c]ritical to such a determination is the explanation by the investigating authority of its conclusion in this regard.''[40]

On this point, the Panel noted that while Commerce argued, during the Panel proceeding, that SAIL's U.S. sales data could not be used without undue difficulty, there was no evidence to indicate that Commerce had made such a determination on the record of this case. Based on the facts and explanations on the case record, the Panel stated that Commerce's decision to reject the U.S. sales information lacked a valid basis under paragraph 3, Annex II, of the AD Agreement. The Panel concluded its review by recommending that the United States bring its measures ''into conformity with its obligations under the AD Agreement.''

Therefore, consistent with the Panel Report, providing the legally sufficient justification that the Panel found lacking in Commerce's initial determination regarding why U.S. sales information could not be used without undue difficulties brings the decision into conformity with the United States' obligation under the AD Agreement. Moreover, as the justification is an integral part of Commerce's new determination, it cannot be viewed as *post hoc* rationalization.

Comment 2

According to SAIL, Commerce essentially offers two reasons for concluding that it is unduly difficult to use the U.S. sales data at issue in its dumping calculations, both of which SAIL rejects. SAIL maintains that the Panel already rejected one of Commerce's reasons for not using the U.S. sales data in a dumping calculation, namely that there is an explicit relationship between the U.S. data and the unusable information and thus it is reasonable to reject the U.S. sales data when fundamental aspects of other data are entirely absent. Specifically, SAIL maintains that this argument was addressed and dismissed by the Panel when it determined that the United States had not applied the criteria of paragraph 3, Annex II, of the AD Agreement to SAIL's U.S. sales data and found Commerce's decision rejecting this sales information lacked a valid basis under the AD Agreement. SAIL notes that in accepting the argument that the absence of certain data may affect the usability of other data, the Panel stated that:

> To accept that view does not necessarily require the further conclusion, espoused by the United States, that in a case in which any 'essential element' of requested information is not provided in a timely fashion, the investigating authority may disregard all the information submitted and base its determination entirely on facts available. To conclude otherwise would fly in the face of one of the fundamental goals of the AD Agreement as a whole, that of ensuring that objective determinations are made, based to the extent possible on facts.[41]

SAIL contends that despite this statement, Commerce continues, in its Draft Determination, to argue that there is an ''explicit relationship'' among essential data elements and to assume that where any ''essential element'' of data is missing, Commerce is always justified in rejecting the other ''essential element'' entirely. SAIL notes that Commerce attempts to defend this position by stating that, based on the dumping analysis called for under Article 2 of the AD Agreement, none of these elements serves any purpose in isolation. SAIL asserts, however, that even dumping margins based on facts available must be calculated under Article 2 of the AD Agreement. SAIL claims that the only difference between a determination based on facts available and one based on the respondent's submitted data is that the information is derived from different sources. SAIL also notes that, regardless of the source of the information, the dumping margin is calculated by comparing the export price with normal value.

Furthermore, SAIL argues that if Commerce cannot calculate a margin under Article 2 of the AD Agreement when one side of the equation is based on facts available, it is difficult to see how Commerce can establish a margin when both sides of the equation are based on facts available. Although Commerce attempts to address this point by noting that all the information required for each Article 2 adjustment may not be reasonably available to the petitioner, SAIL states that this argument underscores the obvious fact that the petition data is less accurate than the data submitted by SAIL and that Commerce has failed to '' 'undertake a degree of effort' in selecting among the data in the petition and submitted by the respondent in order to calculate the most accurate

[39] Panel Report, paragraph 7.60.

[40] Panel Report, paragraph 7.67.

[41] Panel Report, paragraph 7.60.

possible margin under Article 2.'' SAIL maintains that Commerce ''cannot fulfill its obligations under the AD Agreement simply by asserting that the use of actual data does not necessarily provide any meaningful information.'' SAIL emphasizes that 30 percent of its U.S. sales involve a product that is identical to the one for which constructed value was calculated in the petition and could be used to calculate a dumping margin for SAIL that is more accurate and reliable than that based entirely on the petition.

SAIL also notes that Commerce resorts to its old defense in arguing that a respondent should not be allowed to ''game'' the process by selectively submitting information, but maintains that this claim is groundless in this case. SAIL states that it did not attempt to manipulate the system and there is nothing in the Panel Report to suggest that this argument provides a legally sufficient basis under the AD Agreement to discard SAIL's U.S. sales information.

SAIL observes that Commerce's second claim that it cannot use the U.S. data because the data are flawed attempts to disavow Commerce's statement in the investigation that errors in the U.S. sales database ''in isolation were susceptible to correction'' by suggesting that there are other flaws in that database. However, other than claiming that missing cost of production data is a flaw in the U.S. sales database, SAIL contends that Commerce's claim simply recycles its initial argument and does not provide a reason for rejecting use of the U.S. data.

Finally, SAIL notes that nothing in the Draft Determination suggests that Commerce even attempted to calculate a margin using its verified U.S. sales data. SAIL, therefore, asserts that Commerce is in no position whatsoever to state that it ''encountered undue difficulty in doing so.''

Petitioners disagree with SAIL's claim that Commerce continues to assume that ''where any 'essential element' is missing (in this case, home market sales and cost), the investigating authority is always justified in rejecting the other 'essential element' entirely.'' Petitioners argue that Commerce has discussed the data shortcomings in this case extensively and explained why the reported U.S. sales data is unduly difficult to use. In Petitioners' view, Commerce has shown that ''the egregiousness of the situation here goes well beyond the norm for an antidumping investigation.'' Moreover, it is Petitioners' contention that ''the interrelationship between elements in a dumping analysis is embodied in the numerous requirements throughout Article 2 of the AD Agreement.'' Petitioners maintain that to conduct a fair comparison between markets, Article 2 requires that due allowance be made for differences in physical characteristics, level of trade and other terms and conditions of sale, taxation, and quantities that affect price comparability. Petitioners note that as Commerce has shown in its Draft Determination, SAIL failed to provide any usable home market sales, constructed value or adjustment data that could be used as the basis for establishing normal value in calculating a dumping margin. Petitioners assert that this lack of usable data, under the facts of this case, render it unduly difficult to use SAIL's reported U.S. sales data in a manner consistent with Article 2. Petitioners' argue that this is ''the end of the matter as far as the reported U.S. sales data are concerned—Commerce may reject those data and use total facts available.'' Commerce then has the discretion to choose the facts available to apply.

Petitioners also counter SAIL's claims that the margin calculation in the petition suffers from the same flaws as a margin calculated using SAIL's U.S. sales data and that the U.S. sales data are the most accurate data on the record. Petitioners argue, as described above, that once Commerce rejects the U.S. sales data as unduly difficult to use, it may use, and has the discretion to choose, the form of total facts available to apply. This includes use of the petition margin, just as Commerce did in this case. Petitioners claim that Commerce is under no obligation to prove that the facts available it selects are the most accurate. At the same time, Petitioners assert that ''it does not follow that the petition margin is less accurate than the margin calculated by comparing SAIL's reported U.S. sales data to the normal value in the petition. Without SAIL's actual data, it is impossible to determine what its true margin is.'' Petitioners point out that if SAIL's assertions about the presumed lack of accuracy in a petition margin were accepted, Commerce would never be able to use the petition margin as facts available—an argument that is flatly inconsistent with the AD Agreement.

Petitioners dispute SAIL's claim that some of its U.S. sales can be compared to the petition's normal value arguing that the merchandise is not identical as SAIL purports and that Commerce cannot adjust for differences in the terms and conditions of these sales. Even if this were not the case, Petitioners further assert that this alternative is not acceptable as it violates the object and purpose of the AD Agreement in calculating accurate and reliable margins. Petitioners argue that this approach forces Commerce to calculate a dumping margin for SAIL based on only a minority of its U.S. sales and would be subject to manipulation and abuse by respondents. Petitioners respond to SAIL's claim that there is no evidence of ''gaming'' the process in this case by arguing that it would not be proper to require Commerce to produce such evidence. In Petitioners' view, ''to do so would require Commerce to assess the respondent's mental state—something that is literally impossible to do.''

Finally, Petitioners argue that SAIL's assertion that ''Commerce does not provide any evidence that it actually attempted to use the verified U.S. sales data and encountered 'undue difficulties' in doing so'' is irrelevant and should be dismissed. Petitioners note that this argument ''focuses solely on the difficulties, or lack thereof, in physically calculating a dumping margin using its submitted data. As noted above, however, the Panel's decision goes not only to the difficulties in physically calculating a dumping margin, but also to the methodological difficulties in determining the dumping margin in a manner consistent with the AD Agreement.'' Petitioners maintain that Commerce has determined ''that it is unduly difficult to use the U.S. sales data, including by using the methodologies proposed by India in the proceedings before the Panel, in a manner that is consistent with the AD Agreement.'' As Commerce's Draft Determination is fully consistent with the Panel's decision, SAIL's arguments should be rejected.

Commerce's Position

The Panel has not rejected the position taken by Commerce in this determination, namely that SAIL's U.S. data is unduly difficult to use based on both its attendant errors and its relationship with the home market and cost of production information that SAIL failed to provide. Rather, the Panel found that Commerce incorrectly rejected SAIL's U.S. data on the basis of problems with other information without addressing whether the U.S. sales price information could be used without undue difficulties. In this determination, we have identified the undue difficulties attendant in calculating a dumping margin in the manner envisioned by the AD Agreement, including the fact that no more than 30 percent of SAIL's U.S. sales are even potentially suitable for comparison to the product that served

as the basis for normal value in the petition. In its proposals, SAIL focuses on the ease of calculating a dumping margin using its U.S. sales data and the proffered calculation methodologies. However, as explained above, these methodologies do not, and cannot, account for all of the adjustments required under Article 2 of the AD Agreement because the information needed to make those adjustments is not on the record. Moreover, the proposed methodologies do not remedy the lack of useable home market sales and cost of production information. Where a lack of information precludes the investigating authority from applying the provisions of Article 2 of the AD Agreement in calculating a dumping margin, the authority is justified in finding potentially useable elements of information unduly difficult to use and basing the margin on facts available. The Panel recognized this possibility when it noted that a failure to provide cost of production information would leave the investigating authority unable to determine whether sales were in the ordinary course of trade (a requirement of Article 2) and thus might justify resorting to facts available with respect to elements of the determination beyond just the calculation of the cost of production.

Furthermore, although SAIL contends that Commerce continues to believe it is justified in always entirely rejecting the other ''essential elements'' of a response where any ''essential element'' is missing, Commerce has not in fact made this statement. The present case is not one where an ''essential element'' is missing; it is a case where *all* of the ''essential elements'' of information provided by SAIL, other than U.S. sales data, were unverifiable, with substantial additional problems associated with the U.S. data. Thus, of all the information requested by Commerce in order to calculate a margin in accordance with Article 2 of the AD Agreement, only a small portion of one of the ''essential elements'' of information needed to calculate a dumping margin is even potentially useable.

In the instant case, it was not possible for Commerce to conduct an antidumping duty calculation, as envisioned by the AD Agreement, because SAIL failed to properly provide most of the information that Commerce required. This was despite Commerce's actions throughout the investigation to actively cooperate with SAIL in obtaining an accurate and complete record with which to calculate a dumping margin in accordance with Article 2 of the Agreement. In fact, during the course of the investigation Commerce provided SAIL with no fewer than five opportunities after its initial questionnaire response to supply useable information. As a result, the information-gathering stage of the investigation extended from the issuance of the initial questionnaire up to the preliminary determination, and was then further extended to a period well after the preliminary determination until just prior to verification. Each submission by SAIL required a separate analysis to identify remaining problems that needed to be addressed in order for the information to be used to calculate a dumping margin. Despite the numerous difficulties encountered prior to the preliminary determination, and the fact that Commerce made its preliminary determination entirely on the basis of facts available, Commerce sought to establish the validity of the information submitted by SAIL through extensive verifications undertaken in India. Thus, SAIL is incorrect when it claims that Commerce's position in this matter demonstrates that it fails to recognize the obligation on the investigating authority to cooperate with interested parties in making its determination and undertake a degree of effort in selecting between petition and respondent data for purposes of calculating a margin. Rather than failing to recognize this obligation, Commerce went far beyond what is otherwise the norm in an antidumping investigation in its attempts to base its determination on the data provided by SAIL.

Section 129 Determination Margin

As a result of the redetermination of the facts available margin, the following margins exist:

Exporter/Manufacturer	Margin (percentage)
Steel Authority of India, Ltd.	42.39
All Others	42.39

Continuation of Suspension of Liquidation

In accordance with section 129(c)(1)(B) of the URAA, we will instruct the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of certain cut-to-length carbon-quality steel plate from India that are entered, or withdrawn from warehouse, for consumption on or after February 7, 2003, the date on which the USTR directed Commerce under subsection (b)(4) of that section to implement this section 129 determination. Customs shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice.

The section 129 determination ''all others'' rate is the new cash deposit rate for all exporters of subject merchandise, other than SAIL. This rate will apply to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 7, 2003.

This section 129 determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: February 7, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3993 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to a request from Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu). The period of review (POR) is September 1, 2001, through February 28, 2002.

The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results. (*See* the ''Preliminary Results of Reviews'' section of this notice.)

EFFECTIVE DATE: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the People's Republic of China on September 15, 1997. (*See Notice of*

Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China, 62 FR 48218.) On March 29, 2002 the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from Weishan Zhenyu under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China.

The new shipper request was made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. Under these provisions, an exporter or producer of the subject merchandise may request a new shipper review stating that it did not export the merchandise to the United States during the period of investigation (POI) and that such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise during that period, including those not individually examined during the investigation. If the exporter or producer makes the statements required by the regulations, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; (iv) a certification that since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI and; (v) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. (*See generally* section 351.214(b)(2) of the Department's regulations.)

The request received from Weishan Zhenyu was accompanied by information and certifications establishing that it did not export the subject merchandise to the United States during the POI, and that it was not affiliated with any company which exported subject merchandise to the United States during the POI. Weishan Zhenyu provided information and certifications that demonstrated the date on which this company first shipped and entered freshwater crawfish tail meat for consumption in the United States, the volume of that and each subsequent shipment, and the date of first sale to an unaffiliated customer in the United States. In addition, Weishan Zhenyu certified that its export activities are not controlled by the central government.

The Department determined that the request met the requirements stipulated in section 351.214 of the regulations. On April 30, 2002, the Department published its initiation of this new shipper review for the period September 1, 2001, through February 28, 2002. (*See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review*, 67 FR 21218 (April 30, 2002).)

On May 8, 2002 we issued a questionnaire to Weishan Zhenyu. On June 7, 2002, we received their section A questionnaire response. On June 24, 2002 we received their sections C and D questionnaire responses. On September 23, 2002, we issued a supplemental questionnaire to Weishan Zhenyu. We received the response to this questionnaire on October 7, 2002. On October 25, 2002, we issued a second supplemental questionnaire to Weishan Zhenyu. We received their response to the second supplemental on November 12, 2002. We issued a third supplemental questionnaire to Weishan Zhenyu on November 12, 2002. We received their response to the third supplemental questionnaire on November 18, 2002. On January 28, 2003, we requested information from the U.S. importer of Weishan Zhenyu's new shipper shipment. To date, we have not received a response to this request. Any information provided by the importer will be analyzed for purposes of the final results of this new shipper review.

On September 26, 2002, the Department extended the preliminary results of this new shipper review by 33 days until November 22, 2002. (*See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review*, 67 FR 60640 (September 26, 2002).) On November 1, 2002, the Department extended the deadline for completion of the preliminary results of this new shipper review for an additional 83 days until February 13, 2003. (*See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 66613 (November 1, 2002).)

Scope of the Antidumping Duty Order

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of Weishan Zhenyu. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Freshwater Crawfish Tail Meat (tail meat) from the People's Republic of China (PRC) (A–570–848): Sales and Factors Verification Report for Weishan Zhenyu Foodstuff Co., Ltd.*, dated January 30, 2003. (*Weishan Zhenyu Verification Report*). A public version of this report is on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Separate Rates

Weishan Zhenyu requested a separate, company-specific rate. In its questionnaire response, the company

stated that it is an independent legal entity.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by Weishan Zhenyu that its export activities are not controlled by the government. Weishan Zhenyu submitted evidence of its legal right to set prices independently of all government oversight. The business license of Weishan Zhenyu indicates that the company is permitted to engage in the exportation of crawfish. We found no evidence of *de jure* government control restricting this company's exportation of crawfish.

In general, no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. (*See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (*Legal Persons Law*), issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC and provided for the record of this review, indicates a lack of *de jure* government control over privately-owned companies, such as Weishan Zhenyu, and that control over this enterprise rests with the enterprise itself. *The Legal Persons Law* provides that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. (*See Notice of Final Determination of Sales at Less Than Fair Value; Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*).) At verification, we saw that the business license for Weishan Zhenyu was granted in accordance with this law. The results of verification support the information provided regarding the *Legal Persons Law*. (*See Weishan Zhenyu Verification Report*, at 6.) Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to Weishan Zhenyu.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification, indicates that the management of Weishan Zhenyu is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company general manager of Weishan Zhenyu has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. Weishan Zhenyu stated that its management is selected by a board of directors and there is no government involvement in the selection process. Finally, decisions made by the respondent concerning purchases of subject merchandise from suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that a separate rate should be applied to Weishan Zhenyu. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see Separate Rates Decision Memorandum* to Dana Mermelstein, Program Manager, Office of AD/CVD Enforcement VII, dated February 12, 2003. A public version of this memorandum is on file in the Department's Central Record Unit (CRU).

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value, we compared its United States price to normal value, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For Weishan Zhenyu, we based the United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight and brokerage and handling expenses from the starting price (gross unit price) in

accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Weishan Zhenyu did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China,* dated February 12, 2003 *(Factor Values Memo).*

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available data showing Spanish imports of whole live crawfish from Portugal. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China,* 62 FR 51410 (October 1, 1997) *(Roofing Nails).*)

To value the by-product of wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. (*See Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01,* dated August 5, 2002.)

To value coal, we used the average 1996 total price of ''steam coal for industry'' as published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000.* We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the average of the 1997 total cost per kilowatt hour (KWH) for ''Electricity for Industry'' as reported in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000.* For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region,* published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the crawfish tail meat processing period applicable to the company under review, we adjusted these factor values to reflect inflation to the applicable crawfish processing season during the POR using the Wholesale Price Index (WPI) for India, as published in the 2002 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data for the period April 2000 through January 2001 as reported in the *Monthly Statistics of the Foreign Trade of India (Monthly Statistics).* We adjusted these prices to reflect inflation to the crawfish processing season during the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *(See Roofing Nails.)*

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple average derived from the publicly available 1996–97 financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. *(See Factor Values Memo,* at 6.)

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000,* International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

We valued movement expenses as follows: To value truck freight expenses we used seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China,* 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer and exporter	Time period	Margin (percent)
Weishan Zhenyu Foodstuff Co., Ltd.	9/1/01–2/28/02	0.00

Cash-Deposit Requirements

If these preliminary results are not modified in the final results of this review, a cash deposit rate of zero will be effective upon publication of the final results of this new shipper review for all shipments of freshwater crawfish tail meat from the PRC produced and exported by Weishan Zhenyu and entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act. The cash deposit rate for shipments produced and exported by Weishan Zhenyu will be the total amount of antidumping duties divided by the total quantity exported during the POR. This per kilogram cash deposit rate will be equivalent to the company-specific dumping margin rate established in this review. For crawfish tail meat exported, but not produced, by Weishan Zhenyu, we will apply as the cash deposit rate the PRC-wide rate, which is currently 223.01 percent. (*See* memorandum to file dated August 5, 2002, which places on the record of this review the ''Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC, dated August 27, 2001''.)

Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for the importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. For crawfish tail meat produced and exported by Weishan Zhenyu, we will assess antidumping duties on a per kilogram basis equivalent to the company-specific cash deposit rate established in this review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with § 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: February 12, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3995 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–836]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that polyvinyl alcohol from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Robin Moore, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from Germany is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 61591 (Oct. 1, 2002)) (*Initiation Notice*), the following events have occurred.

On October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PVA from Germany are materially injuring the United States industry (*see* ITC Investigation Nos. 731-TA-1014–1018 (Publication No. 3553, *Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 65597 (Oct. 25, 2002))).

On October 22, 2002, we selected Clariant GMBH (Clariant) and Kuraray Specialties Europe GMBH (Kuraray Europe), the producers/exporters accounting for the vast majority of exports of subject merchandise from Germany during the period of investigation (POI), as the mandatory respondents in this proceeding. For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team entitled ''Antidumping Duty Investigation of Polyvinyl Alcohol from Germany - Selection of Respondents,'' dated October 22, 2002. Due to limited resources, we determined that we could only investigate these two largest producers/exporters. We also issued antidumping questionnaires to Clariant and Kuraray Europe on October 22, 2002.

On November 22, 2002, Kuraray Europe submitted a response to Section A of the Department's questionnaire. On December 5, 2002, Kuraray Europe notified the Department that it would no longer participate in this investigation, and it requested that the Department remove all of its business proprietary information from the record of this proceeding. On December 11, 2002, the Department destroyed Kuraray Europe's business proprietary information and notified Kuraray Europe of this action. For further discussion, see the ''Facts Available (FA)'' section of this notice.

On December 9, 2002, in a letter faxed to the Department, Clariant acknowledged receipt of the Department's questionnaire. The fax was placed on the record of this proceeding on December 17, 2002. However, Clariant stated that, because it had sold the entirety of its production assets on January 1, 2002, and no longer produced PVA, it did not intend to respond to the Department's questionnaire. For further discussion, see the ''Facts Available (FA)'' section of this notice.

Period of Investigation

The POI is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Scope Comments

In accordance with the preamble to our regulations (see Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. *See* the *Initiation Notice*, 67 FR at 61591. Although no comments on the scope of the investigation were received in this proceeding, scope comments were received in the companion Japanese case. Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, we have placed on the record of this proceeding all public scope comments as well as all public versions of the proprietary scope documents filed in the companion Japanese case, and we have modified the scope to conform to that set forth in the preliminary determination of that proceeding. *See* the ''Scope Comments'' section of the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, published in the **Federal Register** concurrently with this notice.

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

1) PVA in fiber form.

2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or

(D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On October 22, 2002, the Department issued its questionnaire to Clariant and Kuraray Europe. On December 9 and December 5, 2002, respectively, these parties informed the Department that they did not intend to participate in this investigation. Because both Clariant and Kuraray Europe failed to supply necessary information, we have applied FA to calculate their dumping margins, pursuant to section 776(a)(2)(B) of the Act.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Both respondents were notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Clariant and Kuraray Europe possessed the records necessary for this investigation and that by not supplying the information the Department requested, Clariant and Kuraray Europe failed to cooperate to the best of their ability. As the respondents failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the September 25, 2002, Initiation Checklist, on file in the Central Records Unit, Room B-099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition). In addition, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

Export Price

With respect to the margins in the petition, EP was based on POI price quotes from a U.S. distributor for the sale of fully-hydrolyzed PVA produced by Kuraray Europe. The petitioners calculated net U.S. prices by deducting a distributor mark-up, certain movement expenses, and U.S. imputed credit expenses. We adjusted the petitioners' EP calculation by not deducting an amount for U.S. credit expenses; instead, we made an adjustment to NV, in accordance with the Department's EP circumstance-of-sale calculation methodology.

We compared the U.S. market price quotes with official U.S. import statistics and U.S. customs data, and found the prices used by the petitioners to be reliable. For further discussion, see the February 12, 2003, memorandum to the file from the team entitled ''Corroboration of Data Contained in the Petition for Assigning Facts Available Rates'' (Corroboration Memo).

Normal Value

The petitioners based NV on a home market price quote from a German PVA producer for PVA of a comparable grade to the products exported to the United States. This price quote was contemporaneous with the U.S. price quotes used as the basis for EP. In addition, the petitioners alleged that sales of PVA products in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the price of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COP based on the experience of a U.S. PVA producer during the 2001 fiscal year, adjusted for known differences between costs incurred to manufacture PVA in the United States and Germany.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Germany on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with Section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Clariant International's 2001 financial statements. The petitioners' calculation of profit was based on operating profit and not on the net income of the German PVA producer. Therefore, for

initiation purposes, we recalculated the CV profit rate to include non-operating items. Because this calculation resulted in a loss, we used a profit rate of zero.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. Specifically, we attempted to locate both home market prices through publicly available sources and U.S. producer costs upon which CV was based, but we were unable to do so. *See* the Corroboration Memo.

It is worth noting that the implementing regulation for section 776 of the Act states, ''(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question. '' *See* 19 CFR 351.308(d). Additionally, the SAA specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department need not prove that the facts available are the best alternative information.'' *See* SAA at 870.

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Clariant and Kuraray Europe, we have applied the margin rate of 19.05 percent, which is the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice*, 67 FR at 61593.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''all others'' rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the ''all others'' rate. Where the data do not permit weight-averaging such rates, the SAA provides that we may use other reasonable methods. *See* SAA at 873. Because the petition contained two estimated dumping margins, we have used these two estimated dumping margins to create an ''all others'' rate based on a simple average. Therefore, we have calculated the margin of 10.75 percent as the ''all others'' rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India*, 64 FR 19123, 19124 (Apr. 19, 1999).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Clariant GMBH	19.05
Kuraray Specialties Europe	19.05
All Others	10.75

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 25 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 10 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310.

We will make our final determination no later than 75 days after the date of this preliminary determination, pursuant to section 735 (a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: February 12, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3994 Filed 2-18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012303A]

Small Takes of Marine Mammals Incidental to Specified Activities; Port of Miami Construction Project (Phase II)

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin) to a depth of 44 ft (13.41 m). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1-year small take authorization, to the Corps to incidentally take, by harassment, small numbers of bottlenose dolphins (Tursiops truncatus) as a result of conducting this activity.

DATES: Comments and information must be received no later than March 21, 2003.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, ncluding, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 24, 2002, NMFS received a request from the Corps for an IHA to take bottlenose dolphins incidental to deepening the Turning Basin in the Port of Miami, south of Dodge-Lummus Island. The Port of Miami is one of the major terminal complexes in Florida. The majority of this tonnage is high-value general cargo transported in trailers and containers. The Port also accommodates a large cruise ship industry. Development has primarily centered on the Lummus Island terminal and container complex facilities. Expanding and deepening the Turning Basin would eliminate the need for vessels docked at Lummus Island to back to or from the Fisher Island Turning Basin.

Completion of the dredging project may employ a hopper dredge, clamshell dredge, cutterhead dredge and/or confined blasting. The dredging will remove 1.4 million cubic yards of material from an area 1,500 ft (457.2 m) in diameter. The Corps proposes to dredge the Turning Basin, starting in December 2002, to a maximum depth of 42 ft (12.8 m) plus a 2 ft (0.61 m) overdepth. Material removed from the dredging will be placed in the Miami Ocean Dredged Material Disposal Site.

The Corps expects the contractor will employ underwater dredging and confined blasting to construct the project. Blasting has the potential to have adverse impacts on bottlenose dolphins inhabiting the area near the project. While the Corps does not presently have a blasting plan from the contractor which will specifically identify the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of blasts per day (usually no more than 3/day) or the number of days the construction is anticipated to take to complete, the Corps has forwarded to NMFS a description of a completed project in San Juan Harbor, Puerto Rico to use as an example. For that project, the maximum weight of the explosives used for each event was 375 lbs (170 kg) and the contractors detonated explosives once or twice daily from July 16 to September 9, for a total of 38 individual detonations. Normal practice is for each charge to be placed approximately 5–10 ft (1.5–3 m) deep depending on how much rock needs to be broken and how deep a depth is sought. The charges are placed in the holes and tamped with rock. Therefore, if the total explosive weight needed is 375 lbs (170 kg) and they have 10 holes, they would average 37.5 lbs (17.0 kgs)/hole. However, a more likely weight for this project may be only 90 lbs (41 kgs) and, therefore, 9 lbs(4.1 kg)/hole. Charge weight and other determinations are expected to be made by the Corps and the contractor approximately 30–60 days prior to commencement of the construction project. Moreover, because the charge weight and other information is not presently available, NMFS will require the Corps provide this information to NMFS, including calculations for impact/mitigation ranges (for the protection of marine mammals and sea turtles from injury), prior to commencing work.

Description of the Marine Mammals Affected by the Activity

General information on marine mammal species found off the East Coast of the United States can be found in Waring et al. (2001, 2002). This report is available at the following location:

http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html.

The only marine mammal species likely to be found in the Turning Basin is the bottlenose dolphin. There is not currently a stock assessment available concerning the status of bottlenose dolphins in the inshore and nearshore waters off south Florida. Additionally, while neither a status review nor peer-reviewed reports of status of the Biscayne Bay bottlenose dolphins have been published, the Southeast Fisheries Science Center, NMFS, is currently working on this report. Preliminary information indicates a documented population of 159 bottlenose dolphins residing within the boundaries of the Biscayne Bay area. A total of 146 bottlenose dolphins have been resighted in the Port of Miami area at least one additional time. These animals were often sighted within or transiting through the Port of Miami. It is not known whether bottlenose dolphins inhabit the Turning Basin or whether they simply use the area as a transit to North Biscayne Bay or offshore via the main port channel. The defined stocks of bottlenose dolphins that reside closest to the project area, therefore, are the western North Atlantic coastal and offshore stocks of bottlenose dolphins with minimum populations estimated to be 2,482 for the coastal stock and 24,897 for the offshore stock. Additional assessment information for these two stocks is available at the previously mentioned URL.

Potential Effects on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include both lethal and non-lethal injury, as well as Level B harassment. Marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are more likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.''

A second criterion for mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS has established dual criteria for determining non-lethal injury for explosives as the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50-percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own. Finally, NMFS has established dual criteria for Level B acoustic harassment: (1) an energy-based TTS criterion of 182 dB re 1 uPa^2–sec cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (and sea turtles) derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The Level B Harassment zone therefore is the minimum distance at which neither criterion is exceeded.

To protect endangered, threatened and protected species (manatees, dolphins, sea turtles), the following equations have been proposed by the Corps for this project to determine zones for injury or mortality from an open water explosion and to assist the Corps in establishing mitigation to reduce impacts to the lowest level practicable. These equations are believed to be conservative since they are based on unconfined charges and the proposed blasts in the Turning Basin will be confined (stemmed) charges. The equations are:

Caution Zone radius = 260 (lbs/delay)$^{1/3}$

Safety Zone radius = 520 (lbs/delay)$^{1/3}$

The caution zone is the radius from the detonation where mortality (but not necessarily injury), would not occur in an open-water blast while the safety zone is the approximate distance where non-serious injury (Level A harassment) is unlikely from an open-water explosion. However, even though single event detonations do not result in behavioral response by marine mammals (*see* 66 FR 22450, May 3, 2001), there is a possibility that other Level B harassment (e.g., a temporary shift in hearing threshold) could occur at greater distances than provided by these safety zones. For that reason, an IHA is warranted.

In the Turning Basin or any area where explosives are required to obtain channel design depth, marine mammal/sea turtle protection measures will be employed by the Corps. For each explosive charge, the Corps proposes that detonation will not occur if a marine mammal is sighted by a dedicated marine mammal/sea turtle observer within the caution zone, a circular area around the detonation site with the following radius: R = 260(W)1/3 (260 times the cube root of the weight of the explosive charge in pounds) where: R = radius of the danger zone in ft; W = weight of the explosive charge in lbs). Although the area described by the above equation is considered to be an area for potential mortality, the Corps believes that because all explosive charges will be stemmed (placed in a drilled hole and tamped with rock), the areas for potential mortality and injury will be significantly smaller than this area and therefore it is unlikely that even non-serious injury would occur if monitoring this zone is effective. (Since bottlenose dolphins are commonly found on the surface of the water, implementation of a mitigation/monitoring program is expected by NMFS to be close to 100 percent effective).

According to the Corps, bottlenose dolphins and other marine mammals have not been documented as being directly affected by dredging activities and therefore the Corps does not anticipate any incidental harassment of bottlenose dolphins by dredging.

Potential Effects on Habitat

The Corps expects the effects on marine mammal habitat to be minimal. The bottom of the basin is rock and sand, and the walls of the Turning Basin are vertical rock. The Corps also believes that the area of the Turning Basin may not be suitable habitat for dolphins in Biscayne Bay, but it is more likely that the animals use the area to traverse to North Biscayne Bay or offshore via the main port channel. In addition, as a large number of fish are not expected to perish during the detonations, there will not be a significant effect on dolphins' food supply (T. Jordan, pers. comm, 2002).

Mitigation and Monitoring

The Corps proposes to implement mitigation measures and a monitoring program that will establish both danger- and caution-zone radii to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Mitigation measures include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other

loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hr before sunset to ensure adequate observation of marine mammals and sea turtles in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the danger zone radius; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or sea turtle; (5) matching, to the extent possible, the energy needed in the ''work effort'' of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal/sea turtle watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, at least 30 minutes before and continue for 30 minutes after each detonation to ensure that there are no dolphins or sea turtles in the area at the time of detonation. The observer monitoring program will take place in a circular area at least three times the radius of the above described caution/safety zone (called the watch zone). Any marine mammal(s) in the danger zone or the watch zone will not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal(s) move(s) out of the danger zone on its own volition.

In the unlikely event a marine mammal or marine turtle is injured or killed during blasting, the Contractor shall immediately notify the NMFS Regional Office.

Reporting

The Corps would like to have contractors complete the proposed activities in no more than 24 months from start date. Therefore, NMFS is proposing to issue a 1–year IHA with the possibility for renewal upon application from the Corps. NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the Corps plans to request a renewal of its IHA, or 120 days after the expiration of the IHA if a renewal is not being requested.

Endangered Species Act

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded upon completion of the comment period and consideration of those comments prior to a determination on issuance of an IHA.

National Environmental Policy Act

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the Corps' 1989 Environmental Impact Statement and Feasibility Report for the Navigation Study for the Miami Harbor Channel; and the contents, results, and analyses of the Corps' blasting project, will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA governing the incidental taking of marine mammals, by harassment for this activity meets the definition of a ''Categorical Exclusion'' as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact as described in this document, should result, at worst, in the temporary modification in behavior by bottlenose dolphins. While behavioral modifications, including temporarily vacating the area, may be made by these species to avoid the resultant visual and acoustic disturbance from dredging and detonations, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the Corps for the potential harassment of small numbers of bottlenose dolphins incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin), provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (*see* **ADDRESSES**).

Dated: February 12, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3989 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011003C]

Marine Mammals; File No. 782–1438

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, (Dr. Sue Moore, Principal Investigator (PI)) has been issued an amendment to scientific research Permit No. 782–1438.

ADDRESSES: The amendment 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;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 782–1438, issued on issued on May 8, 1998 (63 FR 27265) authorizes the National Marine Mammal Laboratory to take various large and

small cetacean species through photographic aerial surveys (Project I); biopsy sampling, tagging and photo-identification (Project II); small cetacean species and pinnipeds through vessel surveys (Project III); gray whales through biopsy sampling, tagging, photo-id and harassment (Project IV); and beluga whales by satellite-tagging, flipper tagging, VHF radio/time depth recorder(TDR) suction cup-tagging and biopsy sampling (Project V). The amendment increased the number of accidental mortalities in Project V to three during 2003. This Project will expire September 30, 2003.

Dated: January 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3991 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Electronic Response to Office Action and Preliminary Amendment Forms.

Form Number(s): PTO Form 1966 and PTO Form 1957.

Agency Approval Number: 0651–XXXX.

Type of Request: New collection.

Burden: 6,258 hours annually.

Number of Respondents: 36,815 responses per year.

Avg. Hours Per Response: The time needed to respond to the response to office action form and the preliminary amendment form is estimated to be 10 minutes each. This includes time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et. seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application to register their mark. In some cases, the USPTO may issue Office Actions requesting missing information, or advising applicants of the refusal to register the mark. Applicants may also submit additional information voluntarily by providing a Preliminary Amendment. The USPTO administers the Trademark Act through 37 CFR Part 2, which contains the rules that implement the Act.

This collection of information is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by contacting Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Washington, DC 20231, by phone at 703–308–7400, or by e-mail to *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before March 21, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 11, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–3880 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice/Change of Comment Period.

SUMMARY: On January 31, 2003, the Department of Education published a 60-day public comment period notice in the **Federal Register** (Page 5004, Column 3) for the information collection, ''Indian Education Formula Grants to Local Educational Agencies (LEAs).'' This notice should have requested comments within the 30-day period since a 60-day notice was already provided for this program. Interested persons are invited to submit comments on or before March 21, 2003. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.*

Dated: February 12, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–3916 Filed 2–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice/change of comment period.

SUMMARY: On February 12, 2003, the Department of Education published a 30-day notice in the February 12, 2003 **Federal Register** (Volume 68, Number 29, Page 7110) for the Small Business Innovation Research (SBIR) Program Grant Application. The notice referred to the Phase I grant application; however, this was incorrect. The 30-day notice relates to the Phase II grant application. The remaining information of that notice remains the same, including the public comment end date of March 14, 2003. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.*

Dated: February 12, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–3917 Filed 2–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–20; Low Dose Radiation Research Program—Biologically-Based Risk Modeling

AGENCY: Department of Energy.

ACTION: Notice inviting applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for participation in a biologically-based risk modeling exercise, for the purposes of developing and evaluating different modeling/prediction strategies. Awardees will be asked to develop individual biologically-based models incorporating one or more phenomena such as adaptive response, bystander effects, genetic susceptibility, or genomic instability. A central aspect of this exercise will be the eventual modeling, by all awardees, of an artificially defined biological test system or archetype having a set of biological characteristics and radiation-induced endpoints for which exact probability values are either known or assigned. Please review the Supplementary Information and Application sections below for further details.

DATES: *Preapplications* (letters of intent) should be submitted by April 4, 2003. *Formal applications* are due 4:30 p.m. EDT, May 23, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: *Preapplications* referencing Program Notice 03–20, should be sent to Ms. Joanne Corcoran by E-mail: *joanne.corcoran@science.doe.gov,* with a copy to Dr. Noelle Metting at: *noelle.metting@science.doe.gov.*

Formal applications referencing Program Notice 03–20 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (see also *http://www.sc.doe.gov/production/grants/grants.html*). IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Noelle Metting, telephone: (301) 903–8309, E-mail: *noelle.metting@science.doe.gov,* Office of Biological and Environmental Research, U.S. Department of Energy, SC–72/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: The Low Dose Radiation Research Program has the challenge of conducting research that can be used to inform the development of future national radiation risk policy for the public and the workplace. The Program has focused on quantifying and understanding the mechanisms of molecular and cellular responses to low dose exposures to radiation, currently 0.1 Gy (10 rads) or less, with a view toward the lower doses. Most scientists in the field would agree that not enough is yet known about the biological consequences of low dose radiation exposure to be able to completely model human health risk. However, it is timely to begin to systematically evaluate different approaches for modeling the diversity of available information on the biological effects of low dose radiation exposure.

We define biologically-based risk models as mathematical constructs of the key biological events involved in the production of an adverse health effect, *e.g.*, cancer, in response to radiation across a range of doses of interest. Such models are likely to describe both stochastic and deterministic variables that range from probabilities of inducing key molecular events such as cell death, replication or specific gene expression, to the description of responses at the tissue level or even at the level of the entire organism. Mathematical predictors or estimators of radiation risk should ultimately be able to incorporate all available epidemiological and experimental information.

In this solicitation, applications are sought for participation in an interactive, biologically-based risk modeling exercise. The first activity for the awardees will be to participate in an initial Workshop for extensive discussions with experimental researchers and regulatory scientists. Awardees will then work to develop a biologically-based risk model that includes one or more characteristics important to low dose radiobiology.

Concurrently, awardees will participate in one or more workshops for the purpose of developing an artificially defined *biological archetype.* This biological archetype will become the core source of biological data, a biological test system for which exact probability values are either known or (temporarily) assigned. Quantitative information to be defined in the biological archetype will include definitions (specific probability values or ranges as a function of dose) for such attributes as:

- Amount of steady state endogenous DNA damage
- Yield of radiation-induced DNA damage (specific lesions)
- Efficiency of repair of radiation-induced DNA damage for specific lesions (repair capacity, saturation level, error rate)
- Radiation-induced gene expression
- Radiation-induced genomic instability
- Radiation-induced bystander effects (cell-cell communication)
- Radiation-induced adaptive responses
- Genetic susceptibility—for a population of individuals
- Current epidemiological information
- Etc...

The biological archetype will eventually be modeled by each funded awardee, for the ultimate purpose of comparing the different modeling/prediction strategies. Please note that the biological archetype will be a composite of what is presently established, supplemented where needed by best-guess, made-up data.

The long term goals of this exercise are the following: (1) To discover which mechanistic data are usable and which are the most critical inputs for development of biologically-based models to predict human health risks for low dose exposures (the exercise thus may help to define future experimental research needs); and (2) to provide new insight into how to extrapolate between different levels of

biological organization (from molecules to cells to tissues to organisms) and from observations *in vitro* to biological responses *in vivo.*

Applicants should demonstrate knowledge of and expertise in risk modeling. They should discuss general strategies for, or demonstrate expertise in the use of, biological mechanistic data in the development of risk models. Ideally, the application should exhibit some familiarity with relevant radiation biology literature, but prior work in this field is not a prerequisite. *The Project Description must contain the following:*

1. A proposal to develop a biologically-based model taking account of one or more phenomena such as adaptive response, bystander effects, genetic susceptibility, or genomic instability. A hierarchical scheme may be proposed for developing a series of simple to complex biologically-based risk models that include successively higher numbers of biological parameters.

2. A discussion of model validation strategies, as well as a general discussion of error estimation strategies, should be included. (Of great importance will be the determination of how much error can be tolerated in each of the critical inputs.)

3. Briefly, the applicant's ideas on how one would begin to design a ''biological archetype'' that could be used to compare different models. (What type of biological archetype would be most useful at the present time—single cell, cell culture, tissue, mouse, man? In the future? Which characteristics of the biological archetype should be defined? Which characteristics are known at the present time?)

Information on the Low Dose Radiation Research Program can be found on the Web site: *http://lowdose.tricity.wsu.edu.*

Program Funding: It is anticipated that up to $1,500,000 will be available for approximately 8 two-year awards, contingent upon the availability of funds. Each award will be no more than $200,000, total costs per year. If the exercise is judged productive by administrative review, some or all awards may be extended an additional year.

Merit and Relevance Review: Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.

2. Appropriateness of the Proposed Method or Approach.

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Application

(Please Note Information Below On Page Limits)

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the Guide and required forms is made available via the World Wide Web: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage of providing more text in their applications by using small type. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8 ½'' × 11'' (or metric A4, *i.e.*, 210 mm × 297 mm). Applications must be written in English, with all budgets in U.S. dollars.

Applicants are asked to use the following ordered format:

- Face Page (DOE F 4650.2 (10–91))
- Project Abstract Page; single page only, should contain title, PI name, and abstract text
- Budget page for the one year project period (using DOE F 4620.1)
- Budget Explanation
- Project Description; ten (10) pages or less. The application should contain the following:

a. A proposal to develop a biologically-based model taking account of one or more phenomena such as adaptive response, bystander effects, genetic susceptibility, or genomic instability.

b. A discussion of model validation strategies, as well as a general discussion of error estimation strategies, should be included.

c. Briefly, the applicant's ideas on how one would design a biological archetype that could be used to compare different models (approximately one page). .

- Literature Cited
- Collaborative Arrangements (if applicable)
- Facilities and Resources
- Biographical Sketches
- Current and Pending Support
- Letters of Collaboration (if applicable)

The Office of Science, as part of its regulations, requires at 10 CFR 605.11(b) that a recipient receiving an award to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE requirements for reporting, protection of human and animal subjects and related special matters can be found on the World Wide Web at: *http://www.science.doe.gov/production/grants/Welfare.html.*

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on February 6, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–3939 Filed 2–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41757–0 entitled, ''Ground Breaking Innovative Technology Concepts For Mining.'' The Department of Energy (DOE), National Energy Technology Laboratory (NETL) is seeking white paper applications on behalf of the Energy Efficiency and Renewable Energy, Mining Industries of the Future Program, for advanced concepts that span the mining industry and are capable of revolutionizing the industry as a whole or for discrete segments as regards energy intensity (*i.e.* energy used to achieve a unit output).

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about February 14, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Juliana L. Murray, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *murray@netl.doe.gov,* Telephone Number: 412–386–4872.

SUPPLEMENTARY INFORMATION: The objective of this solicitation is to support the stated national interests by providing seed funding for development of ''revolutionary'' concepts or ''unique'' approaches that would define the direction for potential future research and development projects that address needs that broadly fall in the domestic mining industry. These approaches should represent significant departures from existing approaches, not simply incremental improvements. This solicitation seeks ''out-of-the-box'' thinking; therefore, mature ideas, past the conceptual stage, are not eligible for this program. Cost sharing is not required because of the fundamental nature of the requested research under this solicitation, but the DOE/NETL will only contribute up to $50,000 per project selected for award.

DOE has identified specific mining industry activities where energy efficiency improvements would have the most significant impact. This solicitation encourages prospective concepts to be developed in the following areas:

Area of Interest 1: DE–PS26–03NT41757–1

Energy Efficient Alternatives to Current Technologies in Materials Handling

Interests include energy alternatives with regard to energy use per unit of output to current technologies involving the used of equipment or processes to transport ore and waste.

Area of Interest 2: DE–PS26–03NT41757–2

Energy Efficient Alternatives to Current Beneficiation and Processing Technologies, Particularly Crushing and Grinding

Interests include energy alternatives with regard to energy use per unit of output to current technologies using equipment or processes to crush, grind, concentrate and/or separating the ore from the unwanted material.

Area of Interest 3: DE–PS26–03NT41757–3

Mineral Extraction Processes To Reduce Downstream Material Handling and

Beneficiation and Processing Requirements; Efficiency Alternatives to Pumping in Mining Applications

Interests include energy alternatives to mineral processes using equipment or processes to explore, mine and process ore.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at IIPS_HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on February 6, 2003.

Dale A. Siciliano, Director,

Acquisition and Assistance Division.

[FR Doc. 03–3938 Filed 2–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Executive Order 13272; Consideration of Small Entities in Agency Rulemaking

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of procedures and policies.

SUMMARY: The Department of Energy (DOE) is adopting procedures and policies to ensure that the potential impacts of its draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. These procedures and policies, which are published for the benefit of the public, also are available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

EFFECTIVE DATE: The procedures and policies in this notice are effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, SW., GC–74, Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: On August 13, 2002, President Bush issued Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002). E.O. 13272 generally calls on agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* More specifically, section 3(a) of the Executive Order requires all Executive agencies to ''issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process.'' It also requires agencies to make their procedures and policies available to the public through the Internet or other easily accessible means. Section 3(b) of the Executive Order requires agencies to notify the Chief Counsel for Advocacy of the Small Business Administration (''Office of Advocacy'') of any draft rules that may have a significant economic impact on a substantial number of small entities. Such notification must be made either: (i) When the agency submits a draft rule to the Office of Information and Regulatory Affairs of the Office of Management and Budget under

Executive Order 12866, or (ii) if review under E.O. 12866 is not required, at a reasonable time prior to publication of the rule in the **Federal Register**. Section 3(c) of the Executive Order provides that the agency must give appropriate consideration to Office of Advocacy comments on a draft rule and, subject to narrow exceptions, respond in the notice of final rulemaking to any written comments submitted by the Office of Advocacy on the proposed rule.

The procedures and policies in this notice were reviewed by the Office of Advocacy pursuant to section 3(a) of E.O. 13272, and the Secretary of Energy has approved their publication in the **Federal Register**.

Issued in Washington, DC on February 12, 2003.

Lee Liberman Otis,

General Counsel.

On the basis of the foregoing, DOE adopts the following Procedures and Policies:

Department of Energy (DOE) Procedures and Policies for Implementing Executive Order 13272; Consideration of Small Entities in Agency Rulemaking

I. Purpose

These procedures and policies implement Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), consistent with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''Act'').

II. Applicability

These procedures and policies, which have been approved by the Secretary of Energy, apply to the development of any regulation by DOE (including by the National Nuclear Security Administration) that is subject to notice and comment rulemaking under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other law. For purposes of these procedures and policies, the Federal Energy Regulatory Commission is not considered to be part of DOE.

III. Procedures and Policies

1. *Preliminary Determination.* In developing a proposed rule, a DOE program office must determine whether an initial regulatory flexibility analysis (IRFA) is required by the Act. The Act requires an agency to prepare and make available for public comment an IRFA for any rule subject to notice and comment requirements (5 U.S.C. 603(a)). The agency must prepare a final regulatory flexibility analysis (FRFA) for a final rule (5 U.S.C. 604(a)). However, the Act provides that these analysis requirements do not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

To make the foregoing determinations, the program office must conduct a preliminary informal analysis to determine if there is any impact on small entities and the magnitude of any impacts. The preliminary analysis must be sufficient to answer the following questions:

a. Does the Act Apply?

The Act applies to any rule subject to notice and comment rulemaking under section 553 of the APA or any other law, including notice and comment rulemaking required by an agency regulation. Among the exemptions from the APA's notice and comment rulemaking requirements are matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)). In addition, the Act does not apply to rules of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances (see definition of ''rule,'' 5 U.S.C. 601(2)). Although exempted from notice and comment requirements under the APA, certain rulemakings involving procurement contracts are subject to notice and comment requirements under 41 U.S.C. 418b, and therefore are subject to the Act.

If a rule is being promulgated in response to an emergency that makes compliance with the analysis requirements of the Act impracticable, DOE may delay the completion of a FRFA for a period of up to 180 days after issuance of the rule (5 U.S.C. 608). If a FRFA is not prepared within the 180-day period, the rule will lapse and have no effect.

Program office staff should direct questions regarding the applicability of the Act to a particular rulemaking or category of rulemaking to program counsel at DOE, who may consult the Assistant General Counsel for Regulatory Law.

b. What Is the Applicable Definition of a Small Entity?

The Act defines three categories of small entities: ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''

The Act defines a ''small business'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act (5 U.S.C. 601(3)). Section 3 of the Small Business Act provides that a small business concern includes any firm that is ''independently owned and operated'' and is ''not dominant in its field of operation'' (15 U.S.C. 632). In addition, the Small Business Administration (SBA), as authorized by section 3, has developed specific size standards and related regulations (13 CFR 121.201) that further define ''small business concern.'' In performing regulatory flexibility analyses, DOE program staff must use SBA size standards for determining the number of small businesses that would be affected by a proposed rule unless an alternative definition of ''small business'' is adopted following procedures required by the Act (discussed below). The SBA's size standards generally are based on the total number of employees or on gross annual receipts of an enterprise (including affiliates). Beginning on October 1, 2000, the SBA size standards used the North American Industry Classification System (NAICS) to categorize businesses on an industry-by-industry basis. Previously, the SBA size standards were based on the less-detailed Standard Industrial Classification (SIC) codes.

The Act defines a ''small organization'' as any not-for-profit enterprise that is independently owned and operated and not dominant in its field (5 U.S.C. 601(4)). The Act defines ''small governmental jurisdiction'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000 (5 U.S.C. 601(5)).

If an agency wishes to use an alternative definition of ''small business,'' ''small organization,'' or ''small governmental jurisdiction'' for purposes of its actions required by the Act, it must consult with the Office of Advocacy on an appropriate alternative definition and publish the proposed alternative definition for public comment in the **Federal Register**. In addition, if an agency seeks to change the definition of ''small business'' for rulemaking purposes (*i.e.*, for purposes of determining how a regulation applies to a business of a certain size), the agency must obtain the approval of the SBA Administrator using the procedures outlined in the Small Business Act (*see* 15 U.S.C. 632(a)(2)(C)(i)-(ii)) and in SBA's regulations (*see* 13 CFR 121.902(b)). The Administrator's approval is not required, however, if a different standard is specifically authorized by statute.

The Office of Advocacy can assist program office staff who have questions regarding the definitions of small entities and the process for using alternative definitions. Program staff with such questions should contact the Office of Advocacy, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; telephone (202) 205–6533. In addition, these definitions are discussed in Chapter 1 of the Office of Advocacy's guide for complying with the Act, entitled *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies* (''Office of Advocacy Guide''), which is available on the Office of Advocacy's Internet site at: *http://www.sba.gov/advo/.*

c. What Is the Preliminary Assessment of a Proposed Rule's Economic Impact Based on the Size and Type of Entities Affected and the Likely Overall Cost?

After defining the small entities that would be affected by a proposed rule, the program office staff must gather and consider sufficient information for determining whether the rule, if promulgated, will have a significant economic impact on a substantial number of small entities. There are no ''hard'' boundaries for the terms ''significant economic impact'' and ''substantial number'' of small entities. Significance should be considered relative to the size of the small businesses, the size of competitors' businesses, and any disparity in impact the rule might have on small businesses. It may be appropriate to group small businesses and other small entities into more than one category for purposes of the analysis. The Office of Advocacy Guide, Chapter 1, suggests criteria that may be used to determine significance, including the percentage of revenue or profits affected and effect on the ability of firms to make capital investments. The interpretation of ''substantial number'' should be made on an industry-specific basis. As explained in the Office of Advocacy Guide, Chapter 1, the absolute number of small entities required to meet the ''substantial number'' test may vary greatly depending on the size of the universe of small entities within a particular economic or other activity.

The level, scope and complexity of the preliminary analysis under the Act also will vary depending on the characteristics and composition of the industry to be regulated and the nature of proposed regulatory requirements. For example, the level of data collection and analysis in the preliminary assessment will be different for: (1) A proposed rule to establish new energy efficiency standards for a type of home appliance (*e.g.*, refrigerators or furnaces), and (2) a procurement regulation that applies principally to DOE's management and operating contractors but has requirements that flow down to subcontractors, some of whom may be small entities. In the former example of appliance standards, a fairly rigorous analysis of the economic impact on small manufacturers may be warranted because new energy efficiency standards often impose costs on all manufacturers of the affected products, and competition within the industry may be affected. In the latter procurement contract example, it may be difficult to estimate the number of small subcontractors who would be affected by new contract requirements. However, if DOE is contractually obligated to reimburse contractors for the cost of complying with regulatory requirements, the proposed rule would not have a significant economic impact on small entities. Because it is clear that such a proposed rule would not have an adverse economic impact, there is no need to determine the exact number of small contractors that might be affected by the proposed new requirements.

d. Is There Sufficient Factual Basis for Concluding That the Proposed Rule Would Not Have a Significant Economic Impact on a Substantial Number of Small Entities?

The Act permits the head of the agency to forego the preparation of an IRFA upon a written certification that the rule will not have a significant economic impact on a substantial number of small entities. The Act requires certifications to be supported by a ''statement of factual basis'' (5 U.S.C. 605(b)). At a minimum, the statement of factual basis must contain a description of the small entities that would be directly affected by the proposed rule and the potential economic impacts, as well as the program office's reasoning and assumptions underlying the certification. This statement will be subject to public comment, which will assure either that the certification was not erroneous, or that erroneous certifications are corrected. If the program office is uncertain of the impact on small entities, it should consider: (1) Performing an IRFA with the available data and information, and (2) soliciting public comment on the issue of impacts on small entities. Based on information obtained during the comment process, the program office may determine that a sufficient factual basis exists to certify, in the notice of final rulemaking, that the rule will not have a significant economic impact on a substantial number of small entities.

The Office of Advocacy Guide, Chapter 1, gives examples of adequate and inadequate certifications. One example given of an inadequate certification is an agency statement that the rule would not have a significant economic impact on small entities because they would not be subject to any requirements not applicable to large entities. The Office of Advocacy filed comments with the agency, objecting to the certification because a principal purpose of the Act was to address disproportionate impacts of ''one-size-fits-all'' regulations on small entities. Therefore, the justification that the same requirements applied to both small and large businesses was inadequate. Other examples of inadequate certifications referenced in the Office of Advocacy Guide involve unsupported generalizations that were inconsistent with readily available factual information about the small entities that would be regulated by a proposed rule.

2. *The Initial Regulatory Flexibility Analysis and Notification to Advocacy.* If an IRFA is required, the DOE program office must inform the Office of General Counsel point of contact for the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA) — currently the Assistant General Counsel for Regulatory Law— that an IRFA is being prepared. This notice may be given when a draft notice of proposed rulemaking is submitted to the Office of General Counsel for review. To comply with the notification requirement in section 3(b) of E.O. 13272, the Office of General Counsel point of contact for OIRA will provide a copy of the draft notice of proposed rulemaking and the draft IRFA to the Office of Advocacy either when: (i) The submission is made to OIRA under E.O. 12866, or (ii) if review under E.O. 12866 is not required, no later than 10 business days before the notice of proposed rulemaking is published in the **Federal Register**.

The IRFA, or a summary, must be included in the Supplementary Information portion of the notice of proposed rulemaking. The IRFA must describe the economic impact of the proposed rule on small entities that would be directly affected by the proposed rule. Sections 603(b) and (c) of the Act set forth the elements of an IRFA. Each of the elements is discussed in more detail in Chapter 2 of the Office of Advocacy Guide. Section 603(b) requires that the IRFA contain:

- Reasons why action by the agency is being considered;

• A succinct statement of the objectives of, and legal basis for, the proposed rule;

• A description of and, if feasible, an estimate of the number of small entities to which the proposed rule would apply;

• A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirements and the type of professional skills needed to comply; and

• An identification, to the extent practicable, of all federal rules that may duplicate, overlap or conflict with the proposed rule.

Section 603(c) of the Act provides that the IRFA also must contain:

• A description of any significant alternatives to the proposed rule that would minimize the economic impact on small entities while accomplishing the stated objectives of the applicable statutes; and

• Consistent with applicable statutes, a discussion of significant alternatives such as: (1) Differing compliance or reporting requirements or timetables for small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements for small entities; (3) the use of performance rather than design standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.

To estimate the number of small entities to which the proposed rule would apply, DOE program staff should identify each of the affected classes of small businesses according to its NAICS code. They can then use the NAICS code in combination with U.S. Census data to arrive at an estimate of the number of entities in each class. To help agencies with this element of the IRFA, the Office of Advocacy provides a full listing of NAICS codes along with the U.S. Census data for each class on its web page *(http://www.sba.gov/advo/stats/us99_n6.pdf).*

The Act requires the IRFA to provide either quantifiable or numerical estimates of the impacts of a proposed rule and alternatives to the proposed rule, although more general descriptive statements concerning effects may be provided if quantification is not practicable or reliable (5 U.S.C. 607). The level of the analysis in the IRFA also will depend on such factors as the quality and quantity of available information and the anticipated severity of a rule's impacts on small entities that will be affected by the rule. Generally, the agency must examine the costs and other economic impacts for the industry sectors targeted by the rule. Impacts examined may include economic viability (including closure), competitiveness, productivity, and employment. The analysis should identify cost burdens for the industry sector and for the individual small entities affected. Costs might include engineering and hardware acquisition, maintenance and operation, employee skill and training, and administrative practices (including recordkeeping and reporting). The results of the analysis should allow interested persons to compare the impacts of regulatory alternatives on the differing sizes and types of entities targeted or affected by the rule. The results should enable direct comparison of small and large entities to determine the degree to which the alternatives chosen disproportionately affect small entities or a targeted sector. Furthermore, the analysis should examine whether the alternatives are effectively designed to capture benefits to the public and accomplish the purposes of the statute authorizing the regulations.

The Act provides that agencies may prepare regulatory flexibility analyses in conjunction with, or as a part of, any other analysis required by law as long as the Act's requirements are met (5 U.S.C. 605(a)). For significant regulatory actions requiring preparation of a regulatory impact analysis under Executive Order 12866, the IRFA and the regulatory impact analysis may be prepared together. Program staff must, however, explicitly explain how the requirements of the Act are satisfied.

The DOE program office also must include in the Supplementary Information portion of the notice of proposed rulemaking a summary of the actions that have been or will be taken to assure that small entities are given an opportunity to participate in the rulemaking. Examples of the techniques for accomplishing this are set forth in 5 U.S.C. 609 and include: (1) A statement in an advance notice of proposed rulemaking alerting small entities that the rulemaking may have a significant impact on them; (2) publication of the notice of proposed rulemaking in publications likely to be obtained by small entities; (3) direct notification; (4) conferences or workshops targeted to small entities; and

(5) modification of procedural rules to reduce the cost or complexity of small entity participation in the rulemaking. In addition, for any rulemaking that may significantly or uniquely affect small governments, program offices must follow DOE's policy on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995. *See* Notice of Final Statement of Policy, 62 FR 12820 (March 19, 1997), which is posted on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Program staff may obtain additional guidance on how to prepare an IRFA from the Office of Advocacy's Internet site: *http://www.sba.gov/advo/.* Chapter 2 of the Office of Advocacy Guide deals with IRFAs.

3. *The Final Regulatory Flexibility Analysis.* A FRFA must be prepared for any final rule that will have a significant economic impact on a substantial number of small entities (5 U.S.C. 604). The elements of the FRFA resemble, but are somewhat different than, those for an IRFA. Section 604(a)(1)-(5) of the Act requires that the FRFA include:

• A succinct statement of the need for, and objectives of, the rule;

• A response to significant issues raised by the public comments in response to the IRFA, including a statement of any changes made in the rule as result of public comments;

• A description and an estimate of the number of small entities to which the rule would apply or an explanation of why no such estimate is provided;

• A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills needed to comply; and

• A description of the steps taken by the agency to minimize the significant economic impact on small entities consistent with applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

In addition, section 3(c) of E.O.13272 provides that, subject to narrow exceptions, an agency must respond in the notice of final rulemaking to any written comments submitted by the Office of Advocacy on the proposed rule.

Section 604(b) of the Act provides that an agency must publish the FRFA, or a summary, in the **Federal Register** and make it available to the pubic. In most cases, this publication will be included in the notice of final rulemaking. An agency may delay, but not waive, the completion of a FRFA for up to 180 days after issuance of a rule if the rule is being promulgated in response to an emergency that makes compliance with the Act impracticable

(*see* section III.1.a. of these Procedures and Policies). If a FRFA is not prepared within the 180-day period, the rule will lapse and have no effect.

IV. Legal Effect

These procedures and policies are intended only to improve the internal management of the federal government. They do not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the Department of Energy, its officers or employees, any federal agency or any other person.

[FR Doc. 03–3937 Filed 2–18–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–002]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment

February 12, 2003.

Take notice that on February 4, 2003., Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP01–388–002, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to amend the certificate of public convenience and necessity granted by the Commission by order issued February 14, 2002 in Docket No. CP01–388 authorizing Transco's Momentum Expansion Project (Momentum), all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 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.

Transco states that Momentum is an incremental expansion of Transco's existing pipeline system to provide new firm transportation capacity to serve increased market demand in the Southeastern region of the United States.

Transco states that the purpose of this application is to seek Commission authorization to amend the Momentum certificate to enable Transco to: (1) Reduce the overall size of the project from 358,898 dt/d to 322,898 dt/d to reflect the termination of two shippers under the project and the partial replacement of such shippers with two new shippers under the project, (2) place the Momentum facilities into service in two phases, with the first phase (Phase I) to be placed into service on May 1, 2003. and the second phase (Phase II) to be placed into service on May 1, 2004, and (3) redesign the recourse rates to reflect the revised estimated cost of the project and the phased-in construction of the project.

Transco states that in order to provide the service requested, it proposes to downsize the firm transportation capacity to be created under Momentum and to place the project facilities into service in two phases. The Momentum facilities as amended will consist of the following:

Phase I Facilities—268,898 dt/d of firm transportation capacity commencing May 1, 2003. (the original in-service date for Momentum):

- Magnolia Loop. 2.03 miles of 42-inch diameter pipeline loop from milepost 632.89 on Transco's mainline in Amite County, Mississippi to milepost 634.85 on Transco's mainline in Amite County, Mississippi (previously authorized as 6.63 miles of 42-inch diameter pipeline loop from milepost 632.89 to milepost 639.44 in Pike County, Mississippi);
- Jones Loop. 25.25 miles of 48-inch diameter pipeline loop from milepost 860.78 on Transco's mainline in Perry County, Alabama to milepost 885.97 in Autauga County, Alabama (previously authorized as 25.38 miles of 48-inch diameter pipeline loop from milepost 860.78 to milepost 886.12 in Autauga County, Alabama);
- Kellyton Loop. 8.35 miles of 42-inch diameter pipeline loop from milepost 926.87 (the discharge side of Compressor Station No. 105) on Transco's mainline in Coosa County, Alabama to milepost 935.04 in Coosa County, Alabama (previously authorized as 19.01 miles of 42-inch diameter pipeline loop from milepost 926.87 to milepost 945.64 in Tallapoosa County, Alabama; a portion of this loop is included in Phase II);
- The Bowman Loop and the compression related facilities at Compressor Station Nos. 90, 105, 130 and 160 remain as originally certificated in the February 14, 2002 order.

Phase II Facilities—54,000 dt/d of firm transportation capacity commencing May 1, 2004:

- Kellyton Loop. 6.84 miles of 42-inch diameter pipeline loop from milepost 935.04 on Transco's mainline in Coosa County, Alabama to milepost 941.85 in Tallapoosa County, Alabama (as noted above, previously authorized as 19.01 miles of 42-inch diameter pipeline loop from milepost 926.87 on Transco's mainline in Coosa County, Alabama to milepost 945.64 in Tallapoosa County, Alabama; a portion of this loop is included in Phase I).

The previously authorized Hale Loop, consisting of 5.55 miles of 42-inch diameter pipeline loop from milepost 767.38 on Transco's mainline in Clarke County, Mississippi to milepost 772.80 in Clarke County, Mississippi, will be eliminated in its entirety.

Transco states that a complete environmental record regarding the Momentum facilities has already been developed in this proceeding. Since no new facilites are being proposed herein and since the shortened loops described above will be essentially within the ''footprint'' of the originally certificated loops, Transco states that this requested amendment will reduce the overall environmental impact of the project. Relocated loop tie-ins may take additional extra work space at a new location that was not contemplated under an original, longer loop, but the impact will be minor.

Transco states that it estimates the proposed project, as amended, will cost approximately $189 million. As a result of the changes to the estimated cost and billing determinants for the project and the phasing of the facilities, Transco proposes to revise the certificated initial recourse rates for the firm transportation service under Momentum. Transco requests that the Commission issue an order granting these requested authorizations by April 10, 2003, to enable Transco to place the Phase I facilities into service by May 1, 2003 as requested by the Phase I shippers.

Any questions concerning this application may be directed to Tom Compson, Transcontinental Gas Pipe Line Corporation, P. O. Box 1396, Houston, Texas 77251–1396, at (713) 215–2080; or Scott C. Turkington, Director, Rates & Regulatory, or Stephen A. Hatridge, Senior Counsel, Transcontinental Gas Pipe Line Corporation, P. O. Box 1396, Houston, Texas 77251–1396, at (713) 215–2312. In addition, Transco states that it has established a toll-free telephone number (1–866–241–1787) so parties can call with questions about the Momentum project.

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 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) by the comment date, below. 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.

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.

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.

Comment Date: March 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4004 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3410]

Woods Lake Hydro Co.; Notice of Authorization for Continued Project Operation

February 12, 2003.

On April 30, 2001, Woods Lake Hydro Co., licensee for the Woods Lake Project No. 3410, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 3410 is located on Lime Creek in Eagle County, Colorado.

The license for Project No. 3410 was issued for a period ending January 31, 2003.. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 3410 is issued to Woods Lake Hydro Co. for a period effective February 1, 2003., through January 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Woods Lake Hydro Co. is authorized to continue operation of the Woods Lake Project No. 3410 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4020 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–51–000, et al.]

Lake Benton Power Partners LLC, et al. Electric Rate and Corporate Filings

February 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Lake Benton Power Partners LLC, Storm Lake Power Partners II LLC and RP Wind LBI LLC RP Wind SLII LLC

[Docket Nos. EC03–51–000, ER97–2904–005, and ER99–1228–003]

Take notice that on February 5, 2003, RP Wind LBI LLC (LBI) and RP Wind SLII LLC (SLII), Lake Benton Power Partners LLC (Lake Benton), and Storm Lake II Power Partners LLC (Storm Lake), and together with Lake Benton, LBI, and SLII, the (Applicants), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act seeking authorization for LBI and SLII to acquire managing member interests in Lake Benton and Storm Lake, respectively. In addition, Lake Benton and Storm Lake gave notice of the change in status that will result from the transaction described in the application.

Comment Date: February 26, 2003.

2. Ameren Energy Generating Company and Union Electric Company d/b/a AmerenUE

[Docket No. EC03–53–000]

Take notice that on February 5, 2003, Ameren Energy Generating Company (AEG) and Union Electric Company d/b/a AmerenUE (collectively, AEG and AmerenUE are referred to as Applicants) submitted an application pursuant to section 203 of the Federal Power Act, and part 33 of the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 CFR part 33, for authorization for AEG to sell and

transfer, and for AmerenUE to purchase and acquire, certain transmission facilities currently owned by AEG that are used to interconnect AEG's Kinmundy, Illinois and Pinckneyville, Illinois generation facilities to the Ameren transmission system. This transaction also involves the sale and transfer of the Kinmundy and Pinckneyville generation facilities now owned by AEG to AmerenUE.

Applicants state that copies of this filing have been served on all affected state commissions.

Comment Date: February 26, 2003.

3. Citizens Communications Company, Tucson Electric Power Company, and UniSource Energy Corporation

[Docket No. EC03–54–000]

Take notice that on February 7, 2003, Citizens Communications Company, Tucson Electric Power Company, and UniSource Energy Corporation filed with the Federal Energy Regulatory Commission (Commission) a Joint Application for the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act.

As further described in the Application, Citizens proposes to sell, and UniSource Energy proposes to acquire, the operating electric and gas utility properties of Citizens that are located in Arizona. Applicants request that the Commission find that the transaction is consistent with the public interest and approve the transaction pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000). Applicants request approval of the Transaction by no later than May 30, 2003, to permit closing of the proposed transaction as soon as possible thereafter.

Comment Date: February 28, 2003.

4. The Premcor Refining Group Inc.

Williams Generating Memphis, L.L.C.

[Docket Nos. EC03–55–000 and ER02–2421–001]

Take notice that on February 7, 2003, The Premcor Refining Group Inc. (Premcor) and Williams Generating Memphis, L.L.C. (Williams Generating) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000), and part 33 of the Commission's regulations, 18 CFR part 33, a joint application for authorization to dispose of certain jurisdictional facilities in connection with the purchase of the Williams Generating refinery by Premcor.

Comment Date: February 27, 2003.

5. Sussex Rural Electric Cooperative

[Docket No. EL03–49–000]

Take notice that on January 27, 2003., Sussex Rural Electric Cooperative (Sussex) filed with the Federal Energy Regulatory Commission (Commission) a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Commission's regulations. Sussex also requests waiver of 18 CFR 35.28(d)(ii)'s 60-day notice requirement. Sussex's filing is available for public inspection at its offices in Sussex, New Jersey.

Comment Date: February 26, 2003.

6. Mountain View Power Partners, LLC

[Docket No. ER01–751–003]

Take notice that on February 7, 2003, Mountain View Power Partners, LLC (Mountain View) filed with the Federal Energy Regulatory Commission (Commission) an amended market-based rate tariff and a code of conduct to reflect a change in upstream ownership, in compliance with the Commission's delegated letter order on January 24, 2003, as amended by the errata issued on January 30, 2003 in the above-referenced proceeding.

Mountain View requests that the Commission make the amended tariff effective as of January 31, 2003.

Comment Date: February 28, 2003.

7. Quonset Point Cogen, L.P.

[Docket No. ER02–2607–000]

Take notice that on February 10, 2003, Quonset Point Cogen, L.P., requests to withdraw its Application for Market-Based Rates, Request for Expedited Consideration, and Requests for Notice Waiver and Blanket Authority filed on September 27, 2002.

Comment Date: March 3, 2003.

8. Quonset Point Cogen, L.P.

[Docket No. ER03–6–000 ER03–6–001]

Take notice that on February 7, 2003, Quonset Point Cogen, L.P. and PSEG Energy Technologies Inc. (Applicants) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw a Thermal and Electric Energy Purchase Agreement filed on October 2, 2002 in this docket. Applicants are requesting that this Agreement no longer be reviewed for approval by the Commission.

Comment Date: February 28, 2003.

9. Sithe/Independence Power Partners, L.P.

[Docket No. ER03–42–001]

Take notice that on February 6, 2003, Sithe/Independence Power Partners, L.P. (Sithe Independence) submited revised tariff sheets in compliance with the Commission's November 22, 2002 order in Sithe/Independence Power Partners, L.P., 101 FERC § 61,210 (2002). Sithe Independence is filing revisions to its FERC Electric Tariff No. 1 and its Original Service Agreement Nos. 1 and 2 to reflect an effective date of February 1, 2003, the date on which Sithe Independence terminated the Qualifying Facility status of its 1,060 MW electric generating facility in Oswego County, New York. Sithe Independence is also revising its FERC Electric Tariff No. 1 to prohibit both sales to and purchases from its affiliate Portland General Electric Company without the Commission's approval.

Comment Date: February 27, 2003.

10. New York Independent System Operator, Inc.

[Docket No. ER03–303–001]

Take notice that on February 6, 2003, the New York Independent System Operator, Inc. (NYISO), filed corrections to its December 20, 2002 (the December 20 Filing), filing in which the NYISO proposed to amend its demand response programs. The filing amended a definition submitted in the December 20 Filing.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: February 27, 2003.

11. ConocoPhillips Company

[Docket No. ER03–428–001]

Take notice that on February 10, 2003., ConocoPhillips Company (ConocoPhillips) tendered for filing an Amended Notice of Succession pursuant to Section 35.16 of the Commission's Regulations. As a result of a name change, ConocoPhillips is succeeding by merger to the tariffs and related service agreements of Conoco Inc., effective December 31, 2002.

Comment Date: March 3, 2003.

12. Centennial Power, Inc.

[Docket No. ER03–509–000]

Take notice that on February 7, 2003, Centennial Power, Inc. (Applicant) tendered for filing, under Section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its proposed market-based tariff.

Comment Date: February 28, 2003.

13. Delta Energy Center, LLC

[Docket No. ER03–510–000]

Take notice that on February 7, 2003., Delta Energy Center, LLC (Delta) filed an

unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Delta and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Delta proposes to provide reliability must-run services to the ISO. Delta requested expedited consideration of the RMR Agreement by the Commission.

Comment Date: February 28, 2003.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4005 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Project Nos.:* 12308–000 and 12358–000.

c. Dates filed: July 17, 2002 and August 21, 2002.

d. *Applicants:* Universal Electric Power Corporation and Brandon Road Hydro, LLC.

e. *Name and Location of Projects:* The two Brandon Road L&D Hydroelectric Projects are proposed to be located on the Des Plaines River in Will County, Illinois, and would utilize the U.S. Army Corps of Engineers' existing Brandon Road Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.§§ 791(a)—825(r).

g. *Applicant Contacts: For Universal:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. *For Brandon Road Hydro, LLC:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects:* Universal Electric Power Corp (P–12308–000): The proposed run-of-river project using the existing Corps' Brandon Road Lock and Dam would consist of: (1) A 54-inch-diameter, 80-foot-long steel penstock, (2) a powerhouse containing three generating units with a total installed capacity of 3 MW, (3) a 14.7-kv transmission line approximately 1 mile long in length, and (4) appurtenant facilities. The project would have an annual generation of 18 GWh.

Brandon Road Hydro, LLC (P–12358–000): The proposed run-of-river project using the existing Corps' Brandon Road Lock and Dam would consist of: (1) A 156-inch-diameter, 50-foot-long concrete penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 6.6 MW, (3) a 25-kv transmission line approximately 1 mile long in length, and (4) appurtenant facilities. The project would have an annual generation of 55.16 GWh.

k. *Competing Application:* Project No. 12315–000, *Date Filed:* July 1, 2002. *Comment Due Date:* December 8, 2002.

l. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business

address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4007 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12320–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Peoria L&D Hydroelectric Project would be located on the Illinois River in Peoria County, Illinois. The project would utilize the U.S. Army Corps of Engineers' existing Peoria Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project using the existing Corps' Peoria Lock & Dam would consist of: (1) Four 7-foot-diameter 50-foot-long steel penstocks; (2) a submersible powerhouse containing four turbine/generating units with an installed capacity of 6.6 MW; (3) a 14.7 kv transmission line approximately 100 feet long; and (4) appurtenant facilities. The project would have an annual generation of 40 GWh.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4008 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12322–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Brookville Lake Dam Hydroelectric Project would be located on the East Fork of the Whitewater River in Franklin County, Indiana. The project would utilize the U.S. Army Corps of Engineers' existing Brookville Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project using the existing Corps' Brookville Lake Dam would consist of: (1) A 9-foot-diameter 220-foot-long steel penstock; (2) a powerhouse containing three generating units with an installed capacity of 9 MW; (3) a 14.7 kv transmission line approximately 400 feet long; and (4) appurtenant facilities. The project would have an annual generation of 55 GWh.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4009 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12334–000.

c. *Date filed:* August 13, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Demopolis L&D Hydroelectric Project would be located on the Tombigbee River in Marengo County, Alabama. The project would utilize the U.S. Army Corps of Engineers' existing Demopolis Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Demopolis Lock and Dam, would consist of: (1) A new powerhouse containing several turbine/generating units with a total installed capacity of 23.7 megawatts, (2) the penstock (input) to the powerhouse, (3) a 12.7 or 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 155 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction.

The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4010 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No*: 12344–000.

c. *Date Filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* J. Edwards Roush Lake Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' existing J. Edwards Roush Lake Dam, on the Wabash River in Huntington County, Indiana.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7715.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12294–000, *Date Filed:* July 5, 2002, *Comment Due Date:* November 25, 2002.

l. *Description of Project*: The proposed project, using the Corps' existing J. Edwards Roush Lake Dam, would consist of: (1) one 50-foot-long, 78-inch-diameter steel penstock, (2) a powerhouse containing two generating units with a total installed capacity of 2.3 megawatts, (3) a 4 mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 14 gigawatthours.

m. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'' COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4011 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12366–000.

c. *Date filed:* September 13, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Dequeen Lake Dam Hydroelectric Project would be located on the Rolling Fork River in Sevier County, Arkansas. The project would utilize the U.S. Army Corps of Engineers' existing Dequeen Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Dequeen Lake Dam, would consist of: (1) one 50-foot-long, 6-foot-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.8 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 11 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

1. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4012 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12382–000.

c. *Date filed*: October 1, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Fulton L&D Hydroelectric Project would be located on the Tombigbee River in Itawamba County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Fulton Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing dam, would consist of: (1) a 300-foot-long, 6-foot-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.125 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 7 gigawatthours. k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4013 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12384–000.

c. *Date filed*: October 3, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Emmett Sanders L&D #4 Hydroelectric Project would be located on the Arkansas River in Jefferson, Arkansas. The project would utilize the U.S. Army Corps of Engineers' existing Emmett Sanders Lock & Dam #4.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing Emmett Sanders Lock &Dam #4, would consist of: (1) Fourteen 40-foot-long, 114-inch-diameter steel penstocks, (2) a powerhouse containing fourteen generating units with a total installed capacity of 27 megawatts, (3) a 1000-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 166 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4014 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12391–000.

c. *Date filed:* October 17, 2002.

d. *Applicant:* Universal Electric Power Corporation

e. *Name and Location of Project:* The Dillon Dam Hydroelectric Project would be located on the Licking River in Muskingum County, Ohio. The project would utilize the U.S. Army Corps of Engineers' existing Dillon Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Dillon Dam, would consist of: (1) one 50-foot-long, 8-foot-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.59 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 9.7 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4015 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12401–000.

c. *Date Filed:* October 31, 2002.

d. *Applicant:* North Texas Municipal Water District.

e. *Name of Project:* Lavon Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' existing Lake Lavon Dam, on the East Fork of the Trinity River in Collin County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James Parks, North Texas Municipal Water District, 505 E. Brown Street, P.O. Box 2408, Wylie, TX 75098, (972) 442–5405.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12233–000, *Date Filed:* June 17, 2002, *Comment Due Date:* October 2, 2002.

l. *Description of Project:* The proposed project, using the Corps' existing Lake Lavon Dam, would consist of: (1) one 200-foot-long, 84-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.8 megawatts, (3) a mile-long, 25-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 7.2 gigawatthours.

m. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO

INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4016 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12407–000.

c. *Date filed:* October 31, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Sardis Dam Hydroelectric Project would be located on the Little Tallahatchie River in Panola County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Sardis Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing Sardis Dam, would consist of: (1) Two 80-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing six generating units with a total installed capacity of 15.75 megawatts, (3) a ½ mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 97 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4017 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12422–000.

c. *Date filed*: November 25, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Francis E. Walter Dam Hydroelectric Project would be located on the Lehigh River in Luzerene County, Pennsylvania. The project would utilize the U.S. Army Corps of Engineers' existing Francis E. Walter Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing Francis E. Walter Dam, would consist of: (1) Five 50-foot-long, 9-foot-diameter steel penstocks, (2) a powerhouse containing five turbine/generating units with a total installed capacity of 10.3 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 63 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4018 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12427–000.

c. *Date filed*: December 17, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project*: The Kentucky L&D # 1 Hydroelectric Project would be located on the Kentucky River in Carroll County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Kentucky Lock & Dam # 1.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Corps' existing Kentucky Lock and Dam, would consist of: (1) Three 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing three turbine/generating units with a total installed capacity of 3 megawatts, (3) a 200-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 18 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4019 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 13, 2003.

The following Notice of Meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 20, 2003, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

* Note—Items Listed on The Agenda May Be Deleted Without Further Notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400, For a Recording Listing Items Stricken From or Added to the Meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; However, all public documents may be examined in the reference and information center.

819TH—Meeting February 20, 2003, Regular Meeting 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# EL03–36, 000, D.E. Shaw Plasma Power, L.L.C.

E–2.
Docket# EC03–30, 000, Illinois Power Company, Illinois Electric Transmission Company, LLC and Trans-Elect, Inc.
Other#s ER03–284, 000, Illinois Power Company, Illinois Electric Transmission Company, LLC and Trans-Elect, Inc.

E–3.
Docket# EC03–40, 000, ITC Holdings Corporation, ITC Holdings Limited Partnership, International Transmission Company, DTE Energy Company and Detroit Edison Company
Other#s ER03–343, 000, ITC Holdings Corporation, ITC Holdings Limited Partnership, International Transmission Company, DTE Energy Company and Detroit Edison Company

E–4.
Docket# ER98–1438, 014, Midwest Independent Transmission System Operator, Inc.
Other#s EC98–24, 008, Midwest Independent Transmission System Operator, Inc.
ER01–479, 004, Midwest Independent Transmission System Operator, Inc.

E–5.
Docket# EL03–35, 000, Midwest Independent Transmission System Operator, Inc.

E–6.
Omitted

E–7.
Docket# ER03–332, 000, PJM Interconnection L.L.C.

E–8.
Docket# ES02–51, 000, Westar Energy, Inc.

E–9.
Omitted

E–10.
Docket# ER03–338, 000, Southern California Edison Company

E–11.
Docket# ER03–184, 000, Geysers Power Company, LLC
Other#s ER03–184, 001, Geysers Power Company, LLC

E–12.
Omitted

E–13.
Omitted

E–14.
Docket# ER03–379, 000, Southern Company Services, Inc.

E–15.
Docket# ER03–402, 000, Midwest Independent Transmission System Operator, Inc.

E–16.
Omitted

E–17.
Docket# ER03–312, 000, Pacific Gas and Electric Company

E–18.
Docket# ER03–366, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–368, 000, Midwest Independent Transmission System Operator, Inc.

E–19.
Docket# ER03–358, 000, Pacific Gas and Electric Company

E–20.
Omitted

E–21.
Omitted

E–22.
Docket# ER01–3001, 004, New York Independent System Operator, Inc.

E–23.
Docket# ER01–2189, 004, Mid-Continent Area Power Pool
Other#s ER01–2322, 001, Mid-Continent Area Power Pool
ER01–3003, 003, Mid-Continent Area Power Pool
ER01–3004, 001, Mid-Continent Area Power Pool
ER02–112, 003, Mid-Continent Area Power Pool

E–24.
Docket# ER02–2234, 005, California Power Exchange Corporation
Other#s ER02–2234, 006, California Power Exchange Corporation
ER02–2234, 007, California Power Exchange Corporation
ER03–139, 001, California Power Exchange Corporation
ER03–139, 002, California Power Exchange Corporation

E–25.
Docket# ER02–2008, 002, Duke Energy Corporation

E–26.
Docket# ER02–2313, 000, Southwestern Electric Power Company

E–27.
Docket# EC03–24, 000, Idaho Power Company and IDACORP Energy, L.P.
Other#s EC03–33, 000, Idaho Power Company and IDACORP Energy, L.P.
EC03–34, 000, Idaho Power Company and IDACORP Energy, L.P.
EC03–38, 000, Idaho Power Company and IDACORP Energy, L.P.

E–28.
Omitted

E–29.
Omitted

E–30.
Docket# ER02–1069, 001, Entergy Services, Inc.
Other#s EL02–88, 000, Wrightsville Power Facility, L.L.C. v. Entergy Arkansas, Inc.

ER02–1069, 002, Entergy Services, Inc.
ER02–1151, 001, Entergy Arkansas, Inc.
ER02–1151, 002, Entergy Arkansas, Inc.
ER02–1472, 001, Entergy Gulf States, Inc.
ER02–1472, 002, Entergy Gulf States, Inc.

E–31.
Omitted

E–32.
Docket# EL02–73, 001, Access Energy Cooperative

E–33.
Docket# ER02–2220, 001, Southern Company Services, Inc.
Other#s ER02–2220, 002, Southern Company Services, Inc.

E–34.
Docket# ER98–3760, 006, California Independent System Operator Corporation
Other#s EC96–19, 057, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
ER96–1663, 060, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company

E–35.
Omitted

E–36.
Docket# ER02–2420, 001, Midwest Independent Transmission System Operator, Inc.

E–37.
Omitted

E–38.
Omitted

E–39.
Docket# TX96–2, 007, City of College Station, Texas

E–40.
Docket# ER02–2126, 004, Consolidated Edison Company of New York, Inc.

E–41.
Docket# EL00–89, 001, Southern California Edison Company

E–42.
Docket# NJ00–7, 000, Basin Electric Power Cooperative, Inc.
Other#s NJ00–7, 001, Basin Electric Power Cooperative, Inc.
NJ01–6, 000, Basin Electric Power Cooperative, Inc.
NJ01–6, 001, Basin Electric Power Cooperative, Inc.
NJ01–8, 000, Basin Electric Power Cooperative, Inc.
NJ01–8, 001, Basin Electric Power Cooperative, Inc.

E–43.
Omitted

E–44.
Docket# EL03–32, 000, Illinois Power Company

E–45.
Omitted

E–46.
Docket# EL03–28, 000, Town of Wallingford, Connecticut Department of Public Utilities, Electric Division and Connecticut Municipal Electric Energy Cooperative v. Connecticut Light and Power Company, Select Energy, Inc. and Northeast Utilities Service Company

E–47.
Docket# EL03–40, 000, Wisconsin Public Service Corporation v. Midwest Independent Transmisson System Operator, Inc.

E–48.
Omitted

E–49.
Docket# ER01–313, 000, California Independent System Operator Corporation
Other#s ER01–313, 001, California Independent System Operator Corporation
ER01–424, 000, Pacific Gas and Electric Company
ER01–424, 001, Pacific Gas and Electric Company

E–50.
Docket# ER02–111, 002, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–652, 001, Midwest Independent Transmission System Operator, Inc.

E–51.
Docket# EL01–113, 000, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., v. West Texas Utilities Company

E–52.
Docket# EL02–51, 001, California Electricity Oversight Board v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing L.P., Mirant Delta LLC, Reliant Energy Services, Inc., Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynergy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company LLC, Southern California Edison Company, All Other Public and Non-Public Utilities Who Own or Control Generation in California and Who Sell Through the Markets or Use the Transmission Lines Operated by the California Independent System Operator Corporation, and All Scheduling Coordinators Acting on Behalf of the Above Entities

E–53.
Docket# ER02–188, 000, Geysers Power Company, LLC
Other#s ER02–236, 000, Geysers Power Company, LLC
ER02–236, 001, Geysers Power Company, LLC
ER02–407, 000, Geysers Power Company, LLC
ER02–407, 001, Geysers Power Company, LLC

E–54.
Omitted

E–55.
Docket# ER02–1422, 003, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1842, 001, Midwest Independent Transmission System Operator, Inc.

E–56.
Docket# EG03–33, 000, Wellco Services, Inc.

E–57.
Docket# ER03–45, 001, Virginia Electric and Power Company

E–58.
Docket# EL03–47, 000, Investigation of Certain Enron-Affiliated QF's
Other#s QF89–251, 008, Las Vegas Cogeneration Limited Partnership
QF90–203, 004, Las Vegas Cogeneration Limited Partnership

E–59.
Docket# EL02–114, 000, Portland General Electric Company
Other#s EL02–115, 001, Avista Corporation

Miscellaneous Agenda

M–1.
Docket# RM02–4, 000, Critical Energy Infrastructure Information
Other#s PL02–1, 000, Critical Energy Infrastructure Information

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP01–503, 001, Natural Gas Pipeline Company of America

G–2.
Omitted

G–3.
Docket# RM00–11, 000 Five-Year Review of Oil Pipeline Pricing Index
Other#s RM00–11 001 Five-Year Review of Oil Pipeline Pricing Index

G–4.
Docket# OR98–11, 000, SFPP, L.P.
Other#s IS98–1, 000 *et al.*, SFPP, L.P.

G–5.
Docket# RP03–129, 000, Panhandle Eastern Pipe Line Company

G–6.
Docket# RP03–237, 000, Transwestern Pipeline Company

G–7.
Docket# RP98–43, 000, Anadarko Gathering Company

G–8.
Docket# RP02–217, 000, Panhandle Eastern Pipe Line Company

G–9.
Docket# RP00–335, 001, Black Marlin Pipeline Company
Other#s RP03–167, 000, Black Marlin Pipeline Company

G–10.
Docket# RP00–482, 003, CenterPoint Energy Gas Transmission Company
Other#s RP00–482, 004, CenterPoint Energy Gas Transmission Company

G–11.
Docket# RP00–401, 001, Enbridge Pipelines (AlaTenn) Inc.
Other#s RP01–4, 004, Enbridge Pipelines (AlaTenn) Inc.

G–12.
Docket# RP02–331, 002, PG&E Gas Transmission, Northwest Corporation

G–13.
Docket# RP00–535, 004, Texas Eastern Transmission, LP
Other#s RP03–194, 000, Texas Eastern Transmission, L.P.

G–14.
Docket# RP02–158, 001, Viking Gas Transmission Company
G–15.
Docket# RP00–533, 004, Algonquin Gas Transmission Company
Other#s RP03–193, 000, Algonquin Gas Transmission Company
G–16.
Omitted
G–17.
Omitted
G–18.
Docket# RP00–468, 004, Texas Eastern Transmission Corporation
Other#s RP00–468, 005, Texas Eastern Transmission Corporation
RP01–25, 004, Texas Eastern Transmission, LP
RP01–25, 005, Texas Eastern Transmission, LP
RP03–175, 000, Texas Eastern Transmission, LP
G–19.
Docket# RP00–387, 001, Florida Gas Transmission Company
Other#s RP00–387, 002, Florida Gas Transmission Company
RP00–583, 002, Florida Gas Transmission Company
RP00–583, 003, Florida Gas Transmission Company
RP03–165, 000, Florida Gas Transmission Company
G–20.
Docket# RP00–410, 002, CenterPoint Energy-Mississippi River Transmission Corporation
Other#s RP00–410, 003, CenterPoint Energy-Mississippi River Transmission Corporation
RP01–8, 002, CenterPoint Energy-Mississippi River Transmission Corporation
RP01–8, 003, CenterPoint Energy-Mississippi River Transmission Corporation
G–21.
Omitted
G–22.
Docket# RP00–398, 001, Overthrust Pipeline Company
Other#s RP00–398, 002, Overthrust Pipeline Company
RP01–34, 003, Overthrust Pipeline Company
RP01–34, 004, Overthrust Pipeline Company
G–23.
Omitted
G–24.
Docket# RP99–485, 001, Enbridge Pipelines (KPC)
G–25.
Omitted
G–26.
Docket# RP02–505, 002, Kinder Morgan Interstate Gas Transmission LLC
G–27.
Omitted
G–28.
Docket# IS02–403, 001, Shell Pipeline Company LP
G–29.
Docket# PR02–16, 002, Calpine Texas Pipeline, L.P.
G–30.
Docket# RP03–229, 000, Tennessee Gas Pipeline Company
G–31.
Docket# RP02–363, 003, North Baja Pipeline LLC
G–32.
Docket# RP00–275, 000, Chesapeake Panhandle Limited Partnership v. Natural Gas Pipeline Company of America, MidCon Gas Products Corp., MidCon Gas Services Corp, KN Energy, Inc., and Kinder Morgan, Inc.

Energy Projects—Hydro

H–1.
Docket# RM02–16, 000, Hydroelectric Licensing under the Federal Power Act
H–2.
Omitted
H–3.
Docket# P–2671, 042, Kennebec Water Power Company
H–4.
Omitted
H–5.
Docket# JR00–2, 000, James M. Knott
Other#s P–9100, 011, James M. Knott
H–6.
Docket# DI02–3, 001, AquaEnergy Group Ltd.

Energy Projects—Certificates

C–1.
Docket# CP02–387, 000, Petal Gas Storage, L.L.C.
C–2.
Docket# CP02–381, 000, Texas Eastern Transmission, L.P.
C–3.
Docket# CP03–7, 000, Colorado Interstate Gas Company
C–4.
Docket# CP02–1, 003, Southern Natural Gas Company
C–5.
Docket# CP01–416, 001, Sierra Production Company
C–6.
Docket# CP98–131, 005, Vector Pipeline L.P.
C–7.
Docket# CP01–415, 004, East Tennessee Natural Gas Company
Other#s CP01–375, 001, East Tennessee Natural Gas Company
CP01–375, 002, East Tennessee Natural Gas Company
CP01–415, 007, East Tennessee Natural Gas Company
C–8.
Docket# CP02–431, 000, Colorado Interstate Gas Company, RME Petroleum Company and Chevron U.S.A.
C–9.
Docket# CP01–36, 000, Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Company
Other#s CP01–52, 000, Raton Gas Transmission Company
CP01–382, 000, Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Company
CP01–383, 000, Raton Gas Transmission Company
C–10.
Docket# CP01–76, 001, Cove Point LNG Limited Partnership
Other#s CP01–76, 000, Cove Point LNG Limited Partnership
CP01–77, 000, Cove Point LNG Limited Partnership
CP01–77, 001, Cove Point LNG Limited Partnership
CP01–156, 000, Cove Point LNG Limited Partnership
CP01–156, 001, Cove Point LNG Limited Partnership
RP01–217, 000, Cove Point LNG Limited Partnership
RP01–217, 001, Cove Point LNG Limited Partnership

Magalie R. Salas,

Secretary.

[FR Doc. 03–4169 Filed 2–14–03; 4:00 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

February 13, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: February 20, 2003 (Within a relatively short time after the regular Commission Meeting).

Place: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters to be Considered: Non-public investigations and inquiries and enforcement related matters.

Contact Person for more information: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on February 20, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4170 Filed 2–14–03; 4:00 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Revised Public Utility Filing Requirements; Notice of Extension of Time

February 11, 2003.

On December 19, 2002, the Commission issued Order 2001–C (published 12/27/02, Vol. 67 FR 79077), requiring future Electric Quarterly Reports to be filed using the new Electric Quarterly Report Submission Software. The fourth quarter Electric Quarterly Reports were originally due to be filed on or before January 31, 2003. This deadline was previously extended to February 14, 2003.

On February 10, 2003, a bug was found in the program that inactivated some of the error checking on imported transaction data. The submission capability was temporarily disabled in order to preclude erroneous data from being filed at the Commission. A new version of the software was released today which reactivated the edit checks. This version will be automatically uploaded to the respondents' computers upon opening the Electric Quarterly Report application. Utilities that had previously imported data which passed the data integrity checks may find that some of their data will not pass the current edits.

In consideration of this situation, we would like to allow utilities more time to correct their data to ensure that they can file successfully. Notice is hereby given that the time to file the fourth quarter 2002 Electric Quarterly Report is extended to and including February 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4006 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0003; FRL–7287–8]

Recordkeeping Requirements for Certified Applicators Using 1080 Collars on Livestock; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Recordkeeping Requirements for Certified Applicators Using 1080 Collars on Livestock (EPA ICR No. 1249.07, OMB Control No. 2070–0074). This is a request to renew an existing ICR that is currently approved and due to expire September 30, 2003. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0003, must be received on or before April 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are one of the approximately 75 certified pesticide applicators who utilize 1080 collars for livestock protection; or a state agency that implements a 1080 collar monitoring program in the states of Montana, New Mexico, South Dakota, or Wyoming; or are one of the five registrants required to keep records of: (1) Number of collars purchased; (2) number of collars placed on livestock; (3) number of collars punctured or ruptured; (4) apparent cause of puncture or rupture; (5) number of collars lost or unrecovered; (6) number of collars in use and storage; and (7) location and species data on each animal poisoned as an apparent result of the toxic collar. Potentially affected entities may include, but are not limited to:

- Pesticide and other agricultural manufacturing (NAICS 325320), e.g., Pesticide registrants whose products include 1080 collars.
- Government establishments primarily engaged in the administration of environmental quality programs (NAICS 9241), e.g., States implementing a 1080 collar monitoring program.

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 above 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 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Food Quality Protection Act (FQPA) of 1996, and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0003. 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.

B. 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 II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, 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.

III. How Can I Respond to this Action?

A. 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 III.B. 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–2003–0003. 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–2003–0003. 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 III.A. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0003.

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–2003–0003. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. 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**.

C. 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 collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it 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 Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars on Livestock.

ICR numbers: EPA ICR No. 1249.07, OMB Control No. 2070–0074.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire September 30, 2003.

Abstract: This ICR affects approximately 75 certified pesticide applicators who utilize 1080 toxic collars for livestock protection. Four states (Montana, New Mexico, South Dakota, and Wyoming) monitor the program, and five pesticide registrants are required to keep records of: (1) Number of collars purchased; (2) number of collars placed on livestock; (3) number of collars punctured or ruptured; (4) apparent cause of puncture or rupture; (5) number of collars lost or unrecovered; (6) number of collars in use and in storage; and (7) location and species data on each animal poisoned as an apparent result of the toxic collar. Applicators maintain records, and the registrants/lead agencies do monitoring studies and submit the reports. These records are monitored by either the: State lead agencies; EPA regional offices; or the registrants. EPA receives annual monitoring reports from registrants or State lead agencies. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 3,353 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Certified pesticide applicators who utilize 1080 collars for livestock protection; state agencies that implement a 1080 collar monitoring program in Montana, New Mexico, South Dakota, or Wyoming; one of five registrants required to keep records pertaining to use of 1080 collars for livestock protection.

Estimated total number of potential respondents: 84.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 3.

Estimated total annual burden hours: 3,353.

Estimated total annual burden costs: $40,792.

VI. Are There Changes in the Estimates from the Last Approval?

Total respondent costs associated with this program rose from $38,448 to $40,792. Total agency costs rose from $8,845 to $10,150. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 5, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–3959 Filed 2–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0309; FRL–7281–7]

Oxadiazon; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the human health and environmental fate and effects risk assessments, and related documents for oxadiazon. Oxadiazon, an herbicide, is used primarily on golf courses, and has no remaining tolerances. This notice also starts a 60-day public comment period for the risk assessments. Comments are to be limited to issues directly associated with oxadiazon, and raised by the risk assessments or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The Agency cautions that these risk assessments for oxadiazon are preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket ID number OPP–2002–0309, must be received on or before April 21, 2003.

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: Mark Seaton, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; e-mail address: seaton.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in, or affected by this action. If you have questions in this regard, 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–2002–0309. 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 are 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. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on 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–2002–0309. 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–2002–0309. 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–2002–0309.

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–2002–0309. 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 notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket 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. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's human health and environmental fate and effects risk assessments and other related documents for oxadiazon are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for oxadiazon.

The Agency cautions that the oxadiazon risk assessments are preliminary and that further refinements may be appropriate. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessments for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues

associated with the pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by April 21, 2003 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION.** Comments will become part of the Agency record for oxadiazon.

List of Subjects

Environmental protection, Chemicals, Oxadiazon, Pesticides.

Dated: December 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–3844 Filed 2–18–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 11, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by April 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0400.

Title: Tariff Review Plan.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 45.

Estimated Time Per Response: 61 hours.

Frequency of Response: On occasion, annual and biennial reporting requirements.

Total Annual Burden: 2,745 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Certain local exchange carriers are required annually to submit Tariff Review Plans in partial fulfillment of cost support material required by 47 CFR part 61. The information is used by the Commission and the public to determine the justness and reasonableness of rates, terms and conditions in tariffs as required by the Communications Act of 1934, as amended.

OMB Control No.: 3060–0421.

Title: New Service Reporting Requirements Under Price Cap Regulation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 17.

Estimated Time Per Response: 20 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 340 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission seeks to extend for three years the current obligation of price cap local exchange carriers (LECs) to file annual reports comparing their actual results of operation with the projections made when those LECs filed tariff revisions to offer new services. The Commission staff continues to use these reports to monitor the new services to which these reports relate and to evaluate the reliability of subsequent new service showings submitted by these carriers.

OMB Control No.: 3060–0514.

Title: Section 43.21(b), Holding Company Annual Report.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 20 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The SEC 10K form is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Control No.: 3060–0894.

Title: Certification Letter Accounting for Receipt of Federal Support, CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 51.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 153 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission requires states to certify that carriers with the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with section 254(e).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3866 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 11, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0307.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individual or households, business or other for-profit, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 12,195.

Estimated Time Per Response: .5–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 23,073 hours.

Total Annual Cost: $7,591,000.

Needs and Uses: This collection will promote Congress' goal of regulatory parity for all commercial mobile radio services, and encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, this collection will establish rules for the SMR services in order to streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

OMB Control No.: 3060–0824.

Title: Service Provider Identification Number and Contact Form.

Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 10,000 hours.

Total Annual Cost: $400,000.

Needs and Uses: The Administrator of the universal service program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The Administrator uses FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receives payments directly from the Administrator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3867 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Thursday, February 20, 2003

February 13, 2003.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, February 20, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147), and Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No. 02–33). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Notice: Due to the elevated homeland security alert announced February 7, 2003, the FCC has taken additional security precautions that will limit visitor access to the FCC headquarters building in Washington, DC. Until further notice, the Maine Avenue lobby is closed. All visitors must enter the building through the 12th Street lobby, and will require an escort at all times in the building.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4158 Filed 2–14–03; 3:29 pm]

BILLING CODE 6712–01–M

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 March 14, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. F.N.B. Corporation, Naples, Florida; to merge with Charter Banking Corp., Tampa, Florida, and thereby indirectly acquire Southern Exchange Bank, Tampa, Florida.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, Kansas; to acquire additional shares, for a total of 47.5 percent of the voting shares of Brotherhood Bancshares, Inc., and thereby indirectly acquires shares of Brotherhood Bank & Trust Company, both of Kansas City, Kansas.

Board of Governors of the Federal Reserve System, February 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3875 Filed 2–18–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03003]

HIV Community-Based Prevention Projects for the Commonwealth of Puerto Rico and the United States Virgin Islands; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317 of the Public Health Service Act, 42 U.S.C. 241(a) and 247(b) as amended. The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities —Non-Governmental Organization Based.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2003 funds for a cooperative agreement program for community-based organizations (CBOs) in the Commonwealth of Puerto Rico (the Commonwealth) (Category A) and the United States Virgin Islands (USVI) (Category B) to develop and implement HIV Prevention Programs. This program addresses the ''Healthy People 2010'' focus area(s) of Educational and Community-Based Programs, HIV, and Sexually Transmitted Diseases.

The purpose of the program is to (1) Develop and implement effective community-based HIV prevention programs that reflect the Commonwealth's or the USVI HIV prevention priorities outlined in their comprehensive HIV prevention plan and epi profile; and

(2) Promote collaboration and coordination of HIV prevention efforts among CBOs, Health Departments, and private agencies in order to increase the number of high-risk persons who are tested for HIV infection and learn their test results.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention: (1) Reduce the number of new HIV infections; and (2) Decrease the number of persons at high risk for acquiring or transmitting HIV infection.

All attachments referenced in this announcement are posted with the announcement on the CDC Web site, Internet address: *http://www.cdc.gov.*

C. Eligible Applicants

Assistance will be provided only to non-governmental organizations and faith-based organizations (tax exempt corporation or association), whose net earnings do not benefit private shareholders or individuals and who meet the following criteria:

1. Have a current tax-exempt status under Internal Revenue Service Code Section 501(c)(3) or written Statement of Good Standing and a Certificate of Incorporation from the Commonwealth State Department (Category A) or the USVI State Department (Category B).

2. Be located in the Commonwealth of Puerto Rico or the United States Virgin Islands.

3. Be able to show that you have provided HIV prevention or care services to your target population over the last two years.

4. Provide evidence that you have shared with the health department the details of your proposed program.

5. Request no more than $175,000 in funding, including indirect costs, if applying under Category A; and no more than $200,000, including indirect costs, if applying under Category B.

6. Not be a government or municipal agency (including a health department, school board, or public hospital), a private or public university or college, or a private hospital.

For both categories, you can apply on your own or with one or more CBOs as a coalition. The term coalition, for this announcement, means a group of organizations working together, where each organization has a clearly defined activity assigned to them from the overall program plan. All groups share program responsibilities, but the organization applying for funds must be the legal applicant and perform a substantial portion of the program activities. The lead organization must meet all of the eligibility requirements listed above.

CDC encourages applications from applicants who are representative of the minority communities served in the make up of their board of directors, key staff and management. They should also be situated in close geographic proximity to the targeted population, have a history of providing services to these communities and have documented linkages to the targeted populations.

Note: You may only submit one application. If you apply alone and also as part of a group, your application will not be reviewed and will be returned to you. Your organization may apply for this funding even if you are currently receiving other funding from CDC; however, you must still meet all of the eligibility requirements above.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c (4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

For fiscal year 2003, about $1.3 million is available for awards under Category A to fund approximately eight awards and $800,000 for Category B to fund approximately four awards. CBOs who are selected will receive funding in July 2003. The funds are to be used during a budget time frame of 12 months.

Your organization's project may be continued for a total of 5 years (*i.e.*, 2003, 2004, 2005, 2006, 2007) under this agreement. Funding at the same level after the first year is based on the amount of funds available to CDC and your success and/or progress in meeting your goals and objectives. You must keep track of your successes by writing reports and sending them to CDC. Also, CDC staff may visit your organization to learn about your activities. When asking for the subsequent funding, you must again show CDC that you still meet the requirements stated above in the ''Eligible Applicants'' section.

CDC is committed to working with CBOs in these activities and to ensuring that these funds are distributed in a way that matches the geographic locations and risk behaviors where the epidemic is widespread.

Use of Funds

The money must be used to:

1. Target priority populations identified in the Comprehensive HIV Prevention Plan developed by the Community Planning Group.

2. Develop and implement activities and interventions described in the Comprehensive HIV Prevention Plan developed by the Community Planning Group.

The money must not be used to:

1. Give direct patient medical care, including substance abuse or medical treatment, or medications.

2. Replace or duplicate existing funding.

3. Support only administrative and managerial functions.

Funding Preferences

Preference will be given to applicants that:

1. Are located in or near to the targeted community they are intending to serve (Indigenous to the targeted population.)

2. Have a documented history of service to the targeted community(ies) to be served with evidence of having established systems for involving clients, and community members in identifying community needs, assets, and barriers, and in creating appropriate program response.

3. Have documented linkages to the targeted population.

4. Have documented evidence of implementing culturally and linguistically competent interventions for the targeted population.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible activities listed under 1. Recipient Activities, and CDC will be responsible for activities listed under 2. CDC Activities.

1. Recipient Activities

a. Involve the target population in planning, implementing, and evaluating activities and services throughout the project period.

b. Develop or adapt existing program models that are supported by scientifically valid evidence of lowering risk behavior, encouraging abstinence, or increasing help-seeking behavior.

Examples of evidence-based models can be found: (1) In the ''Compendium of Effective Behavioral Interventions'', (Inventory #D235) available in CD-Rom format from the CDC National Prevention Information Network (NPIN) by calling 1–800–458–5231 or at the following Web site: *http://www.cdc.gov/hiv/pubs/hivcompendium.pdf* and (2) in the report entitled, ''Positive Youth Development in the United States,'' commissioned by the U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation and available at: *http://aspe.hhs.gov/hsp/positiveyouthdev99/index.htm*

c. Comply with the requirements described in the Review of Contents of ''HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questioners, Survey Instruments, and Education Sessions'', published in the **Federal Register** on June 15, 1992.

d. Comply with Health Department rules, regulation, protocols and procedures while implementing your counseling and testing intervention.

Your program activities should address barriers to HIV prevention. The activities could address social, health service, faith organizations and family units that can keep persons at risk from getting the services they need.

e. Conduct at least one of the interventions listed below. All of your efforts must include cultural competency, sensitivity to issues of sexual and gender identity, and developmental and linguistic appropriateness.

(1) HIV counseling, testing, and referral (CTR) Provide HIV CTR to individuals at high risk for HIV infection. If you provide these services, you must meet certain requirements and follow set guidelines. See Attachment 4 for more information.

Your program might: (a) Improve access to testing sites that will be more acceptable and accessible to the target population or, (b) Improve use of post-test counseling, referral, and follow-up.

(2) Health Education and Risk Reduction Conduct health education and risk-reduction interventions (HE/RR). These may include individual, group, or community-level interventions.

(3) Outreach Activities Conduct outreach activities to improve access to the target population. Provide face-to-face HIV prevention interactions and hand out prevention-related materials, encourage abstinence.

f. Assist high-risk clients with referrals to appropriate primary HIV prevention services, and continued prevention and care services if they are infected.

g. Assist HIV infected individuals with access to appropriate prevention interventions, care and treatment.

h. Monitor and evaluate your proposed program to assure its quality. Use approximately three to five percent of the funds awarded under this announcement for monitoring intervention activities. CDC will provide technical assistance in tracking program activities and quality.

i. If conducting counseling and testing, prepare and submit to CDC, within the first six months of funding, a quality assurance plan for your program.

j. Conduct periodic client satisfaction assessments, *e.g.*, questionnaires or focus groups.

k. Put into place training and capacity building measures and a plan to identify the training needs of your staff.

l. Work with CDC and CDC-funded capacity-building assistance programs to identify and address the capacity-building needs of your program.

m. Find and use local resources for organizational and program development, *e.g.*, the health department, community development agencies, other CBOs, local colleges and universities, locally based foundations, Service Corps of Retired Executives (a Small Business Administration program), and the local business or industrial community.

n. Put into place a communication and information dissemination plan, which includes: (1) Marketing your prevention program and services to the target population and local community; (2) Sharing lessons learned and successful program models; and (3) Ensuring Internet and e-mail communication for your organization and key program staff during the first year of funding.

o. You must attend at least one CDC-sponsored meeting of funded agencies. If you sponsor any conferences using CDC funds, you must follow CDC policies for getting approval.

p. Begin gathering information to help develop and implement a plan for obtaining additional resources from non-CDC sources to further support the program implemented through this cooperative agreement and to improve the chance that it will continue after the end of the project period. We encourage you to contact local organizations and agencies, such as community development agencies, colleges, and universities who may often have information about funding and other types of assistance.

q. Work with other organizations in the community by:

(1) Establishing ongoing collaborations with health departments, community planning groups, academic and local or national research institutions, health care providers, or other local or national resources in designing, implementing, and evaluating interventions; and

(2) Participating in the HIV prevention community planning process. Participation may include going to meetings; if selected, serving as a member of the group; reviewing and commenting on plans; and becoming familiar with and using information from the community planning process, such as the epidemiology (epi) profile, needs assessment data, and intervention strategies. If selected for funding, an overview of project activities should be presented to your jurisdiction's community planning group.

2. CDC Activities

a. Provide assistance and consultation on program and administrative issues through its partnerships with health departments, national and regional minority organizations, contractors, and other national and local organizations.

b. Meet with you to find out what your training needs are and work with you to ensure those needs are met.

c. Work with the health department to provide training either directly or through its network of HIV/STD prevention training centers. This service is available to persons who supervise, manage, and perform counseling and referral and other outreach activities and for staff who provide direct patient care.

d. Sharing the most up-to-date scientific information on risk factors for HIV infection and prevention measures, and successful program strategies to help prevent HIV infection.

e. Provide assistance and information on rapid test technologies once they become available.

f. Help you establish partnerships with state and local health departments, community planning groups, and other groups who receive federal funding to support HIV/AIDS activities.

g. Make sure that successful prevention interventions, program models, and lessons learned are shared between grantees through meetings, workshops, conferences, newsletters, Internet, and other avenues of communication.

h. Oversee your success in program and fiscal activities, protection of client privacy, and compliance with other requirements that apply to your organization.

i. During the first year of funding, CDC will work with CBOs and the Health Department to develop standardized evaluation formats and activities for grantees.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. If you are eligible and you want to apply for funding under this announcement, CDC asks that you let us know your intention to apply by filling out the ''Intent to Apply,'' form found in Attachment 7. Your letter of intent will enable CDC to determine the amount of interest in this program and make sure we have enough of the most qualified reviewers for the application review process.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

1. Include page numbers throughout your application. Begin with the first page and number each page through to the last page of the last attachment.

2. Include a Table of Contents which indicates each section and page numbers for the whole package you send in.

3. Begin each separate section of your application on a new page.

4. Do not staple or bind the original document submission or the two copies.

5. Print all materials in a 12 point type size, single-spaced.

6. Use 8½ × 11 paper.

7. Set the margins at a minimum of one inch.

8. Print on one side of the paper only.

Content Guidelines

The sections that follow give you the questions you have to answer to correctly prepare your application. There are three sections:

- How Do I Write My Proposal Narrative?
- How Much Will My Proposed Program Cost and How Many Staff Do I Need?

• What Other Materials Do I Need to Attach?

When answering the questions below, you must:

1. Label each section, as indicated below, using the section title (*e.g.*, How Do I Write My Proposal Narrative?) and, when appropriate, the name of the subsection (*e.g.*, Justification of Need, Program Activities.)

2. Use the abbreviation N/A (not applicable), if a section does not apply to your application.

3. Include all information that is part of the basic plan (*e.g.*, activity timetables, staff program responsibilities, evaluation plans) in the main section of the application.

Note: Your application will be reviewed based on the answers you give to these questions. To be sure you get the best review of your application, use the format provided below when writing your application. Please answer all questions with complete sentences that provide detailed information about your eligibility and proposed activities.

How Do I Write My Proposal Narrative?

Your narrative should be no more than 35 pages. The 35 pages does not include your budget and budget narrative. We have included the number of points attached to each section and a suggested number of pages. Sections can vary in length as long as the total number of pages of the narrative is no more than 35. The narrative should address the following areas:

1. Justification of Need

How this section is scored: You will be scored on what information you use and how you use it to demonstrate the need of the target population for your proposed program. Check with the health department for information on the HIV/AIDS statistics and HIV/AIDS needs assessment developed for the community planning process. Use this information when writing your answer for this section.

Suggested length: 6 pages.

Points for this section: 200 points.

Answer all of the following questions for this section:

(a) How has your proposed target population been affected by the HIV/AIDS epidemic, *e.g.*, how many persons are infected with HIV or diagnosed with AIDS; how many deaths have there been from AIDS; how do socioeconomics affect the population? (50 points)

(b) What are the behaviors and other characteristics of your target population that put them at a high risk of becoming infected with HIV or giving HIV to a needle-sharing or sex partner, *e.g.*, unsafe sexual behaviors as indicated by rates of STDs, teen pregnancy rates, or assessments of risk behaviors; substance use rates; environmental, social, cultural, or language characteristics? (50 points)

(c) What are the barriers to accessing HIV prevention in your target population? How will you address these barriers? (50 points)

(d) Which organizations in your area are providing similar services? Please describe their activities and how your proposed activities will further meet the needs of the target population or improve services provided. (20 points)

(e) Is your proposed target population a priority population as indicated in the comprehensive HIV prevention plan developed through the community planning process? If not, please tell us why your proposed activities are needed? (30 points)

2. Program Activities

How this section is scored: We will look at whether or not your objectives are likely to be achieved; if your activities are sound, doable, creative, specific (how detailed you are in what you want to do), time-phased (have you set a time frame), and measurable (can you show that your activities made a difference).

Suggested length: 15 pages.

Points for this section: 400 points.

Remember that you will work with the health department and other organizations serving your proposed target population to carry out your program activities. As the applicant, you must describe how all planned services are to be provided either by you or together with another organization.

You will be asked to provide goals and objectives in this section. Goals provide a broad statement of what you intend to accomplish. Objectives should be realistic, specific (who will do what) and measurable.

Sample Goal and Objectives

Proposed Intervention (goal): Our program is intended to increase condom use among men who have sex with men who meet in bars.

Reaching clients (objective): Our program will enroll # high-risk persons MSM in our intervention.

Referral and Linkages (objective): Our program will ensure that # HIV-positive persons are successfully referred to a substance abuse program.

Answer all of the following questions for this section:

(a) Proposed Interventions (100 points)

(1) What program model are you planning to use?

(2) Which social-behavioral science theory are you basing your proposed program model on?

(3) What risk behavior(s) or help-seeking behavior(s) will your program model address?

(4) What are the goals for your proposed intervention, *i.e.*, what will happen as a result of your intervention?

(b) Reaching Your Clients (130 points)

(1) What are your objectives and activities planned to reach your proposed target population, during the first year of your proposed project?

(2) What steps will you take to build trust and credibility with this population?

(3) How will you get them to use your services?

(4) How will you use the available social networks to help you provide services?

(5) How will you involve them in planning, evaluating, and modifying your program activities?

(c) Referral and Linkages (80 points)

(1) What are your objectives and activities to help ensure that individuals who are infected with HIV or at a high risk get treatment and other services they need, for example, medical, mental health, drug use treatment, and social services such as housing and transportation?

(2) If you are working with other organizations, which of your proposed activities will be carried out by those organizations, whether they are part of an HIV prevention coalition, subcontractors, or non-paid partners? You must provide in your application a letter of intent from all partnering organizations, as applicable.

(d) Confidentiality (50 points)

(1) What steps will you take to ensure the confidentiality of all records, information, and activities related to your clients?

(2) What steps will you take to ensure the confidentiality of your clients during program activities?

(e) Management and Staffing of the Program (20 points)

(1) How will you manage your program?

(2) What will be the responsibilities and roles of the staff?

(3) What skills and experience does your staff have working with the target population?

(4) What are the responsibilities and roles of those organizations who you want to work with you, *e.g.*, staff responsibilities, skills, experience?

(f) Time line (20 points)

What are the details of your time line? Include information on the most important steps in your project and the approximate dates for when a step is begun and expected to be completed.

3. Training, Quality Assurance, and Program Monitoring and Evaluation

How this section is scored: We will look at the quality of: your plan to train your staff; how you will monitor their performance; your plans for seeking technical assistance; how you will measure progress in achieving your objectives; and how you will measure whether you are meeting the needs of your clients.

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Suggested length: 8 pages.

Points for this section: 200 points.

Answer all of the following questions for this section:

(a) What will you do to make sure your staff gets the training they need? Give an estimate of the number of staff to be trained, which staff will be trained, and who will provide the training? (40 points)

(b) How will you routinely monitor your staff's activities to find out if they are following established guidelines and protocols and what training they need? (40 points)

(c) How will you determine and meet your organization's needs in the areas of capacity-building or technical assistance? (20 points)

(d) How will you find out if you are meeting your objectives during the first year of operation? (40 points)

(e) How will you measure whether your services are meeting the needs of the target population and if those you refer for services are using the referral? How will you monitor your activities and those of the organizations working with you as subcontractors or as collaborators? (40 points)

(f) How will you measure the accomplishment for the objectives of this cooperative agreement (stated in section ''A. Purpose'' of this announcement)? These measures of effectiveness must be objective and quantitative and must measure the intended outcome of the program. (20 points)

4. Organizational History and Experience

How this section is scored: We will look at the overall experience of your organization in working with your proposed target population. This will include how much experience you have related to your proposed project.

Suggested length: 8 pages.

Points for this section: 250 points.

Answer all of the following questions for this section:

(a) Show evidence of the appropriateness of the proposed staff to the language, age, gender, sexual orientation, disability, literacy, and ethnic/racial/cultural factors of your proposed target population. (50 points)

(b) Provide evidence that your organization reflects the proposed target communities served in the makeup of your board of directors, key staff and management, and that your organization is situated in close geographic proximity to the proposed targeted population, have a history of providing services to the target community and have documented linkages to the targeted populations. (50 points)

(c) What are the specific kinds of health-related services, other than HIV prevention services, that you have provided your target population and for how long? (20 points)

(d) What are the HIV prevention services that you have provided your target population and for how long? (20 points)

(e) How have you ensured that any materials or interventions that you use in your program are culturally sensitive and appropriate for the target population? (30 points)

(f) What other experience does your organization have in providing services to the proposed target population, and for how long? (20 points)

(g) What is your organization's experience in linking with other organizations to provide HIV care or prevention services and ongoing care, as needed, for your clients? (20 points)

(h) What experience does your organization have in record keeping of when and how services are provided, evaluating services, and marketing services to the target population? (25 points)

(i) What experience does your organization have in improving the way services are delivered by finding and accessing other resources (for example, other organizations, materials, proven strategies)? (15 points)

5. Communication and Information Dissemination

How this section is scored: We will look at the overall experience of your organization sharing information with other partners, health departments and national organizations.

Suggested length: 3 pages.

Points for this section: 75 points.

Answer all of the following questions for this section:

(a) How are you planning to market your prevention program and services to the target population and local community? (25 points)

(b) How are you planning to compile lessons learned from the project? (30 points)

(c) How would you ensure access to Internet and e-mail communication for your organization during the first year of funding? (20 points)

How Much Will My Proposed Program Cost and How Many Staff Do I Need? (Budget)

In this section, you will need to provide a detailed description of your budget needs and the type and number of staff you will need to put into place to conduct your proposed activities.

Use Form 5161, 424A for the correct format when writing your budget. These forms are available in a PDF format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.*

You must provide details of your budget for each activity you want to do. You must show how the operating costs will support the activities and objectives you propose.

Your organization must have the capability to access the Internet and to download documents about HIV from CDC and other sites, as well as have electronic mail (e-mail) available for program staff. If you do not have this capability, you must provide a budget for purchasing this equipment.

The following information and questions will help you in writing this part of the application.

(a) What are your budget and staffing needs? This answer should provide the specifics of how you plan to spend funds. For example, how much funding is needed to provide services to the target population, how much is needed to operate your organization (staff, supplies), with whom are you planning to contract, and how much is needed for contracting with other organizations.

CDC may not approve or fund all proposed activities. Give as much detail as possible to support each budget item. List each cost separately when possible.

(b) If you are contracting with other organizations or are applying as a coalition, you must include in the budget the type and name (if known) of the organization(s); how you chose the organization(s); what activities they will do and why they are the best ones to do these activities; a detailed list of the funds you think you will need to pay the organization(s); why and how long you will use their services; and how you

will keep track of what they are doing for you.

(c) Provide a description for each job, including job title, function, general duties, and activities; the rate of pay and whether it is hourly or salary; and the level of effort and how much time will be spent on the activities (give this in a percentage, *e.g.*, 50 percent of time spent on evaluation). Also, if you already know names and titles of persons you will be working with, include this information and a resume, if available. If you don't have names yet, tell us how you plan to recruit these persons. For positions that are voluntary, give a description of the work the volunteers will be doing. Also include the experience and training that is available in relation to the proposed project.

(d) If you ask for indirect costs, you must include a copy of your organization's current agreement concerning your negotiated Federal indirect cost rate.

What Other Materials Do I Need To Attach?

Following is a list of additional materials to include with your application:

1. A description of funds you receive from any other source to support your HIV/AIDS programs and other similar programs that target the same population included in your proposed plan.

You must include: the name of the organization/source of income, the amount of funding they give you, a very brief description of how you use the funds, and the budget and project time period; and information that tells us that the funds you are requesting through this program announcement will not be used to replace funds received from any other Federal or non-Federal source.

Note: CDC-awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

2. Independent audit statements from a certified public accountant for the past 2 years. If you do not have audit statements, provide completed IRS Form 990s for the last 2 years.

3. If you are part of a national organization, please include an original, signed letter from the chief executive officer of the national organization that states that they understand this program announcement and the responsibilities you will have if you are chosen for funding.

4. If you are working with other organizations (*e.g.*, coalition members or referral agencies), you must include a memorandum of understanding or agreement or a letter to show that the relationship is accepted by both organizations. This memorandum or letter should give details about the activities you propose to do with the organization. This must be submitted each year to show that you are still working with the organization.

G. Submission and Deadline

Letter of Intent (LOI)

On or before March 21, 2003, send the completed Intent to Apply Form, found in Attachment 8, to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the signed original and two copies of Application Form PHS 5161–1 (OMB Number 0920–0428) and your narrative. Forms are available at the following internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

Your application and narrative must be received by 4 p.m. Eastern Time April 21, 2003. Send your application and narrative to:

Technical Information Management—PA# 03003, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline: Letters of intent and applications will be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or national disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Your application will not be compared to other applications. It will only be reviewed based on the information contained in section the ''Content'' section of this announcement. This will be done by an independent review group that is chosen by CDC.

With the recommendations from the independent review group, CDC will conduct pre-decisional site visits to those applications that score high enough to be considered for funding. This will be the second tier of the selection process. The Pre-decisional site visits will account for a total of 1,000 points. The following areas will be evaluated during this process:

1. Recipient Capability Assessment (300 points)

CDC's Procurement and Grants Office (PGO) will conduct a recipient capability assessment (RCA) to evaluate the capacity of the agency to manage the funds that will be provided by CDC. This will be conducted by either PGO staff or another selected agent.

2. Proposed Program (250 Points)

- The purpose of this section is to assess the feasibility of the proposed program and the capability of the organization to effectively implement HIV prevention interventions.
- Proposed intervention(s) based on scientific theory or an evidence-based logic model.
- Specific, measurable, achievable, realistic and time phased goals and objectives (SMART).
- Target population reflect the priorities identified in the HIV

Prevention Comprehensive Plan or are based on epidemiological data or needs assessment.

- Interventions reflect the priorities identified in the HIV Prevention Comprehensive Plan.
- Evaluation plan for proposed program.

3. Programmatic Infrastructure (200 points)

The purpose of this section is to assess the extent and relevance of organization's experience, capacity, and ability to identify and address the needs of the proposed target population and to effectively and efficiently implement the proposed activities, including:

• Organizational structure and planned collaborations.
• Past and current experience in developing and implementing effective and efficient HIV prevention strategies and activities.
• Experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.
• Capacity to obtain meaningful input and representation from members of the target population(s).
• Capacity to provide culturally competent and appropriate services which respond effectively to the cultural, gender, sexual orientation, race/ethnicity, age groups, environmental, social, and linguistic characteristics of the target population(s) (when appropriate).
• Capacity to identify and provide training to program staff.
• Ability to track data on services provided and use it to plan future interventions and to improve available services.

4. Organizational Infrastructure (150 points)

The purpose of this section is to assess the capacity of the organization to effectively and efficiently sustain the proposed program.
• Organizational By Laws, Mission and Vision.
• Composition, role, experience and involvement of the board of directors in administering the agency.
• Current fiscal systems to track available funding.
• Personnel process and procedures.
• Organizational protocols and procedures (*i.e.* security, confidentiality, grievances, etc)
• Organizational Capacity for fund raising

5. Health Department Review (100 points)

The purpose of this section is to obtain input for the department of health regarding the proposed program plan.
• Review the program plan (*i.e.*, proposed target population, intervention, number of persons to be served, and service location) to assess consistency of the proposed target population and intervention(s) with the HIV Prevention Comprehensive Plan;
• Rate the past performance with state/city funded programs.
• Provide a letter of support or non-support for funding to CDC.

The points from all five sections will be added and a final score will be assigned. In order to be considered for funding you must score at least 700 points during the pre-decisional site visits. Failure to do so will disable your agency from receiving funds from CDC.

I. Other Requirements

Technical Reporting Requirements

If you are selected for funding, you must let CDC know how you are doing by sending to us an original plus two (2) copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must include the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no later than 90 days after the end of each budget period.

3. Final financial and performance reports, no later than 90 days after the end of the project period.

4. Quarterly reports on the numbers of HIV antibody counseling, testing, and referral activities you have done.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

The following are additional requirements that must be met if awarded a cooperative agreement under this announcement. For a complete description of each, see Attachment 1 of the program announcement as posted on the CDC Web site.

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

J. Where To Obtain Additional Information

CDC suggests that you do not use the program announcement in the **Federal Register.** Instead, use the version posted on the CDC Web site to write your application. This copy includes the forms you need and has additional information to help you through the process. The internet address is: *http://www.cdc.gov*.

Click on ''Funding'' the ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Vincent Falzone, Grants Management Specialist, Procurement and Grants Office, Centers for disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2763, email address: *vfalzone@cdc.gov*.

For Program technical assistance, contact: Angel Ortiz, J.D., Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Prevention Program Branch, 1600 Clifton Road, MS E–58, Atlanta, GA 30333, Telephone (404) 639–5197, E-mail: *air4@cdc.gov*.

See also the DHAP home page on the Internet: www.cdc.gov/hiv. To receive additional written information, call The National Prevention Information Network (NPIN) at 1–800–458–5231 (TTY users: 1–800–243–7012) or visit their Web site: *http://www.cdcnpin.org/program* or

You can send requests by fax to: 1–888–282–7681 or e-mail to: *application-cbo@cdcnpin.org*.

This information, including 5161 forms in PDF and word processing formats, is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at: *http://www.cdc.gov/hiv* or by contacting NPIN either through their toll-free number: 1–800–458–5231 or their Web site: *http://www.cdcnpin.org/program*.

CDC also maintains a Listserv (HIV–PREV) related to this program announcement. If you decide to subscribe to the HIV–PREV Listserv, you will be able to send questions and will receive an answer and information through e-mail. This would include the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the DHAP Website. You can subscribe

to the Listserv on-line or via e-mail by sending a message to: *listserv@listserv.cdc.gov* and writing the following in the body of the message: subscribe HIV-prev first name last name (*e.g.*, subscribe HIV-prev john smith).

Dated: February 10, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3922 Filed 2–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03027]

Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Acute Care, Disability, and Rehabilitation-Related Research; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for grants for new investigator training awards in four research areas: unintentional injury prevention, violence-related injury prevention, injury-related acute care and disability research, and injury-related biomechanics research published in the **Federal Register** on February 7, 2003, Volume 68, Number 26, and pages 6483–6488. The notice is amended as follows: On page 6483, second column, the Program Announcement 03027 title should read: Grants for New Investigator Training awards for Unintentional Injury, Violence related Injury, Biomechanics, Acute Care, Disability, and Rehabilitation-Related Research.

Dated: February 7, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3921 Filed 2–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0403]

Determination of Regulatory Review Period for Purposes of Patent Extension; VALCYTE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VALCYTE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VALCYTE (valganciclovir hydrochloride). VALCYTE is indicated for treatment of cytomegalovirus retinitis in patients with acquired immunodeficiency syndrome (AIDS). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VALCYTE (U.S. Patent No. 6,083,953) from Syntex, and the Patent and Trademark Of0fice requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VALCYTE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VALCYTE is 2,101 days. Of this time, 1,919 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 30, 1995. The applicant claims July 26, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 30, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 29, 2000. The applicant claims September 28, 2000, as the date the new drug application (NDA) for VALCYTE (NDA 21–304) was initially submitted. However, FDA records indicate that NDA 21–304 was submitted on September 29, 2000.

3. *The date the application was approved*: March 29, 2001. FDA has verified the applicant's claim that NDA 21–304 was approved on March 29, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 226 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 21, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 18, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3872 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0225]

Determination of Regulatory Review Period for Purposes of Patent Extension; CANCIDAS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CANCIDAS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CANCIDAS (caspofungin acetate). CANCIDAS is indicated for esophageal candidiasis and invasive aspergillosis in patients who are refractory to or intolerant of other therapies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CANCIDAS (U.S. Patent No. 5,514,650) from Merck & Co., Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CANCIDAS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CANCIDAS is 1,974 days. Of this time, 1,791 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 3, 1995. The applicant claims September 1, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 3, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: July 28, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for CANCIDAS (NDA 21–227) was initially submitted on July 28, 2000.

3. *The date the application was approved*: January 26, 2001. FDA has verified the applicant's claim that NDA 21–227 was approved on January 26, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 682 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 21, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 18, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management

Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3873 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 3, 2003, from 8 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: perezt@cder.fda.gov or FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 3, 2003, the subcommittee will discuss the development of antiretroviral drugs in human immunodeficiency virus (HIV)-infected and HIV-exposed neonates younger than 4 weeks of age. Following this at 2:45 p.m., the agency will provide an update to the subcommittee on the Adverse Event Reporting plan as mandated in section 17 of the Best Pharmaceuticals for Children Act. After this presentation, at approximately 3:45 p.m., the agency will provide an update on pediatric initiatives within the agency.

The background material for this meeting will be posted on the Internet when available, or 1 working day before the meeting at http://www.fda.gov/ohrms/dockets/ac/menu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by February 21, 2003. Oral presentations from the public will be scheduled between approximately 9:50 a.m. and 10:50 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by February 21, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February, 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4001 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 6, 2003, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD, 301–948–8900.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6758, or e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 6, 2003, the committee will discuss new drug application 21–549, EMEND (aprepitant) Capsules, Merck & Co., Inc., for the following indication: ''EMEND, in combination with other antiemetic agents, is indicated for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of highly emetogenic cancer chemotherapy, including high-dose cisplatin.''

Background material for this meeting will be available 1 business day before the meeting on the Internet at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.

Procedure: On March 6, 2003, from 8:30 a.m. to 4 p.m., the meeting is open to the public. Interested persons may

present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 26, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 26, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 6, 2003, from 4 p.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Thomas H. Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4002 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 6, 2003, from 10:30 a.m. to 5:30 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons A, B, and C, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a thermal (cold) cardiac ablation catheter and generator system intended for cryoablation of cardiac tissue to treat patients with atrioventricular tachycardia and for mapping of the atrioventricular node. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the March 6, 2003, meeting will be posted on March 5, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 19, 2003. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 19, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3999 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0025]

Medical Devices: Draft Guidance for Industry and FDA; The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Draft Guidance for Industry and FDA.'' The draft guidance document is intended to assist facilities and their personnel in meeting the MQSA final regulations. This document deals with requirements related to testing of the automatic exposure control (AEC) component of mammography units.

DATES: Submit written or electronic comments on the draft guidance by May 20, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to

assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance serves to clarify and update previously issued guidance on testing the AEC component of mammography units. Due to the use of increasingly sophisticated mammography units, previously issued guidance on this matter does not adequately address the issue. This draft guidance was developed with input from the National Mammography Quality Assurance Advisory Committee during a meeting held on August 26, 2002. Once finalized, this guidance will supersede the AEC guidance that currently appears in the July 18, 2002, version of the MQSA Policy Guidance Help System (http://www.fda.gov/cdrh/mammography/robohelp/START.HTM).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on testing of the AEC component of mammography units. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments. Two hard copies of any mailed comments are to be submitted, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

To receive ''The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Draft Guidance for Industry and FDA'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1435) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

Dated: February 3, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–3874 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Flexible System to Advance Innovative Research.

Date: March 19–21, 2003.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703–7142, Rockville, MD 20852, 301/594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3884 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applicants and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Interactions Between Tumor Cells and Bone.

Date: April 23–25, 2003.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852, 301/594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3886 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: March 13, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: 1. Update on the DCLG Advocacy Survey; 2. Report from the Future of the DCLG Working Group; 3. Update on the Consumer Advocates in Research and Related (CARRA) program; 4. Tissue Banking Project; 5. DCLG Activities Report and Implications; 6. Update on the DCLG—Patient Advisory Board (PAB) Clinical Trials Project; 7. DCLG Member Reports.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892. 301/594–3194.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3898 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of High-Yield Technologies for Isolating Exfoliated Cells in Body Fluids.

Date: March 7, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Room 8018, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, (301) 496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3903 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: March 2–4, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert E. Bird, Ph.D., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, (301) 496–7978, *birdr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology

Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3904 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topics 187, 188 and 189.

Date: March 20–21, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, (301) 594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3905 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group. Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: April 22, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, Ph.D., Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, RM 8115, Bethesda, MD 20892, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3906 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Namer of Committee: National Cancer Institute Special Emphasis Panel.

Date: March 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M Amende, PhD, Scientific Review Administrator, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities/NCI, 6116 Executive Boulevard Room 8150, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3907 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. PAR–02–042, Colorectal Cancer Screening in Primary Care Practice.

Date: March 25, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telphone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federall Advisory Committee Policy.

[FR Doc. 03–3908 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group. Subcommittee C—Basic & Preclinical.

Date: April 22–24, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael B. Small, Ph.D., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center's Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3909 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meeting of the Board of Scientific Counselors, National Eye Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Natwional Eye Institute.

Date: February 24–25, 2003.

Time: February 24, 2003, 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Eye Institute, Building 31, Room 6A35, 31 Center Drive, Bethesda, MD 20852.

Time: February 25, 2003, 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Eye Institute, Building 31, Room 6A35, 31 Center Drive, Bethesda, MD 20852.

Contact Person: Miller S Sheldon, PhD, Scientific Director, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, (301) 451–6763.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Information is also available on the Institute's/Center's home page: www.nei.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3911 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–NICHD–2002–04—Shigella Vaccine in Adult and Children.

Date: March 10, 2003.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of

Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3887 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Prostacyclin & the Development of Preimplantation Embryo.

Date: March 10, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3889 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, March 4, 2003, 3:30 p.m. to March 4, 2003, 4:30 p.m. which was published in the **Federal Register** on January 31, 2003, 68 FR 5032.

The starting time of this meeting has changed from 3:30 p.m., as previously advertised to 2:30 p.m. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3890 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, March 4, 2003, 2:30 p.m. to March 4, 2003, 3:30 p.m., which was published in the **Federal Register** on January 31, 2003, 68 FR 5031.

The starting time of this meeting has changed from 2:30 p.m., as previously advertised, to 3:30 p.m. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3891 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Maternal and Child Health Research Subcommittee.

Date: March 10–12, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program, 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3892 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–43, Review of R44 grants.

Date: March 26, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, RM. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–39, Review of RFA DE–03–002, Oral Muscosal Immune Factors HIV.

Date: March 31, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Ph.D., Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892. (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–40, Review of RFA DE–03–003, Oral Muscosal Vaccination HIV.

Date: March 31, 2003.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Ph.D., Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892. (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–47, Review of R44 grants.

Date: April 1, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–38, Review of RFA DE–03–005, Pathobiology of TMJ Disorders.

Date: April 2, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm, Bethesda, MD 20892–6402.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–37, Review of RFA DE–03–004, Restoration of Orofacial.

Date: April 8–9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm, Bethesda, MD 20892–6402.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–45, Review of R44 grants.

Date: April 16, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–46, Review of R44 Grants.

Date: April 29, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3893 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 18–19, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Urology Research Centers.

Date: March 24–26, 2003.

Time: 7:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition

Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3894 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Nursing Fellowships Special Emphasis Panel.

Date: March 5, 2003.

Time: 11 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant application.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey Mchernak, Ph.D., Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3895 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Evaluation of the Colposcopy for Research Use.

Date: February 26, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone conference call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 396–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3899 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A, MARC Review Subcommittee.

Date: February 18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Richard I. Martinez, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3900 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Bulimia Nervosa.

Date: March 7, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITV Conflicts.

Date: March 12, 2003.

Time: 2:50 p.m. to 4:50 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Conflicts.

Date: March 19, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, Ph.D., RN Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Children and Youth Interventions.

Date: March 19, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3901 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH SBIR CONTRACT TOPICS 27 AND 28.

Date: March 6, 2003.

Time: 1:30 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael J. Kozak, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9608, Bethesda, MD 20892–9606, (301) 443–6471, *kozakm@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Models for Public Use Datasets.

Date: March 14, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3902 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis

Panel, Review of Program Project Application.

Date: March 3–5, 2003.

Time: 8 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western University Tower Hotel, 4507 Brooklyn, NE., Seattle, WA 98195.

Contact Person: N. Kent Peters, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 18ANK, Bethesda, MD 20892, (301) 594–2408, *petersn@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3910 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Speical Emphasis Panel, ''Pharmacovigilance Database for Anti-Addiction Medications'' (Topics 044).

Date: March 5, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Researh Programs, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3912 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, A M3 RO1'S.

Date: March 4, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Ph.D., M.D., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3885 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, INFORMATION L M3.

Date: March 11, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, M.D., Ph.D., Scientific Review Adm.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3888 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Integrative, Functional and Cognitive Neuroscience 5, February 18, 2003, 8:30 a.m. to February 19, 2003, 10 a.m., which was published in the **Federal Register** on January 31, 2003, 68 FR 5032–5035.

The meeting will be one day only February 18, 2003, from 8 a.m. to 6 p.m. The location remains the same. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3896 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Emphasis Panel, February 19, 2003, 10:30 a.m. to February 19, 2003, 5:30 p.m., which was published in the **Federal Register** on February 5, 2003, 68 FR 5906–5908.

The meeting times have been changed to 8 a.m. to 6 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3897 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Statement of Organization, Functions, and Delegations of Authority

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995, and as last amended at 67 FR 49947 dated August 1, 2002) is amended to reflect changes in Chapters PA, PB and PH, within the Program Support Center (PSC), Department of Health and Human Services (HHS). The restructuring of information technology resources will benefit the Department by realigning PSC business systems with PSC business owners to achieve greater efficiencies, help to control costs, and enhance customer satisfaction. The human resources restructuring will align functions to facilitate more effective partnering with current and future customers and will facilitate the transition of the planned consolidation of human resources offices throughout the Department. The changes are as follows:

I. Under Part P, Section P–10, Organization, delete the following in its entirety:

5. Information Resources Management Service (PH).

II. Under Section P–20, Functions, make the following changes:

A. Under Chapter PA, retitle the *Immediate Office of the Director (PA),* as the *Immediate Office of the Deputy Assistant Secretary for Program Support (PA).*

B. Under Chapter PH, *''Information Resources Management Service,''* delete in its entirety.

D. Under Chapter PA, establish the *Office of Information Technology (PAE):*

Section PAE.00 Mission: Office of Information Technology (PAE). The Office (1) Serves as the focal point within the PSC for planning, organizing, coordinating, implementing and managing the activities required to maintain an agency-wide information technology (IT) program in compliance with the Clinger-Cohen Act, Paperwork Reduction Act, HHS Chief Information Officer guidance, and other related Federal guidance and best practices; (2) Develops and implements PSC-wide IT policy; (3) Manages and directs the operation of the PSC's IT infrastructure, data communication networks, and enterprise infrastructure while executing some production operations at the PSC and Departmental levels; (4) Oversees PSC corporate level IT support services or initiatives; (5) Reviews and coordinates technology program initiatives, ensuring secure interoperability among systems and reducing system redundancy; (6) Establishes and manages the PSC-wide Security Program; (7) Recommends emerging information technology to improve the productivity, effectiveness, and efficiency of PSC programs; (8) Provides customer liaison services to resolve issues and improve technology support; (9) Manages audit liaison services for all SAS 70 audits conducted within the PSC; (10) Oversees the IT Continuity of Operations Program for PSC IT systems; and (11) Monitors and evaluates the performance of PSC information resource investments through a capital planning and investment control process including budget and acquisition management.

Section PAE.10 Organization. The Office of Information Technology (PAE) consists of the following components:

- Office of the Director
- Information Systems Security Division (PAE1)
- Technology Support Services Division (PAE2)
- Resources Planning and Management Division (PAE3)

Section PAE.20 Functions. 1. *Office of the Director:* (1) Provides leadership and overall management for information technology resources for which PSC has responsibility; (2) Directs the development, implementation, and enforcement of the PSC's information technology architecture, policies, standards, and acquisitions in all areas of information technology; (3) Oversees PSC's information systems security program, assuring compliance with the Federal Information Systems Management Act and other Federal and HHS guidance; (4) Oversees and advises the PSC's IT business technology functions including business planning, development, budgeting and fiscal planning, establishing service level agreements, assessing customer satisfaction, and assuring compliance with the Government Performance and Results Act (GPRA); (5) Oversees capital planning and investment control (CPIC) for PSC IT initiatives; (6) Chairs the PSC Information Technology Review Board (ITRB); (7) Oversees the PSC-wide IT systems Continuity of Operations Program (COOP); and (8) Oversees audit liaison services for all SAS 70 audits conducted within the PSC.

2. *Information Systems Security Division (PAE1):* (1) Manages the PSC-wide Information Technology Security Program; (2) Develops and implements PSC-wide IT security policy; (3) Oversees Certification and Accreditation of all critical PSC systems, including assisting program managers in preparing/revising certification packages to acquire or retain approval to operate; (4) Establishes and implements the PSC Security Awareness Program, including security training and awareness oversight; (5) Oversees the PSC wide Incidence Response Program, including investigation of reported IT security incidents and appropriate disposition, e.g., reporting incidents to higher levels and external organizations, if warranted; (6) Manages the PSC-wide IT systems Continuity of Operations

Program (COOP); and (7) Manages audit liaison services for SAS 70 audits conducted within the PSC.

3. *Technology Support Services Division (PAE2):* (1) Designs, obtains, installs, and maintains all Local Area Network (LAN) capabilities within the PSC for application and office automation support; (2) Provides all electronic mail and third party software support; (3) Designs, obtains, installs, and maintains all communication and Wide Area Network (WAN) connectivity capabilities within the PSC; (4) Establishes and maintains a help desk for desktop support; (5) Provides system administration functions; (6) Schedules, operates, and maintains production processes for some PCS applications; (7) Provides customer liaison services to resolve issues and improve customer service; (8) Designs, obtains, installs, and maintains computer and network systems including hardware, software, and data communications required to support human resources, financial management, and administrative automated systems; (9) Provides automated data processing management services for computer systems in local operational offices; (10) Supports the implementation of the PSC's information system security program, including documenting and reporting security breaches; (11) Manages PSC corporate level IT support services or initiatives; (12) Manages Web site hosting and design PSC-wide; and (13) Designs, develops, and maintains PSC Web applications and pages.

4. *Resources Planning and Management Division (PAE3):* (1) Oversees and manages overall IT budgeting and fiscal planning; (2) Facilitates, supports, and executes the capital planning and investment process and portfolio management; (3) Coordinates and manages the development and execution of the 5-year Information Resources Management (IRM) planning process; (4) Serves as the focal point for IT architecture planning; (5) Develops, implements, and oversees adherence to IT policy; (6) Plans, coordinates, manages and reports on activities required by the Government Paperwork Elimination Act (GPEA) and Government Performance and Results Act (GPRA); (7) Oversees E-Government initiatives; (8) Monitors and evaluates IT Customer Satisfaction; (9) Reviews and oversees all PSC acquisitions and IT acquisitions initiatives; (10) Oversees and evaluates Section 508 compliance throughout the PSC.

III. Delete all organizational units for the *Human Resources Service (PB)* in their entirety except the *Division of Commissioned Personnel (PBJ),* and replace with the following:

Section PB.10 Mission. *Human Resources Service (PB):* The Service: (1) Operates a servicing personnel office for a variety of customers; (2) Provides human resources operating systems and management information to HHS program managers and personnel offices; (3) Operates and maintains a Department-wide centralized payroll system; (4) Provides centralized common needs training; (5) Provides Executive Secretariat/Executive Director services for the Board for Correction of PHS Commissioned Corps Records; (6) Operates a servicing equal employment opportunity function; and (7) Manages the Departmental EEO complaints processing program.

Section PB.20 Organization: The Human Resources Service (PB) consists of the following components:

- Office of the Director (PBA)
- Division of Payroll (PBG)
- Division of Commissioned Personnel (PBJ)
- Division of Personnel Operations (PBN)
- Division of Equal Employment Opportunity (PBP)
- HHS University (PBQ)
- Enterprise Applications Division (PBR)
- Systems Integrity and Quality Assurance Division (PBY)

1. *Office of the Director (PBA):* (1) Provides executive direction, leadership, guidance and support to all Human Resources Service (HRS) components; (2) Provides leadership of a multi-customer, competitive, fee-for-service, cost centered organization; (3) Directs the human resources program for the PSC; (4) Provides leadership for the Board for Correction of PHS Commissioned Corps Records; (5) Provides systems integrity and quality assurance functions including acceptance testing for all new systems/subsystems, major enhancements and systems changes for the human resources information system; (6) Ensures all information necessary for yearly SAS 70 audits is provided, and works with OIT audit liaison staff to resolve any associated issues and findings; and (7) Works with PSC Office of Information Technology staff to ensure appropriate Continuity of Operations measures are in place for systems owned by HRS.

2. *Division of Payroll (PBG):* (1) Administers the Department's centralized payroll systems; (2) Manages and conducts payroll accounting, reconciliation and pay adjustments processing, produces feeder reports for HHS accounting systems, and carries out the Department's employee debt collection program; (3) Processes all actions relative to separated employees, including retirement and other separation actions, maintains retirement records and processes death benefit claims; (4) Audits leave accounts and processes unemployment compensation actions; (5) Provides direction, technical assistance, standard operating procedures, manuals and training for IMPACT operators, timekeepers, designated agents, payroll liaison persons and other persons who input data or who use outputs from the personnel and payroll systems; (6) Diagnoses problems and devises solutions to systemic problems and inefficiencies; and (7) Provides required information and works with the PSC Office of Information Technology to resolve audit-related issues and findings.

3. *Division of Personnel Operations (PBN):* (1) Administers comprehensive human resources management and employee/labor relations services for the Program Support Center (PCS), and its customers; (2) Develops and implements strategies and processes to ensure the progression of the Division of Personnel Operations in its role as a multi-customer, competitive, fee-for-service cost center; (3) Provides a full range of personnel operations services and consultations on human resources activities; (4) Provides expert managerial advisory services including analyzing employee resources, forecasting future requirements, and coordinating policy to meet Departmental mission and public interest needs; (5) Provides consultative services and expert advice to organizations affecting change management activities; and (6) Administers special initiative programs.

4. *Division of Equal Employment Opportunity (PBP):* (1) Encourages and assists the PSC and its other customers in voluntarily taking affirmative steps to correct the effects of past discrimination and prevent present and future discrimination without resorting to litigation or other formal governmental action; (2) Works toward achieving the Federal and the HHS goal of having a fully representative workforce which includes members of all racial and ethnic groups as well as people with disabilities; (3) Administers special emphasis/diversity programs designed to accommodate the special needs of particular groups. This includes programs such as the Hispanic Employment Program, the Federal Women's Program, the People with Disabilities Program, and programs concerning African Americans, Asian

Americans/Pacific Islanders, and American Indians/Alaska Natives; (4) Seeks to identify and eliminate discriminatory policies and practices from the workforce based on race, national origin, color, sex, age, religion, disability, sexual orientation and/or reprisal; (5) Promotes the early resolution of complaints of discrimination, and provides for the prompt, fair and impartial processing of discrimination complaints; and (6) Manages the Departmental EEO complaints processing program.

5. *HHS University (PBQ):* Develops and manages the Department's training and workforce development functions with responsibility for the following: (1) Develops and manages the Department's on-line training program; (2) Develops and implements a service designed to facilitate the Department-wide matching of deployed employees with appropriate positions; (3) Provides career counseling services for Departmental employees; (4) Develops and delivers common needs training; (5) Develops and implements a learning management system; (6) Manages workforce development initiatives to support Departmental common needs training; and (7) Facilitates cross-departmental utilization of mission training being provided by the HHS Operating Divisions.

6. *Enterprise Applications Division (PBR):* The Division provides the full range of automated data processing support activities associated with the development and maintenance of both civilian and commissioned officer's human resources information technology systems: (1) Provides overall program leadership and direction to the operation of the enterprise personnel and payroll system for the Department; (2) Develops and implements new human resources and payroll systems; (3) Conducts analysis and design of systems changes, enhancements and new requirements; (4) Provides the full range of support activities associated with the development and maintenance of personnel/payroll processing and reporting systems; (5) Provides automation services for the HHS automated personnel and payroll systems and subsystems; (6) Manages the operation of production for the civilian personnel and payroll processing systems; (7) Provides human resource and human resource systems customer liaison services to resolve issues and improve customer services; and (8) Provides required information and works with the PSC Office of Information Technology to resolve audit-related issues and findings.

7. *Systems Integrity and Quality Assurance Division (PBY):* Primary functions of SIQAD include: (1) Implements and operates Configuration Management services including change management, software version control, and design of automated systems to reduce errors and support parallel and concurrent development; (2) Manages software/system acceptance testing, quality assurance reviews, Independent Verification and Validation (IV&V), and quality control functions for all human resources systems/subsystems including major enhancements and systems changes for PSC applications and infrastructure; (3) Ensures the integrity of HR production environments; (4) Provides systems integrity and quality assurance services to other PSC organizations as required; (5) Administers HRS accounts residing on the National Institutes of Health mainframe and IBM Resource Access Control Facility (RACF) protection of files within those accounts; and (6) Provides required information and works with the PSC Office of Information Technology to resolve audit-related issues and findings.

Dated: February 4, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–3998 Filed 2–12–03; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Center for the Evaluation of Risks to Human Reproduction: Notice of a Workshop on Thyroid Hormones and Reproduction

Summary

The Center for the Evaluation of Risks to Human Reproduction (CERHR) is sponsoring a workshop entitled ''Thyroid Toxicants: Assessing Reproductive Health Effects'' on April 28 and 29, 2003 at the Holiday Inn Old Town Select Hotel, 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080, fax: 703–684–6508). Registration begins at 8:30 am on April 28 and the meeting begins at 9 am each day. This meeting is open to the public with attendance limited only by the availability of space. Persons interested in attending are requested to pre-register for this meeting by contacting CERHR (contact information below). A preliminary agenda is provided below and additional meeting information will be posted, as available, on the CERHR Web site: *http://cerhr.niehs.nih.gov.*

Background

Thyroid function is modulated through physiological feedback mechanisms. Hypothyroid and hyperthyroid states are well known in humans with some being associated with iodine levels in the environment. Some drugs are known to enhance or repress thyroid function, and a recent article identified 116 synthetic chemicals that ''interfere'' with production, transport, or metabolism of thyroid hormone. Thyroid hormone levels modulate other hormone-producing tissues particularly those that involve reproduction, development, or mental performance. Both hypothyroidism and hyperthyroidism are reported to be associated with an increased risk of adverse pregnancy outcomes in humans.

The purpose of this NTP–CERHR workshop is two-fold:

(1) To discuss and determine appropriate designs of developmental and reproductive toxicity tests for detecting adverse effects resulting from thyroid dysfunction.

(2) To discuss the relevance of thyroid-related adverse reproductive and developmental effects observed in rodents for predicting similar effects in humans.

Preliminary Meeting Agenda

Thyroid Toxicants: Assessing Reproductive Health Effects, Holiday Inn Old Town Select Hotel, 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080).

Day 1—Monday, April 28

8:30 a.m. Registration
9 Introduction
Summary of thyroid conference, ''Thyroid Hormone and Brain Development: Translating Molecular Mechanisms to Population Risk,'' held at the National Institute of Environmental Health Sciences on September 23–25, 2002
A review of current alternative assays for assessing thyroid toxicity
Session 1: A comparison of normal thyroid development/control/function in rodents and humans
10:45 Break
Session 2: Comparison of the reproductive and developmental effects of hypo/hyperthyroidism in rodents and humans
Discussion
Noon Lunch (on your own)
1 p.m. Session 2, continued: Human/rodent comparison of reproductive

effects of selected thyroid active chemicals

Methimazole

PTU

Phenobarbital

Sulfamethazine

Discussion

5 Adjourn

Day 2—Tuesday, April 29

9 a.m.

Session 3: The elements of a rodent testing protocol to consider in assessing thyroid effects on reproduction and development and their relevance to human health effects

Discussion

10:15 Break

Session 4: An overview of 1) appropriate rodent protocols for detecting thyroid effects on reproduction and development and 2) the appropriate use of rodent data for predicting human effects

Discussion

Noon Adjourn

As additional details and materials for this workshop become available, they will be posted on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or can be obtained by contacting Dr. Michael Shelby, Director, CERHR, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: 919–541–3455; fax: 919–316–4511; e-mail: *shelby@niehs.nih.gov*

Pre-Registration

This workshop is open to the public and interested individuals are encouraged to attend. Time is set aside for open discussion throughout the meeting to provide an opportunity for all attendees to contribute to the scientific discussion. The number of attendees will be limited only by the space available. Due to the limitations of space, pre-registration for this meeting is encouraged. To pre-register, please provide your name, affiliation, contact information and email address by Friday, April 18, 2003, to: Ms. Harriet McCollum, CERHR, Suite 500, 1800 Diagonal Road, Alexandria, VA 22314; telephone: 703–838–9440; fax: 703–684–2223; email: *HMcCollum@Sciences.com*

Dated: February 7, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–3913 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Funding Opportunities Notice for State Training and Evaluation of Evidence-Based Practices, March 24, 2003 Application Receipt Date

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Modification/Clarification of a Notice of Funding Availability Regarding the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, grants for State Training and Evaluation of Evidence-Based Practices.

SUMMARY: Federal Register Notice referring to the current RFA SM 03–003 and indicating the availability of funds for State Training and Evaluation of Evidence-Based Practices with a March 24, 2003 receipt date. This notice is to inform the public of expanded eligibility for the SAMHSA/CMHS announcement No. SM 03–003, State Training and Evaluation of Evidence-Based Practices (Short Title: EBP Training and Evaluation). In addition to State mental health authorities, as described in SM 03–003, Indian tribes or tribal organizations (as defined in Section 4(b) and Section 4(c) of the Indian Self-determination and Education Assistance Act) are also eligible to apply.

The EBP Training and Evaluation grants will fund the States/Tribes/Tribal Organizations to (1) provide state-of-the-art training and continuing education to State mental health service providers and other stakeholders who are implementing one or more of six EBPs for which SAMHSA has previously developed implementation Resource Kits, and (2) evaluate the implementation of selected EBPs in two or more communities within the service areas of the State/Tribe/Tribal Organization. The average annual award will range from $250,000 to $325,000 in total costs.

Program Contact: For questions concerning program issues, contact: Crystal R. Blyler, Ph.D., Community Support Program, Suite 11C–22, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3997, Fax 301–443–0541, e-mail: *cblyler@samhsa.gov.*

Dated: February 6, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–3878 Filed 2–18–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Assessment Plan for the Natural Resource Damage Assessment at the Ashtabula River and Harbor Site

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30-day comment period.

SUMMARY: Notice is given that the document titled ''Natural Resource Damage Assessment Plan for the Ashtabula River and Harbor'' (''the Plan'') will be available for public review and comment on the date of publication in the **Federal Register**. The U.S. Departments of the Interior (Fish and Wildlife Service) and Commerce (National Oceanic and Atmospheric Administration) and the Ohio Environmental Protection Agency are trustees for natural resources (''trustees'') considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted within 30 days of the date of this Notice.

ADDRESSES: Comments on the Plan should be sent to: Dr. Sheila Abraham, Ohio Environmental Protection Agency, North East District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087 or Mr. David De Vault, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111

FOR FURTHER INFORMATION CONTACT: Dr. Sheila Abraham (330) 963–1290 or Mr. David De Vault, (612) 713–5340.

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from suspected injuries to natural resources in and near the lower Ashtabula River and Harbor that have been exposed to hazardous substances released by industrial activity at the Fields Brook Superfund Site and the Ashtabula River and Harbor. The trustees suspect this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be addressed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, in order to determine the appropriate type and extent of resource restoration. The Plan addresses the trustee's overall assessment approach, and utilizes both existing data as well as additional data to be collected. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities. Restoration of natural resources will be proposed by the trustees following the assessment.

Requests for copies of the Plan may be made to the Case Managers at the addresses listed above. The Trustee Case Managers will provide copies of all comments to all trustees.

You may submit comments on the Plan by sending electronic mail (e-mail) to: *dave_devault@fws.gov* or *sheila.abraham@epa.state.oh.us.* Do not use any special characters or forms of encryption in your e-mail. The trustees also accept comments in WordPerfect and Word versions as attachments to the e-mail or on disk.

Dated: January 27, 2003.

William F. Hartwig,

Regional Director, Region 3, Fish and Wildlife Service.

[FR Doc. 03–3920 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0137).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a Notice to Lessees and Operators (NTL) discussed below. The current Office of Management and Budget (OMB) approval of the information collection in this NTL expires in August 2003. The MMS is submitting the NTL to OMB for review and approval.

DATE: Submit written comments by April 21, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference ''Information Collection 1010–0137'' in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the collection of information.

SUPPLEMENTARY INFORMATION:

Title: Historical Well Data Cleanup (HWDC) Project—Notice to Lessees.

OMB Control Number: 1010–0137.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA at 43 U.S.C. 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

The MMS's Historical Well Data Cleanup Project, NTL 98–29, Addendum 2, is currently underway and is expected to last several years to allow operators ample time to provide the missing or corrected data. This notice announces our intention to request a 3-year extension for this information collection.

The information we collect under NTL 98–29, Addendum 2, is missing data for wellbores that MMS has not assigned API numbers and other well data discovered as missing while completing the well database cleanup project. We are not able to manage and utilize data from drilling operations accurately without the information for the missing wells. We will use the information to identify other well data (*e.g.,* logs, surveys, tests) missing from our records, geologically map existing MMS data to the correct wellbore/location, and correctly exchange information with the operators and industry. Our geoscientists can use the information to evaluate resources for lease sales for fair market value. With respect to safety concerns, we believe that there may be anywhere from 3,000 to 5,000 unidentified completed and abandoned wellbores (bypasses and sidetracks), some of which may contain stuck drill pipe or other materials. In approving permits and other operations in an area, it is important for us to know what may be adjacent to or near the vicinity of the activity we are approving to minimize the risk of blowouts, loss of well control, and endangerment to life, health, and the environment. This is particularly important as, over the years, the number of wells drilled constantly increases, thereby increasing the risk to adjacent activities if operators are not aware of what might be in the area.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 250.196, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 90,000 hours for approximately 40,000 wells, based on:

(1) ¼ hour to locate and copy a summary of drilling operations (*e.g.,* scout tickets) for each well.

(2) 2 hours to retrieve and analyze each well file and retrieve other missing data. There are no recordkeeping requirements.

Estimated Reporting and Recordkeeping ''Non-Hour Cost''

Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 11, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–3919 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 1, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW, 8th floor, Washington, DC 20005; or by fax, (202) 343–1836. Written or faxed comments should be submitted by March 6, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Boulder County

Boulder Creek Bridge, (Highway Bridges in Colorado MPS), CO 119 at milepost 39.13, Boulder, 03000103.

IDAHO

Bannock County

Pocatello Westside Residential Historic District, Roughly bounded by N. Arthur Ave., W. Fremont St., N. Grant Ave., and W. Young St., Pocatello, 03000102.

NEBRASKA

Douglas County

Lincoln Highway—Omaha to Elkhorn, (Lincoln Highway in Nebraska MPS), Approx. 3 mi. segment along N. 174 St., Elkhorn, 03000104.

Fillmore County

Fairmont Army Airfield, Approx. 2 mi. S of Fairmont, Fairmont, 03000105.

Knox County

Ponca Tribal Self-Help Community Building Historic District, Approx. 3 mi. SE of Niobrara, Niobrara, 03000106.

Platte County

Behlen, Walter and Ruby, House, 2555 Pershing Rd., Columbus, 03000108.

Sarpy County

Linoma Beach, 17106 S. 255th St., Gretna, 03000107.

NEW HAMPSHIRE

Carroll County

Jackson Falls National Register Historic District, Approx. parts of Jackson Village Rd. and Five Mile Circuit Rd., Jackson, 03000110.

Coos County

Aldrich, Benjamin, Homestead, E terminus of Aldrich Rd., 0.46 E of Piper Hill, Colbrook, 03000109.

[FR Doc. 03–3957 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 25, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, (202)

343–1836. Written or faxed comments should be submitted by March 6, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Conway County

Morrilton Commercial Historic District, Roughly bounded by E. Railroad, Broadway, N. Division and N. Moose Sts., Morrilton, 03000085.

KENTUCKY

Harlan County

Lynch Historic District, Roughly bounded by city limits, L&N RR bed, Big Looney Cr., Second, Mountain, Highland Terrace, Liberty, and Church Sts., Lynch, 03000086.

Mercer County

Lexington, Harrodsburg, and Perryville Turnpike Rural Historic District, US 68, Harrodsburg, 03000087.

MISSOURI

Greene County

South—McDaniel—Patton Commerical Historic District, (Springfield, Missouri MPS (Additional Documentation)), Roughly bounded by S. Campbell Ave., W. McDaniel St., South Ave., and W. Walnut St., Springfield, 03000088.

MONTANA

Cascade County

Neihart School, 200 S. Main St., Neihart, 03000089.

NEW YORK

Cattaraugus County

Robbins, Simeon B., House, 9 Pine St., Franklinville, 03000091.

Fulton County

Sacandaga Railroad Station, 136 McKinley Ave., Sacandaga Park, 03000094.

Monroe County

Cox, Isaac, Cobblestone Farmstead, 5015 River Rd., Scottsville, 03000092.

Oneida County

Black River Canal Warehouse, 502 Water St., Boonville, 03000093.

Queens County

Church of the Resurrection, 85–09 118th St., Kew Gardens, Borough of Queens, 03000090.

OKLAHOMA

Ottawa County

Tri-State Zinc and Lead Ore Producers Association Office, 508 N. Connell Ave., Picher, 03000097.

Sequoyah County

First Presbyterian Church, 120 S. Oak St., Sallisaw, 03000096.

Tulsa County

Broken Arrow Elementary—Junior High School, 210 N. Main, Broken Arrow, 03000095.

Circle Theater, 10 S. Lewis Ave., Tulsa, 03000098.

Wagoner County

First Presbyterian Church of Coweta, 200 S Ave. B, Coweta, 03000099.

PUERTO RICO

San Juan Municipality

Puerto Rico Island Penitentiary, S of PR 21, Rio Piedras, 03000100.

TEXAS

Hays County

Michaelis, M.G., Ranch, 3600 FM 150 W, Kyle, 03000101.

[FR Doc. 03–3958 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2658–2003]

Registration of Certain Nonimmigrant Aliens From Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice amends two previous Notices that require certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service. This Notice changes the dates on which the registration periods close, thus permitting the affected nonimmigrant aliens more time to register. The Notice permits nonimmigrant aliens of Pakistan or Saudi Arabia who are required to register under the Notice published on December 18, 2002, at 67 FR 77642, to timely register on or before March 21, 2003. The Notice permits nonimmigrant aliens of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who are required to register under the Notice published on January 16, 2003, at 68 FR 2363, to timely register on or before April 25, 2003. This Notice makes no other changes to the registration requirements.

EFFECTIVE DATES: This Notice is effective on February 19, 2003.

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

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may ''prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence.''

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). *See* 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System (''NSEERS''). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in previously published Notices shall be registered and required to provide specific information. *See* 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002); 67 FR 77642 (Dec. 18, 2002); 68 FR 2363 (Jan. 16, 2003). The Attorney General has the sole discretion to make this determination.

Under this Notice, the Attorney General grants the nonimmigrant aliens required to register under two of these Notices additional time to register. This Notice has the effect of changing the closing date for registration under the Notice published on December 18, 2002, at 67 FR 77642, from February 21, 2003, to March 21, 2003. Thus, covered nonimmigrant aliens from Pakistan or Saudi Arabia are being permitted an additional month to register. This Notice also has the effect of changing the closing date for registration under the Notice published on January 16, 2003, at 68 FR 2363, from March 28, 2003, to April 25, 2003. Thus, covered nonimmigrant aliens from Bangladesh, Egypt, Indonesia, Jordan, or Kuwait are being given almost an additional month to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

A willful failure to comply with the notices setting forth the special registration requirements constitutes a failure to maintain nonimmigrant status

under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). *See* 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the notices is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to the notices fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). *See* 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) Notwithstanding the terms of the Notice published on December 18, 2002, at 67 FR 77642, nonimmigrant aliens included in that Notice may timely register on or before March 21, 2003.

(b) Notwithstanding the terms of the Notice published on January 16, 2003, at 68 FR 2363, nonimmigrant aliens included in that Notice may timely register on or before April 25, 2003.

Dated: February 13, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–3960 Filed 2–18–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2248–02]

Notice Designating Additional Ports-of-Entry for Departure of Aliens Who Are Subject to Special Registration

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On August 12, 2002, the Attorney General published a final rule in the **Federal Register** at 67 FR 52584, to revise the special registration requirements for nonimmigrant aliens whose presence in the United States requires closer monitoring. The final rule requires that when a nonimmigrant alien subject to special registration departs from the United States, he or she must report to an Immigration and Naturalization Service (Service) inspecting officer at any port-of-entry (POE), unless the Service has, by publication in the **Federal Register**, specified that nonimmigrant aliens subject to special registration may not depart from specific POEs. The requirement for an alien subject to special registration to report to the Service prior to departing the United States became effective on October 1, 2002.

On September 30, 2002, the Service published a notice in the **Federal Register** at 67 FR 61352 listing POEs through which nonimmigrant aliens who have been specially registered may depart from the United States. This notice provides the public with an expanded list of ports through which nonimmigrant aliens who have been specially registered may depart from the United States. This list is provided in the affirmative as a list of approved POEs to assist the public.

DATES: This notice is effective March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen M. Dearborn, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number: (202) 305–2970.

SUPPLEMENTARY INFORMATION:

Nonimmigrant Aliens Subject to Special Registration Requirements

Effective September 11, 2002, the Service regulations at 8 CFR 264.1(f) provide that nonimmigrant aliens (other than those applying under section 101(a)(15)(A), or (G) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101(a)(15)(A), (G)) who meet certain criteria are subject to special registration, photographing and fingerprinting requirements. If a nonimmigrant alien who is registered, photographed, and fingerprinted upon arrival in the United States remains in the United States 30 days or more, he or she must report in person to a Service office to provide additional documentation that confirms that he or she is complying with the terms of his or her admission. Whether registered upon arrival in the United States or notified via publication in the **Federal Register** to report to a Service office for registration subsequent to admission, nonimmigrant aliens who are subject to special registration must be interviewed annually. Upon each change of address and where applicable, each change of educational institution or employment, a special registrant who remains in the United States for 30 days or more must also notify the Service within 10 days of such change.

Beginning on October 1, 2002, when a nonimmigrant alien subject to special registration departs the United States, he or she is required to report to an inspecting officer at the POE through which the alien is departing unless the Service has specified in a **Federal Register** notice that certain POEs may not be used for departure by special registrants. A nonimmigrant alien, subject to special registration, who fails to report his or her departure to an inspecting officer as required, may thereafter be presumed to be inadmissible to the United States.

On September 30, 2002, the Service published a notice in the **Federal Register** notifying the public that not all ports may be used for departure by special registrants. In addition, the notice designated those POEs that could be used for final registration and departure by nonimmigrant aliens who are subject to special registration. The purpose of this notice is to expand the list of POEs that may be used for departure by special registrants.

Ports-of-Entry Which Are Not Authorized for the Departure of Nonimmigrant Aliens Subject to Special Registration

Nonimmigrant aliens who are subject to special registration may not depart the United States from any POE listed in, or regarded as designated by 8 CFR 100.4(c)(2), or (c)(3), or any other point-of-embarkation, other than those listed below.

Ports-of-Entry Designated for Final Registration and Departure by Nonimmigrant Aliens Subject to Special Registration

The following POEs are specifically designated for final registration and departure by nonimmigrant aliens subject to special registration. Nonimmigrant aliens subject to special registration may not be examined by the Service and depart the United States through any location other than those listed below. On March 3, 2003 those POEs identified with an asterisk below, will be authorized to provide final registration and departure by nonimmigrant aliens subject to special registration. The other POEs listed without the asterisks were designated on October 1, 2002, and will continue to process special registrants for final registration and departure.

Amistad Dam POE, Texas;
Alcan POE, Alaska;

Anchorage International Airport, Alaska;
Atlanta Hartsfield International Airport, Georgia;
Baltimore–Washington International Airport, Maryland;
Bell Street Pier 66 (Seattle) Cruise Ship Terminal, Washington;
Bridge of the Americas POE, Texas;
Brownsville/Matamoros POE, Texas;
Buffalo Peace Bridge POE, New York;
Cape Vincent POE, New York;
Calexico POE, California;
Calais POE, Maine;
Cape Canaveral Seaport, Florida;
Chicago Midway Airport, Illinois;
Chicago O'Hare International Airport, Illinois;
Champlain POE, New York;
Charlotte International Airport, North Carolina;
Chateaugay POE, New York;
Cleveland International Airport, Ohio;
Columbus POE, New Mexico;
Dallas/Fort Worth International Airport, Texas;
Del Rio International Bridge POE, Texas;
Denver International Airport, Colorado;
Derby Line POE, Vermont;
Detroit International (Ambassador) Bridge POE, Michigan;
Detroit Canada Tunnel, Michigan;
Detroit Metro Airport, Michigan;
Douglas POE, Arizona;
Eagle Pass POE, Texas;
Eastport POE, Idaho;
Fort Covington POE, New York;
Fort Duncan Bridge POE, Texas;
Galveston POE, Texas;
Grand Portage POE, Minnesota;
Guam International Airport;
Heart Island POE, New York;
Hidalgo POE, Texas;
Highgate Springs POE, Vermont;
Honolulu International Airport, Hawaii;
Honolulu Seaport, Hawaii;
Houlton POE, Maine;
Houston George Bush Intercontinental Airport, Texas;
Houston Seaport, Texas;
International Falls POE, Minnesota;
John F. Kennedy International Airport, New York;
Ketchikan Seaport, Alaska;
Kona International Airport and Seaport, Hawaii;
Gateway to the Americas Bridge POE, Laredo, Texas;
Las Vegas (McCarran) International Airport, Nevada;
Lewiston Bridge POE, New York;
Logan International Airport, Massachusetts;
Long Beach Seaport, California;
Los Angeles International Airport, California;
Madawaska POE, Maine;
Miami International Airport, Florida;
Miami Marine Unit, Florida;
Minneapolis/St. Paul International Airport, Minnesota;
Mooers POE, New York;
Niagara Falls, Rainbow Bridge, New York;
Newark International Airport, New Jersey;
Nogales POE, Arizona;
Ogdensburg POE, New York;
Orlando, Florida;
Oroville POE, Washington;
Otay Mesa POE, California;
Pacific Highway POE, Washington;
Pembina POE, North Dakota;
Philadelphia International Airport, Pennsylvania;
Phoenix (Sky Harbor) International Airport, Arizona;
Piegan POE, Montana;
Pittsburgh International Airport, Pennsylvania;
Point Roberts POE, Washington;
Port Everglades Seaport, Florida;
Port Arthur POE, Texas;
Port Huron POE, Michigan;
Portal POE, North Dakota;
Portland International Airport, Oregon;
Progreso Bridge POE, Texas;
Raymond POE, Montana;
Roosville POE, Montana;
Rouses Point POE, New York;
San Antonio International Airport, Texas;
San Diego (Lindbergh Field) International Airport, California;
San Diego Seaport, California;
San Francisco International Airport, California;
San Juan International Airport and Seaport, Puerto Rico;
Sanford International Airport, Florida;
Sault St. Marie POE, Michigan;
Seattle Seaport, Washington;
Seaway International Bridge/Massena POE, New York;
Seattle–Tacoma International Airport, Washington;
St. Louis International Airport (Lambert Field), Missouri;
St. Thomas Seaport, U.S. Virgin Islands;
Sweetgrass POE, Montana;
Tampa International Airport and Seaport, Florida;
Thousand Islands POE, New York;
Trout River POE, New York
Washington Dulles International Airport, Virginia; and
Ysleta POE, Texas

Notice of Where To Report for Final Registration and Departure

Upon registration, whether registered at a POE upon admission to the United States or at a Service office subsequent to admission, each nonimmigrant alien subject to special registration will be issued an information packet that will list each POE authorized for departue and other instructions on how to comply with 8 CFR 264.1. This packet will also contain specific information regarding hours of operation, directions and contact numbers.

Due to the limited availability of current resources, specifically departure staff and facilities, the Service must limit the POEs authorized for departure registration to effectively capture departure data. As more POEs become available to examine special registrants upon departure, the Service will designate the POEs by notice in the **Federal Register** and make the list available at Service offices and on its Web site at *http://www.ins.usdoj.gov.*

Dated: January 31, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–4130 Filed 2–18–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Welfare-to-Work Grant Program; Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the reinstatement of the previously-approved reporting system for the Indian and Native American Welfare-to-Work (INA WtW) Grant Program for three more years (October 1, 2001 to September 30, 2004), or until the expiration of the program if sooner. A copy of the previously-approved information collection request (ICR), especially the reporting forms and completion instructions, can be obtained by contacting the office listed

below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 21, 2003.

ADDRESSES: James C. DeLuca, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3754 (VOICE) or (202) 693–3818 (FAX) (these are not toll-free numbers) or Internet: *jdeluca@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* The Employment and Training Administration of the Department of Labor is requesting reinstatement of its previously-approved reporting system for the Indian and Native American Welfare-to-Work Grant Program for three more years (October 1, 2001 to September 30, 2004), or until the program expires. Current statutory authorization for the INA WtW program has technically expired, but grantees can continue to expend funds for up to five years ''after the date the funds are so provided.'' However, no current grantee may expend FY 1999 INA WtW funds after September 30, 2004. As a result of the statutory program amendments of 1999 and 2000, the Department has decided that the reporting system requires only relatively minor changes at this time.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The proposed renewal of this ICR will be a continuation of the previously-approved system that will be used by the approximately 34 different INA WtW grantees operating some forty (40) grants that have FY 1998 or FY 1999 funds remaining. It will be the primary reporting vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and wage data, as well as detailed financial data on program expenditures. The previously-approved paperwork burdens are covered under OMB Clearance No. 1205–0386 (expiration date 09/30/2001). However, because of the significant reduction in the number of grantees still operating INA WtW programs, those burden estimates have not been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the two main components of INA WtW program operation: (1) Recordkeeping; and (2) reporting.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: Reporting system for Indian and Native American Welfare-to-Work Grant Program.

OMB Number: 1205–0386.

Catalog of Federal Domestic Assistance Number: 17.254.

Recordkeeping Requirements: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

Affected Public: Federally-recognized tribes, Alaska Native regional non-profit corporations, and/or consortia of any of the above.

Total Estimated Burden: 2,880 hours (reporting); 19,800 hours (recordkeeping) Detailed breakdown of the above-estimated burden hour requirements for the INA WtW program are as follows: (It should be noted that the FY 1998 and FY 1999 INA WtW grants are funded separately, by law. Therefore, even though some grantees are still operating both programs, these burden estimates are done as if the tribe were two separate entities, since the two grants must be reported upon separately and separate records must be kept on expenditures and participants.)

Required activity	INA WtW form no.	# of respondents	Responses per year	Total responses	Hours per response	Total burden hrs.
Participant Recordkeeping	.....	40	.....	6,600	3.00	19,800
(Reporting) Financial Status Report	ETA 9069–1	40	4	160	9	1,440
Participation and Characteristics Rpt	ETA 9069	40	4	160	9	1,440
Totals	.....	40	8	6,920	21	22,680

Note: Recordkeeping estimates are based on the estimated current INA WtW caseload times an estimated average of 3.00 hours per participant record. This is currently the approximate experience with actual INA WtW performance. Also, this burden estimate does not include those INA WtW grantees participating in the demonstration under Public Law 102–477. Any INA WtW burden estimate(s) for ''477 grantees'' would be included under the Bureau of Indian Affairs' OMB Clearance Number 1076–0135. The individual time per response (whether plan, record, or report) varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each fiscal year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many INA WtW grantees as possible become computerized, so that response time for planning and reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Grantee Burden Costs

(There are no capital/start-up costs involved in any INA WtW activities)

Recordkeeping: 19,800 hours times an estimated cost per grantee hour of $20.00 (including fringes) = $396,000.

Reporting: 2,880 hours times $20.00 = $57,600 per year.

Total estimated burden costs: $401,760 (nationwide).

As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the required submissions outlined

above, whether for recordkeeping or reporting purposes, are allowable grant expenses. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget continuation of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 11th day of February, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 03–3923 Filed 2–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Independence Coal Company, Inc.

[Docket No. M–2003–006–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) at its White Oak Deep Mine (MSHA I.D. No. 46–08933) located in Boone County, West Virginia. The petitioner would like to use a 2400-volt power center to power a continuous miner with high-voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner has outlined in this petition specific terms and conditions that will be used to protect the 2400-volt trailing cable. The petitioner requests an amendment to its previous petition for modification, docket number M–2002–041–C, to allow the HV trailing cable to be treated just as the 995-volt trailing cable without jeopardizing any safety issues.

2. Independence Coal Company, Inc.

[Docket No. M–2003–007–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) at its Jack's Branch Buffalo Creek Mine (MSHA I.D. No. 46–08513) located in Boone County, West Virginia. The petitioner would like to use a 2400-volt power center to power a continuous miner with high-voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner has outlined in this petition specific terms and conditions that will be used to protect the 2400-volt trailing cable. The petitioner requests an amendment to its previous petition for modification, docket number M–2002–041–C, to allow the HV trailing cable to be treated just as the 995-volt trailing cable without jeopardizing any safety issues.

3. KenAmerican Resources, Inc.

[Docket No. M–2003–008–C]

KenAmerican Resources, Inc., 7590 State Route 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.519–1(b) (Main power circuits; disconnecting switches; locations) at its Paradise Mine (MSHA I.D. No. 15–17741) located in Muhlenberg County, Kentucky. The existing standard requires that ''in an instance on which a main power circuit enters the underground area through a shaft or borehole, a disconnecting switch be installed underground within 500 feet of the bottom of the safe or borehole.'' The petitioner proposes to move its disconnecting switch to the main travelway in the 2nd crosscut from the slope bottom. The switch will be located approximately 750 feet–800 feet of cable length from the bottom of the power borehole. The petitioner states that its proposed alternative method would allow them to put additional roof support in the area where the switch is presently located. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Alfred Brown Coal Company

[Docket No. M–2003–009–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 49.2(b) (Availability of mine rescue teams) at its 7 Ft. Slope Mine (MSHA I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that an attempt to utilize five or more rescue team members in the mine's confined working places would result in diminution of safety to both the miners at the mine and members of the rescue team.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 21, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 11th day of February 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–3881 Filed 2–18–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–015)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

Federal Register Citation of Previous Announcement: 68 FR 3280, Notice Number 03–005, January 23, 2003.

Previously Announced Date of Meeting: February 21, 2003, 12 Noon–1 p.m. Eastern Standard Time.

Meeting has been cancelled and will be rescheduled for a later date.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Pagel, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4621.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3996 Filed 2–18–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–016)]

Aerospace Medicine Occupational Health Advisory Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aerospace Medicine Occupational Health Advisory Committee.

DATES: Friday, March 14, 2003, 9 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 3H46 (MIC 3), Washington, DC. Attendees must check in at the Security Desk at the West Lobby (4th and E Streets) and be escorted to the conference room.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Barnes, Code AM, National Aeronautics and Space Administration, Washington, DC, 20546, 202/358–2390.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks by Chief Health and Medical Officer
—Charter of Committee replacing former Aerospace Medicine Occupational Health Advisory Subcommittee
—Aerospace Medicine Highlights and Issues
—Occupational Health Highlights and Issues
—Open discussion and action assignments
—Next Meeting
—Closing Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the NASA Advisory Council which is also meeting at the Stennis Space Center on March 19 and 20, 2003. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this first meeting of the Aerospace Medicine Occupational Health Advisory Committee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 PM EDT on March 14, 2003) prior to the date of the public meeting. Identification information is to be provided to Pam Barnes, (202) 358–2390, pbarnes@hq.nasa.gov. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600).

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3997 Filed 2–18–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Meeting

TIME AND DATE: 10 a.m., Thursday, February 20, 2003.

PLACE: Board Room, 7th Floor Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. Proposed Rule: Part 709 of NCUA's Rules and Regulations, Addition to Swap Agreement to the Definition of a Qualified Financial Contract.

RECESS: 11:15 am.

TIME AND DATE: 11:30 a.m., Thursday, February 20, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

2. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–4041 Filed 2–13–03; 4:08 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Meetings; Sunshine Act; Agenda

TIME AND PLACE: 9:30 a.m., Wednesday, February 26, 2003.

PLACE. NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

7532 Highway Accident Report—Collision of Greyhound Lines, Inc., Motorcoach and DelCar Trucking Truck Tractor-Semitrailer, Loraine, Texas, on June 9, 2002.

News Media Contact: Telephone (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 14, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–4084 Filed 2–14–03; 12:15 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 60—''Disposal of High-Level Radioactive Wastes in Geologic Repositories''.

2. *Current OMB approval number:* 3150–0127.

3. *How often the collection is required:* The information need only be submitted one time.

4. *Who is required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste

geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, currently under investigation by the U.S. Department of Energy, which is now regulated under 10 CFR Part 63).

5. *The number of annual respondents:* 1; however, none are expected in the next three years.

6. *The number of hours needed annually to complete the requirement or request:* 121 hours; however, none are expected in the next three years.

7. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site proposed by the U.S. Department of Energy). Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. As provided in § 60.1, the regulations in 10 CFR Part 60 no longer apply to the licensing of a geologic repository at Yucca Mountain. All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR Part 63, and were approved by the Office of Management and Budget under control number 3150–0199 (§ 63.8). The Yucca Mountain site is regulated under 10 CFR Part 63 (66 FR 55792, November 2, 2001).

Submit, by April 21, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 12th day of February, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–3935 Filed 2–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.60, ''Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation,'' and 10 CFR Part 50, Appendix G, ''Fracture Toughness Requirements,'' for Facility Operating License No. DPR–22, issued to the Nuclear Management Company, LLC (the licensee), for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, which would allow the use of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code) Code Case N–640 as the basis for revised reactor vessel pressure and temperature (P/T) limit curves in the Monticello Technical Specifications (TSs).

The regulation at 10 CFR Part 50, Section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 requires that P/T limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the ASME Code, Section XI, Appendix G, limits.

ASME Code Case N–640 permits the use of alternate reference fracture toughness (*i.e.*, use of ''K_{IC} fracture toughness curve'' instead of ''K_{IA} fracture toughness curve,'' where K_{IC} and K_{IA} are ''Reference Stress Intensity Factors,'' as defined in ASME Code, Section XI, Appendices A and G, respectively) for reactor vessel materials in determining the P/T limits. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using ASME Code Case N–640 to establish the P/T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G. Therefore, an exemption to apply ASME Code Case N–640 is required.

The proposed action is in accordance with the licensee's application dated April 22, 2002, as supplemented by letter dated September 16, 2002.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–640 in order to revise the method used to determine the P/T limits because continued use of the present curves unnecessarily restricts the P/T operating window. Since the P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure, continued operation of Monticello with these P/T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 °F in a limited operating window during the

pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P/T curves, as allowed by ASME Code Case N–640, would not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Monticello.

Agencies and Persons Consulted

On February 11, 2003, the staff consulted with the Minnesota State official, Nancy Campbell of the Department of Commerce, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated April 22, 2002, as supplemented by letter dated September 16, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of February 2003.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3936 Filed 2–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47354; File No. SR–NASD–2002–180]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Prohibition Against Guarantees and Sharing in Customer Accounts

February 12, 2003.

On December 18, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to amend NASD Rule 2330(e) to clarify that members and their associated persons are prohibited from guaranteeing any customer against loss in connection with any securities transaction or in any securities account of the customer. Additionally, the proposal would require that associated persons obtain written authorization from their employing member firm and the customer before sharing in a customer's account under Rule 2330(f). The proposal would delete the requirement that members and associated persons obtain the written authorization of the member carrying the account before sharing in a customer's account from Rule 2330(f). Notice of the proposed rule change was published for comment in the **Federal Register** on January 6, 2003.[1] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[2] The Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[3] which requires, among other things, that the rules of a registered national securities association 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. Specifically, the Commission believes that the proposal should facilitate compliance with Rule 2330(e) by clarifying that members and their associated persons are prohibited from making guarantees to any customer, not just those whose accounts are carried by the member or those for whom a member is effecting a securities transaction. The proposal should also strengthen the regulatory protections provided in Rule 2330(f) by requiring members and their associated persons to obtain the prior written authorization of the customer before sharing in any customer account. Finally, the Commission believes that requiring associated persons who wish to share in a customer account to obtain authorization from their employer is a more effective way to detect and deter misconduct than requiring such authorization from the member carrying the account.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the

[1] *See* Securities Exchange Act Release No. 47103 (December 30, 2002), 68 FR 595.

[2] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[3] 15 U.S.C. 78o(b)(6).

[4] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASD–2002–180) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3943 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47344; File No. SR–NASD–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, by the National Association of Securities Dealers, Inc. To Clarify Rule 4701(o) Regarding the Ability of UTP Exchanges To Enter Non-Attributable Quotes/Orders Into Nasdaq's SuperMontage System

February 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On January 30, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] On February 6, 2003, Nasdaq filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4701(o) to clarify the ability of UTP Exchanges to enter Non-Attributable Quotes/Orders into the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage''). The text of the proposed rule change is below. Proposed new language is *italicized*.

4700. NASDAQ National Market Execution System (NNMS)

4701. Definitions—Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (n) No Change.

(o) The term ''Non-Attributable Quote/Order'' shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility. *UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).*

(p) through (jj) 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, Nasdaq 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. Nasdaq 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

On July 1, 2002, Nasdaq filed SR–NASD–2002–91 with the Commission setting forth rules governing the entry of orders and quotes by UTP Exchanges into Nasdaq's SuperMontage system.[5] As explained in that filing, UTP Exchanges that elect to participate in the system are allowed to enter a single bid Quote/Order and a single offer Quote/Order representing their principal trading interest that will displayed along with the UTP Exchange's identifier in the Nasdaq Quotation Montage. If that Attributed Quote/Order falls with the number of price levels subject to aggregation, that UTP Quote/Order will be included in the total aggregated share amounts displayed by the system. For their agency Quotes/Orders, UTP Exchanges that elect to participate in SuperMontage can send one, or multiple, Non-Attributable Quote/Orders to the system. These Quotes/Orders will be displayed under SuperMontage's SIZE MMID. In order to make clear the ability of participating UTP Exchanges to enter Non-Attributable Quotes/ Orders for their agency customers, Nasdaq proposes to amend the definition of Non-Attributable Quote/Order in NASD Rule 4701(o) to reference NASD Rule 4710(e) that authorizes and governs UTP Exchange capabilities in SuperMontage.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] in general, and with section 15A(b)(6) of the Act,[7] in particular, in that it is 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will 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

Nasdaq has not solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 30, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq provided a basis for waiving the 30-day operative delay.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 6, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq amended the proposed rule change language for Rule 4701(o) to reflect changes approved by the Commission in Release No. 34–47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). For the purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 6, 2003, the date Nasdaq filed Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (File No. SR–NASD–2002–91 regarding the voluntary participation of national securities exchanges in the SuperMontage).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(6).

Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq believes the proposed rule change clarifies a functionality that is already available to UTP Exchanges. In particular, as already set forth in NASD Rule 4710(e), the proposed rule change makes clear that a UTP Exchange participating in the SuperMontage may enter Non-Attributable Quotes/Orders for their agency customers into the system using the SIZE MMID.[10]

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[11] The Commission notes that this proposal merely clarifies the ability of UTP Exchanges to enter Non-Attributable Quotes/Orders, as currently permitted by the system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 file number SR–NASD–2003–05 and should be submitted by March 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3944 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See* Amendment No. 1, *supra* note 3.

[11] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47351; File No. SR–NASD–2002–60]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Primex Auction System®

February 11, 2003.

I. Introduction

On May 1, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] requesting permanent approval of the Primex Auction System® (''Primex'' or ''System''). The proposed rule change was published for public comment in the **Federal Register** on May 31, 2002.[3] On May 28, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The comment period expired on June 21, 2002.[5] On July 25, 2002, the Commission received one comment letter on the Original Proposal.[6] On October 7, 2002, Nasdaq filed a response to the NYSE Comment Letter.[7] On November 1, 2002, Nasdaq filed Amendment No. 2 to the proposed rule change.[8] On February 4, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.[9]

This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment Nos. 1, 2, and 3 from interested persons, and approving Amendment Nos. 1, 2, and 3 on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45983 (May 23, 2002), 67 FR 38152 (''Original Proposal'').

[4] *See* letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 1, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq removed the following language inadvertently included in proposed NASD Rule 5013(c)(2): ''Participants that are Primex Auction Market Makers for a security may submit Market Orders in that security for an immediate (*i.e.*, ''zero second'') Auction, provided the Participant attaches certain match parameters as set forth in proposed NASD Rule 5014(b). Market Orders for at least 10,000 shares or $200,000 in market value are also eligible for a zero second Auction, regardless of whether or not match parameters are attached.''

[5] Nasdaq has granted the Commission several extensions of time to consider Nasdaq's proposal, the most recent extending the time period until February 14, 2003.

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (''NYSE''), to Jonathan G. Katz, Secretary, Commission, dated July 24, 2002 (''NYSE Comment Letter'').

[7] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated October 7, 2002 (''Nasdaq Response Letter'').

[8] *See* letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated October 31, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq seeks permanent approval of the following changes to Nasdaq's application of Primex: (1) Elimination of the end-of-day anonymity feature; (2) implementation of a system change to prohibit appropriately marked orders from executing in violation of the NASD short sale rule; (3) amendments to proposed NASD Rule 5020 to reflect that Nasdaq delayed for an additional calendar quarter the rule requiring Primex Auction Market Makers (''PAMMs'') to submit a certain percentage of their orders to Primex; (4) amendments to proposed NASD Rule 5016 to reflect that orders not fully executed in Primex can be forwarded to the SuperMontage version (''SuperMontage'') of the Nasdaq National Market Execution System (''NNMS''); and (5) the addition of two new conditions that can be attached to orders submitted to Primex: an Anti-Internalization Qualifier and an All or None condition.

[9] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated February 3, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq seeks permanent approval to (1) change the minimum size requirement for Predetermined Relative Indications from a tiered structure depending on the amount of price improvement, to a standard minimum size requirement of 100 shares; (2) reprogram the System to reject trading interest marked as ''short'' or ''short exempt'' in any exchange-listed security eligible for participation in the InterMarket Trading System; and (3) modify proposed NASD Rule 5017 to be consistent with the system change relating to short sales set forth in Amendment No. 2. Telephone call among Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq; Gordon Fuller, Counsel to the Assistant Director, Division, Commission, and Jennifer Lewis, Attorney, Division, Commission, on February 7, 2003.

II. Background

Nasdaq has operated Primex as a facility of the NASD since December 17, 2001. Primex operates as a Pilot Trading System pursuant to a temporary, two-year exemption from the rule filing requirements of Section 19(b) of the Act[10] under Rule 19b–5 under the Act.[11] Nasdaq represents that Primex has exceeded the volume threshold required to maintain its status as a Pilot Trading System pursuant to Rule 19b–5 under the Act.[12] Accordingly, Nasdaq now seeks permanent approval of the Primex rules. Pending such approval, the NASD submitted a proposed rule change setting forth the rules governing Primex and permitting Nasdaq to continue to operate Primex on a temporary basis.[13]

III. Brief Description of Primex [14]

Participants

Primex is a voluntary system available to any NASD member and other entities that a member chooses to sponsor. To access the System, a member must be in good standing and have executed the necessary agreements with Nasdaq. Members granted access to the System are referred to as Primex Auction System Participants (''Participants''), and can access Primex for their customers or for themselves. Entities that are not members can access the System by becoming a Sponsored Subscriber of a Participant (''Sponsored Subscriber''). The Participant assumes responsibility for all activity conducted through the System by the Sponsored Subscriber.

There are two categories of Primex Participants: Primex Auction Market Makers (''PAMMs'') and Crowd Participants. By becoming a Participant, a member automatically receives the right to trade as a Crowd Participant for any security eligible for trading in the System. In general, Crowd Participants can view all orders exposed in the System; interact with any order in the System; submit orders to the System; and trade as principal, agent, or riskless principal. In addition, PAMMs are entitled to exercise certain matching rights that allow a PAMM to commit capital to its customer orders in conjunction with the order exposure process; provide execution guarantees for its own customer orders submitted to the System; and use certain types of orders that permit the PAMM to facilitate block trades and ''clean crosses.'' PAMMs are also entitled to share in transaction revenue paid by other Participants when those other Participants execute against a PAMM's customer orders.

To become a PAMM, a member must register as such with Nasdaq for each security in which the member wishes to trade in such capacity. Members that seek to become PAMMs also must be registered as Nasdaq market makers with respect to Nasdaq-listed securities (*i.e.*, Nasdaq National Market® and The Nasdaq SmallCap Market℠ securities) or Consolidated Quotation Services (''CQS'') market makers with respect to exchange-listed securities. With respect to any security eligible for which a Participant is registered as a PAMM, such PAMM must submit to the System a minimum percentage [15] of its Mandatory Eligible [16] public customer orders (including customer orders of another broker-dealer that directs such orders to the PAMM) for those securities in which it is registered as a PAMM.

Orders

Participants may submit unpriced market orders, as well as orders that have specified, fixed prices that are marketable or priced between the NBBO. Orders can be submitted in any round lot or mixed lot, but odd lot orders are not accepted. Fixed price orders are eligible only for ''immediate or cancel'' treatment.

Participants can choose the maximum duration of the exposure for their orders. Unpriced market orders generally have a default maximum broadcast period of 15 seconds, but executions can take place sooner if there are satisfactory responses from the crowd at any time during the exposure of the order. Executions can occur instantaneously when there is crowd trading interest residing in the System. Trading interest can reside in the System when Participants define their interest in advance of an order being placed, or when other, contra side orders are already in the process of being exposed. In addition, Participants also may elect to have the order exposed for an immediate or ''zero second'' execution, depending on the size of the order or, as described below, guarantee an execution by committing liquidity in the absence of satisfactory interest from the crowd. Transactions always are executed at or within the NBBO.

An order also can be submitted with a condition attached requiring a minimum amount of price improvement relative to the current NBBO at the time of execution. A Participant utilizing this feature for an order to buy would specify, when entering the order into the System, that the order be executed only if the exposure yields an execution with price improvement of 3 cents below the ''Best Offer'' as publicly displayed in the NBBO at the time of execution.

PAMMs are entitled to attach certain match parameters to customer orders they submit to the System. For example, a PAMM may submit a customer order with a 50% match parameter. Any interest provided by the crowd is matched in both size and price by a corresponding execution with the PAMM. The PAMM must be willing to execute the entire order when using this match parameter, in the absence of sufficient response from the crowd.

PAMMs also can submit customer orders with a Two Cent Match parameter. This function allows the PAMM entering the order to execute the customer order, provided it is willing to match the price established by the crowd for the entire order to the extent the price offered by the crowd is within two cents of the NBBO. If there is crowd interest willing to provide more than two cents of price improvement, the PAMM loses that portion of the order to the crowd.

PAMMs also are entitled to provide execution guarantees within the System. This feature ensures that any balance of an order remaining after exposing it to the crowd will receive a liquidity guarantee, established by the PAMM for each order submitted, at a price at least as good as the NBBO at that time.

Any condition, match parameter, or guarantee must be attached to an order at the time it is submitted to the System. The existence of any condition, match parameter, or guarantee that may be attached to an order is never communicated or displayed to the crowd.

The System also provides participants the option of having the balance of an unexecuted order returned to them or forwarded to other Nasdaq systems for execution. Participants must indicate their preference upon submission of an order to the System. For example, a Participant can submit an order with an indication that it should be forwarded to another Nasdaq system if the order is

[10] 15 U.S.C. 78s(b).

[11] 17 CFR 240.19b–5.

[12] 17 CFR 240.19b–5. *See* Securities Exchange Act Release No. 45983 (May 23, 2002), 67 FR 38152 (''Original Proposal'').

[13] Notice of the filing and the immediate effectiveness of the proposed rule change was published on May 31, 2002 in the **Federal Register.** *See* Securities Exchange Act Release No. 45982 (May 23, 2002), 67 FR 38163.

[14] *See* the Original Proposal for a more detailed description of Primex and the NASD Rules governing Primex.

[15] *See* proposed NASD Rule 5020.

[16] *See* proposed NASD Rule 5011 (definition of ''Mandatory Eligible Order'') and proposed NASD Rule 5020.

not completely executed in Primex. To the extent the exposure concludes and there is a portion of the order remaining, that balance will be converted by the System to an order that is forwarded to SuperSoes (for Nasdaq National Market securities), SuperMontage, or ITS/CAES (for exchange-listed securities, provided the participant also is an ITS/CAES market maker). A Participant's preference is not displayed, exposed or communicated to any other Participant.

Responses and Indications

Participants may submit Responses and Indications to the System, for the purpose of interacting with orders on Primex. Responses and Indications are not communicated to any Participant, except to the extent they result in an execution with an order. Responses and Indications cannot execute against other Responses and Indications. Responses are instructions submitted to the System by Participants to interact with available orders exposed on Primex. Responses may be either a Fixed Price Response (*e.g.*, buy 1,000 at $20) or a Relative Priced Response (*e.g.*, buy 1,000 at the bid plus 3 cents).

Indications are instructions submitted to the System to interact with future orders exposed on Primex by either the next day or the next five days, as selected by the Participant. An Indication may be a Predefined Relative Indication (''PRI'') or a Go-Along Indication. PRIs have no specific fixed price, but are expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the System activates the PRI against orders on Primex. PRIs are ranked in relative price/time priority among all other PRIs and any same-side orders currently being exposed. When activated by the System, a PRI will match against orders at a price equal to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed at that time in the NBBO, plus or minus (respectively) the relative price term associated with that PRI; provided that such price also satisfies any applicable condition associated with the order to which it is responding. All PRIs must be for at least 100 shares. The System will only accept PRIs that meet the required amounts of price improvement (set forth in proposed NASD Rule 5018(c)(1)(C)). Participants may associate a Per Auction Maximum size with a PRI, which will provide the Participant with an opportunity to withdraw the PRI once the Per Auction Maximum is exhausted.

Go-Along Indications also have no specific fixed price, and are also expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the System activates the PRI against orders on Primex. Go-Along Indications are only activated when there has been at least one other contemporaneous Crowd execution at the NBBO, provided there are no PRIs available or orders being exposed. Each Go-Along Indication is required to be for at least 10,000 shares.

All orders submitted to the System are identified as either a Public Order (in general, an order for the account of a customer) or a Professional Order (in general, an order for the proprietary account of a broker-dealer). This status is not communicated to any other Participant, but is used to determine whether an order is available to interact with the Response or Indication of a Crowd Participant. A Participant that responds to orders on Primex can choose whether its Responses and Indications interact with both Public and Professional Orders, or just Public Orders. However, a Participant entering an order does not have the ability to select or control whether public or professional interest may interact with the order.

IV. NYSE Comment Letter and Nasdaq Response

In the NYSE Comment Letter, the NYSE argued against the Commission granting permanent approval to Primex. The NYSE argued that the Commission must evaluate whether Primex complies with Nasdaq's regulatory obligations as an exchange pursuant to Section 6 of the Act,[17] even though Nasdaq's exchange application is pending with the Commission. The NYSE argued, among other things, that Primex's true character is not that of an auction, but rather, an anti-competitive dealer internalization system. For example, the NYSE argued that Primex's ''match mechanism'' for dealer guarantees allows dealers to jump ahead of pre-existing customer orders.

In the Nasdaq Response Letter, Nasdaq stated that it would respond to all of the comments raised by the NYSE Comment Letter, even though it is only required to comply with the requirements of Section 15A of the Act[18] because of its current status as a registered securities association. Nasdaq further stated that Primex is fully consistent with these statutory obligations.

The NYSE argued that the requirement that PAMMs submit 80% of their order flow is anti-competitive and compromises the ability of broker-dealers to comply with their best execution obligations. The NYSE further stated that the 80% requirement is an off-board trading restriction which conditions the ability of any member to effect any transaction otherwise than on Primex. The NYSE also believes the requirement unfairly discriminates against members with high volume of order flow.

Nasdaq responded that the 80% delivery requirement applies only to those dealers who wish to take advantage of the benefits of certain rebates and features available to PAMMs. Nasdaq stated that the only penalty for not meeting the 80% delivery requirement is to be ineligible for PAMM status; there are no disciplinary sanctions for failing to meet the 80% requirement, and such dealers will still have access to the other features of Primex. Nasdaq contended that the requirement does not place participant in a position where it must choose between violating a NASD rule and its duty of best execution; rather, each participant is free to execute its orders in whichever manner it believes can obtain best execution. Finally, Nasdaq stated that all orders that are exposed in Primex are eligible for the 80% test, even if they are executed elsewhere.

Nasdaq further argued that the 80% requirement is designed to encourage dealers with customer order flow to expose customer's orders to the public. It asserted that, without the 80% requirement, the market would believe that dealers were only posting unwanted orders.

NYSE argued that Primex allows participating dealers to provide customers with trade prices no better than if their orders had been internalized, and therefore should not claim to offer an auction-type execution. NYSE contended that there are no true market makers on Primex because no participant has an affirmative obligation to provide the liquidity of continuous two-sided quotations. NYSE further argued that Primex does not display quotes or even the existence of any trading interest in the ''virtual'' trading crowds that Nasdaq claims exists as a source of liquidity, nor does it display most orders entered onto the system to interact with the putative trading crowd. NYSE stated that customer orders may be entered for immediate auction, which it argued would not provide any opportunity for participants to respond.

Nasdaq responded that Primex is designed to expose to a broader audience orders that might otherwise be internalized. Moreover, Nasdaq stated that even if such orders are internalized, federal securities laws do not prohibit

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78o-3.

internalization. In addition, some customers value speed more than other factors. Speed has become an indication of execution quality. Nasdaq characterized Primex's use of PRIs as designed to ensure that notwithstanding the need for speed on the order entry side, there would still remain a fair and reasonable opportunity for any and all crowd participants to respond to such order flow if they choose to do so, regardless of the auction selected. Nasdaq argued that Primex's technology allows this immediate interaction.

The NYSE argued that Primex artificially limits the ability of dealers to enter PRIs below established minimum sizes, thereby discouraging trading interest and constraining liquidity. As a result of consultation with members, Nasdaq has modified the minimum size requirements for PRIs to a less burdensome standard requirement of 100 shares.

The NYSE argued that Primex participants may selectively trade against agency orders alone by using a mechanism to screen out professional orders. NYSE contends that this is discriminatory, not an auction, and acts as a disincentive to participation.

Nasdaq responded that this feature ensures that any price improvement or enhanced liquidity opportunities be reserved for public customers, and not necessarily professional traders who could otherwise take advantage of the System's benefits and ''pre-empt'' the ability of a public customer to receive such benefits.

The NYSE argued that Primex's fee structure penalizes liquidity providers. Fees are charged to liquidity providers, and rebates are given when PRIs result in a trade. The NYSE believes the fee structure formalizes a payment for order flow arrangement to compensate PAMMs when they are displaced from internalizing their own customer orders.

Nasdaq stated that even though the fee structure is not included in the proposed rule change and thus not before the Commission for review, it would respond to the NYSE's arguments. Nasdaq explained that orders exposed in Primex are not charged for an execution so as to avoid any penalty that would discourage participants, particularly dealers, from exposing customer order flow to others. A fee is charged only to those who choose to respond to such order flow with Primex's unique bidding tools. Nasdaq also responded that it is not required to have a uniform pricing principle for all of its systems. The only requirement is an equitable allocation of reasonable fees among members, and the fees for Primex comply with this standard.

The NYSE argued that Primex fails to provide a market structure that ensures its participants comply with Rule 10a–1 under the Act (the ''Short Sale Rule'').[19] As a result of consultation with members, Nasdaq has implemented a system modification that will prohibit appropriately marked orders from executing in violation of NASD Rule 3350, the NASD short sale rule.[20] In addition, Nasdaq has reprogrammed the System to reject trading interest marked as ''short'' or ''short exempt'' in any exchange-listed security eligible for participation in the InterMarket Trading System.[21]

The NYSE argued that Nasdaq has not provided any market data or analysis regarding its trading history for public evaluation. In addition, individual market makers have opted to include Primex executions within their own ''market center'' reports, rather than as orders routed to and executed on another market system. Primex includes these trades in statistics used in its advertising and press releases.

The Nasdaq responded that it has been working closely with SEC staff to confirm how Rule 11Ac1–5 will be applied to Primex.

V. Amendment No. 2

In Amendment No. 2, Nasdaq seeks permanent approval of the following changes to Nasdaq's application of Primex: (1) Elimination of the end-of-day anonymity feature; (2) implementation of a system modification that will prohibit appropriately marked orders from executing in violation of NASD Rule 3350, the NASD short sale rule; (3) amendments to proposed NASD Rule 5016 to reflect that orders not fully executed in Primex can be forwarded to SuperMontage once it is available for a particular security; (4) the addition of two new conditions that can be attached to orders submitted to Primex, the Anti-Internalization Qualifier (''AIQ'') and the All or None (''AON'') condition; and (5) amendments to proposed NASD Rule 5020 to reflect that Nasdaq delayed for an additional calendar quarter the rule requiring PAMMs to submit a certain percentage of their orders to the System. The amended rule text follows. New language is italicized; deleted language is in brackets.

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) ''Application'' or ''Nasdaq Application'' as used in this Rule Series, and ''Nasdaq Application of the Primex Auction System'' as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an [anonymous,] electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to ''lock in'' these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

* * * * *

5016. Option to Route Orders Outside of the System After Exposure in the Application

(a) *(1)* All Market Orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to *the* SuperSoes℠ *version of the Nasdaq National Market Execution System,* in the case of a Nasdaq security, or to ITS/CAES, in the case of an exchange-listed security, or whether the order should be returned to the entering Participant. This option to route orders outside of the Application to *SuperSoes or ITS/CAES* is available for Market Orders only. Orders submitted to the Application with a specified, fixed price cannot be automatically forwarded to *SuperSoes or ITS/CAES* [Nasdaq's other execution systems].

Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(2) For securities eligible for the SuperMontage version of the Nasdaq National Market Executions System, all orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to SuperMontage, or whether the order should be returned to the entering Participant. Orders forwarded to SuperMontage will be treated as

[19] 17 CFR 240.10a–1.

[20] Telephone call among Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, Gordon Fuller, Counsel to the Assistant Director, Division, Commission, and Jennifer Lewis, Attorney, Division, Commission, on October 24, 2002. *See* Amendment No. 2, *supra* note 8.

[21] *See* Amendment No. 3, *supra* note 9.

immediate or cancel orders. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(b) No changes.

5020. Market Maker Participation

(a) No Change.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) No Change.

(2) No Change.

(3) submit to the Application a minimum of 80%* of the number of its Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

* * * * *

5021. [Anonymity, Execution,] Reporting[,] and Clearing

(a) [Anonymity—The Application will process all activity among Participants on an anonymous basis until the end of the day.] After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, and [but will not] contain the identity of the contra-party. [At the end of each trading day, the actual contra-party for executions obtained within the Application will be made available to the Participants involved through Nasdaq's systems. For regulatory and other necessary purposes, the NASD and Nasdaq will have the ability to determine the identity of the actual contra-parties at any time.]

(b) [Tape Reporting and Clearing—]Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the [Participant] transaction at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application[, notwithstanding that, for the remainder of the trading day after a transaction, the actual contra-parties have not had their identities disclosed to each other by the Application].

* * * * *

Nasdaq represents that it eliminated the end-of day anonymity feature to respond to concerns raised by clearing firms, and to harmonize the anonymity features of Primex and SuperMontage. Nasdaq represents that Primex continues to offer pre-trade anonymity, which also is a feature of SuperMontage.

Nasdaq states that Primex originally was designed with an anonymity feature that masked until the end of the day the identity of parties trading in the System. When a match occurred in Primex, the parties would be notified that they executed a trade, but they would not know the identity of their counterparty until the end of the day.[22] At the end of the day, the System would send messages to the parties revealing the identities of their counterparties. A participant would receive a message for each trade executed in the System. Nasdaq represents that the messages formats were unique to Primex, which required Primex users to program their internal systems to recognize the messages. Nasdaq believes this additional programming requirement created a disincentive for firms to participate in Primex. Nasdaq states that, in particular, clearing firms expressed a concern about the additional programming requirements, and some chose not to make the changes and thus not participate in Primex. Nasdaq states that when a clearing firm chose not to participate, its correspondent firms also could not participate.

Nasdaq represents that it eliminated the anonymity feature to remove this disincentive. With the end-of-day anonymity feature removed, the parties to a trade will be informed of their counterparty's identity immediately upon a match. Therefore, the need for the messages at the end of the day is eliminated. Nasdaq expects this change will result in greater participation in Primex.

To further encourage participation in Primex, Nasdaq represents that it added a feature to assist members in complying with the NASD short sale rule. Specifically, Nasdaq represents that the System has been reprogrammed to prevent appropriately marked orders from executing in violation of this rule. An order that is marked to indicate that it is short sale, for which no exemption from the short sale rule is available (*e.g.*, the market maker exemption), will not execute at or below the current best bid when the current best bid as displayed by Nasdaq is below the preceding best bid in the security.

Primex also has been modified to account for Nasdaq simultaneously operating SuperSoes and SuperMontage. Primex always provided members an option to have certain orders routed to other Nasdaq execution systems after exposure in Primex.[23] Nasdaq represents that, when Primex began operation, the SuperSoes version of NNMS was the only system to which orders in Nasdaq-listed stocks could be forwarded. Recently, however, Nasdaq began to phase in the SuperMontage version of NNMS on a security-by-security basis. As such, until the phase-in is complete, Nasdaq simultaneously will operate SuperSoes and SuperMontage. Accordingly, Primex has the functionality to route orders to

*The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; [and] July 1, 2002, *and October 1, 2002,* any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on [October 1, 2002] *January 1, 2003,* a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until [December 31, 2002] *March 30, 2003* only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on [July] *October* 1, 2002 (or during such portion of the calendar quarter that commences on [July] *October* 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on [October 1, 2002] *January 1, 2003* may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on [January] *April* 1, 2003, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80% of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

[22] The anonymity feature only masked the identity from the parties to the trade. Nasdaq staff could obtain the identity of the parties immediately.

[23] *See* proposed NASD Rule 5016.

either of these systems, depending on whether the security is eligible for SuperSoes or SuperMontage. Nasdaq states that the functionality for routing orders to either SuperSoes or SuperMontage generally is the same. Only orders that are marked for routing outside Primex will be routed to SuperSoes or SuperMontage, and only after the order has been exposed in Primex and an unexecuted balance remains. While only Market Orders can be routed to SuperSoes, both Fixed Price Orders [24] and Market Orders will be eligible for routing to SuperMontage. Orders routed to SuperMontage will be considered as immediate or cancel orders.

To permit Primex to operate more efficiently with SuperMontage, Nasdaq also modified the System to allow it to accept orders with AIQ and AON conditions. These conditions can be attached to orders submitted to SuperMontage, but Primex originally was not designed to accept these types of orders. The AIQ functionality, when selected, can preclude an order from executing against proprietary interest from the same firm. The AIQ condition may be applied to orders, responses and indications. The function is designed to prevent intra-firm trades that may not be permissible for certain types of accounts, such as those subject to ERISA or an investment advisory relationship.

The AON functionality allows Primex subscribers to place a condition on certain orders that ensures the order will be executed in its entirety or not at all. The AON condition can be used for orders that the subscriber exposes for a ''zero-second'' auction.

Finally, Nasdaq is modifying the language in proposed NASD Rule 5020 to reflect that it has delayed for an additional calendar quarter the rule implementing the requirement that PAMMs submit a certain percentage of Mandatory Eligible Orders [25] to the System to be eligible for certain features of the System (the ''percentage test''). Some firms, especially those that are now expected to participate in Primex because the anonymity feature has been removed, need to reprogram their internal systems to make Primex an order routing destination. Nasdaq believes delaying the percentage test will allow firms to make these changes and gain experience with the System. The percentage test will continue to be measured on a quarterly basis. However, the phase-in schedule was amended to implement the test starting with the calendar quarter that begins on January 1, 2003, instead of October 1, 2002. Specifically, beginning on January 1, 2003, a participant previously registered as a PAMM can retain this status if it submitted to the System 50% of its Mandatory Eligible Orders during the calendar quarter that commences on October 1, 2002. Beginning on April 1, 2003, and every calendar quarter thereafter, a PAMM can retain its status if it submits 80% of its Mandatory Eligible Orders during the previous calendar quarter.

[24] The term Fixed Price Order is defined in proposed NASD Rule 5011(n) as an order submitted to Primex to purchase or sell a security at a specified, fixed price or better.

[25] The term ''Mandatory Eligible Order'' is defined in proposed NASD Rules 5011 and 5020.

VI. Amendment No. 3

In Amendment No. 3, Nasdaq seeks permanent approval to (1) change the minimum size requirement for Predetermined Relative Indications from a tiered structure depending on the amount of price improvement, to a standard minimum size requirement of 100 shares, regardless of the amount of price improvement offered; (2) reprogram the System to reject trading interest marked as ''short'' or ''short exempt'' in any exchange-listed security eligible for participation in the InterMarket Trading System; and (3) modify proposed NASD Rule 5017 to be consistent with the system change relating to short sales set forth in Amendment No. 2. The amended rule text follows. New language is italicized; deleted language is in brackets.

5017. Short Sales

* * * * *

(a) Participants [are responsible for] *must properly identify trading interest as a long sale, short sale, or short sale exempt.* [complying with applicable short sale rules when using the Application. No Participant shall submit to the Application an order for a security that, if executed, would result in a ''short sale'' as that term is defined in Exchange act Rule 3b–3, unless the transaction would be exempt from, or otherwise permissible under, the requirements of NASD Rule 3350 or Exchange Act Rule 10a–1, as applicable.]

(b) The Application will not process trading interest to sell short a Nasdaq-listed security if the execution of such trading interest will violate Rule 3350.

(c) The Application will reject trading interest identified as a short sale or short sale exempt in any exchange-listed security eligible for participation in the InterMarket Trading System.

5018. Responses and Indications

* * * * *

(c) Indications—Indications are instructions, with the characteristics set forth below, submitted to the Application by Participants to interact with orders exposed in an Auction. An Indication may be a Predefined Relative Indication (''PRI'') or a Go-Along Indication.

(1) Predefined Relative Indications

(A) No changes.

(B) At the time of its original entry, each PRI submitted to the Application must be for *at least 100 shares.* [the following share amounts:

(i) NBBO PRIs must be for at least 3000 shares upon entry;

(ii) NBBO +/-.01 or .02 must be for at least 2000 shares upon entry;

(iii) NBBO +/-.03 or greater must be for at least 1000 shares upon entry.]

(C) No changes.

(D) No changes.

(E) No changes.

* * * * *

Nasdaq represents that the graduated PRI size requirement was intended to make it less expensive to offer greater price improvement by requiring less of a share commitment as more price improvement was offered. Discussion with current and prospective users of Primex indicated to Nasdaq that the minimum size requirements are a disincentive to using PRIs because many of the trading strategies that would employ PRIs are most effective if the user has flexibility in the number of shares that must be committed. Nasdaq therefore proposes to eliminate the graduated, minimum size requirement and instead require a commitment of 100 shares, regardless of the amount of price improvement offered. With this change, Primex users would be able to enter PRIs for any round or mixed lot greater than 100 shares. Nasdaq believes this modification will encourage more users to submit PRIs, thus increasing the liquidity in Primex and the opportunities for price improvement.

VII. Discussion

After careful consideration, the Commission finds, for the reasons discussed below, that the proposed rule change, as amended, is consistent with the Act and the rules and regulations applicable to the NASD, a registered securities association.[26] We do not believe, as the NYSE suggests, that the

[26] In this regard, the Commission disagrees with NYSE's argument that it must apply statutory requirements applicable to registered exchanges to Primex. The Commission notes that Nasdaq operates Primex as a facility of the NASD. The NASD is a registered securities association under Section 15A of the Act and is not a registered exchange under Section 6 of the Act. Nasdaq's application for registration as an exchange is pending with the Commission.

fact that Primex allows dealers to internalize customer orders should be viewed as a reason to deny permanent approval of Primex. The Commission believes that Primex may provide an opportunity for customer orders to receive price improvement, even if the customer order is internalized. In addition, the Commission believes that Primex may provide an opportunity for customer orders to be exposed to possible execution by market participants other than the Primex participant that brought the order to Primex. The Commission notes that its analysis of these issues may change in the context of Nasdaq's exchange application.

In addition, the Commission believes the proposal is consistent with Rule 19b–5(f)(1) under the Act,[27] because it has been submitted within two years after commencement of the operation of the System.

The Commission finds good cause for approving Amendment No. 1 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. The language to be deleted by the amendment was inadvertently included; Amendment No. 1 reflects the current rules governing Primex's operation. The Commission also finds good cause for approving Amendment No. 2 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register.** Amendment No. 2 also reflects the current rules governing Primex's operation. In addition, Amendment No. 2 removes a disincentive to participation in Primex by deleting a programming requirement associated with an end-of-day anonymity feature; assists participants in complying with the Short Sale Rule by adding a useful feature that prevents violative orders from executing on the System; promotes opportunities for greater order interaction and possible price improvement by allowing unexecuted Primex orders to be routed to SuperMontage; and enhances Primex as a potential order-routing destination by providing firms with additional time to program their internal systems to accommodate Primex. The Commission also finds good cause for approving Amendment No. 3 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register.** Amendment No. 3 also reflects the current rules governing Primex's operation. In addition, Amendment No. 3 assists participants in complying with the Short Sale Rule and removes a disincentive to participation in Primex by implementing a less restrictive minimum size requirement for PRIs. The Commission believes Amendment Nos. 1, 2, and 3 are consistent with Sections 15A(b)(6) and (11), and 11A(a)(1)(C) of the Act,[28] and Rule 19b–5 under the Act,[29] and therefore the approval of Amendment Nos. 1, 2, and 3 on an accelerated basis is appropriate.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether the proposed amendments are 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 amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–60 and should be submitted by March 12, 2003.

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–2002–60) is approved and Amendment Nos. 1, 2, and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3945 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–P

[27] 17 CFR 240.19b–5(f)(1).

[28] 15 U.S.C. 78*o*–3(b)(6) and (11), and 15 U.S.C. 78k–1(a)(1)(C).

[29] 17 CFR 240.19b–5.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47350; File No. SR–NASD–2003–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of the Dreyer's Grand Ice Cream Holdings, Inc. Callable Puttable Common Stock

February 11, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the Dreyer's Grand Ice Cream Holdings, Inc. (''New Dreyer's'') class A callable puttable common stock (''Common Stock'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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

Nasdaq proposes to list for trading the New Dreyer's Common Stock under NASD Rule 4420(f). Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities which cannot be readily categorized under traditional listing guidelines.[3] Nasdaq believes that it is appropriate to list the New Dreyer's Common Stock under NASD Rule 4420(f) because it combines the features of more than one category of currently listed securities, specifically common stock with a put right and a call right.[4]

Dreyer's Grand Ice Cream, Inc. (''Dreyer's'') has entered into an Agreement and Plan of Merger and Contribution (''Merger Agreement'') with Nestle Holdings, Inc. (''Nestle'') and its affiliates to combine Dreyer's with Nestle's United States frozen dessert business. The combination will result in both Dreyer's and Nestle Ice Cream Company, LLC, which holds Nestle's United States frozen dessert business, becoming wholly-owned subsidiaries of a newly formed Delaware corporation, which is named New December, Inc. (''New December'') and which will be renamed New Dreyer's.[5]

As described in the registration statement filed by New December, if the transactions contemplated by the Merger Agreement are completed, the public shareholders of Dreyer's will receive the New Dreyer's Common Stock. Each holder of the New Dreyer's Common Stock will have the option to require New Dreyer's to redeem out of legally available funds all or part of the New Dreyer's Common Stock held by the holder at a price of $83.00 per share during each of the following put periods: (1) The period beginning on December 1, 2005 and ending on January 13, 2006; and (2) the period beginning on April 3, 2006 and ending on May 12, 2006. Prior to the start of each put period, New Dreyer's will be required to give notice of the availability of the put right to the holders of the New Dreyer's Common Stock. Notwithstanding the foregoing, New Dreyer's will be relieved of its redemption obligations in respect of any put right upon the occurrence of a triggering event, which means either a substantial adverse change determination or an insolvency event as described in the registration statement. During the call period beginning on January 1, 2007 and ending on June 30, 2007, the New Dreyer's Common Stock may be redeemed by New Dreyer's out of legally available funds, in whole but not in part, at a price of $88.00 per share, upon Nestle's request.

As set forth in the registration statement, prior to the expiration of the two put periods, the existence of the put right will likely be influential in determining the market price at which the New Dreyer's Common Stock will trade. However, the market price of the New Dreyer's Common Stock is not guaranteed at the completion of the transactions or thereafter, and may be adversely affected in the event that the ability of the New Dreyer's Common Stock holders to exercise the put right or to receive proceeds upon exercise of the call right is impaired or diminished. Moreover, after the expiration of the two put periods, the market price of the Common Stock, to the extent still outstanding, may decline significantly. Although Nestle is prohibited from proposing a business combination transaction during the period beginning on July 1, 2007 and ending on July 1, 2008 at a price lower than $88.00 per share of the New Dreyer's Common Stock, there are no price protections for business combination transactions after July 1, 2008.

Furthermore, at the expiration of the call period on July 1, 2007, the New Dreyer's Common Stock will convert into New Dreyer's class B common stock and Nestle will no longer be contractually restricted from controlling more than 50% of the New Dreyer's board of directors, and may use its controlling vote as a New Dreyer's stockholder to elect any number or all of the members of New Dreyer's board of directors. Also, after July 1, 2007, Nestle will have no restrictions on its ability to sell or transfer its New Dreyer's Common Stock on the open market, in privately negotiated transactions or otherwise, and these sales or transfers could create a substantial decline in the price of the outstanding shares of the New Dreyer's Common Stock or, if these sales or transfers were made to a single buyer or group of buyers, could transfer control of New Dreyer's to a third party.

In addition, the existence of the call right may prevent the New Dreyer's Common Stock from trading above the call price of $88.00 per share even if New Dreyer's future growth and/or market conditions were to otherwise warrant a per share valuation in excess of that price. If the call right is exercised, the Common Stock holders would participate in this increased valuation only to the extent of the $88.00 per share of the Common Stock redemption price.

Upon the occurrence of a triggering event, the New Dreyer's Common Stock will be redeemed, in whole but not in part, at a price per share equal to the triggering event price. The triggering event price will be determined on the basis of a discount to the put price of $83.00 per share of the New Dreyer's Common Stock and will depend on the date of the triggering event. Upon New Dreyer's receipt of a written request from Nestle for the redemption of the New Dreyer's Common Stock under the call right, including in connection with a triggering event, New Dreyer's will be required to give notice of the exercise of the call right and the redemption of the Common Stock to New Dreyer's Common Stock holders.

The New Dreyer's Common Stock will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, New Dreyer's will satisfy the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[6] Lastly, pursuant to NASD Rule 4420(f)(3), prior

[3] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993) (''1993 Order'').

[4] *Id.; see also* Securities Exchange Act Release No. 32378 (May 27, 1993), 58 FR 31770 (June 4, 1993).

[5] For further information regarding the Merger Agreement, see the registration statement filed by New December with the Commission (File No. 333–101052).

[6] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on Nasdaq or the New York Stock Exchange (''NYSE'') or be an affiliate of a company listed on Nasdaq or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-cade basis.

to the commencement of trading of the New Dreyer's Common Stock, Nasdaq will distribute a circular to members providing guidance regarding the features of the Common Stock and members' responsibilities (including suitability recommendations) when handling transactions in callable puttable common stock and highlighting the characteristics and risks of the Common Stock. In particular, Nasdaq will inform members that customer confirmations involving the New Dreyer's Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security.[7] Furthermore, given the put and call features of the Common Stock, the circular will indicate that Nasdaq suggests that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. If a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer. Pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, members recommending a transaction in the Common Stock must, among other things, have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The New Dreyer's Common Stock will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Common Stock also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1).

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Common Stock. Specifically, NASD will rely on its current surveillance procedures governing equity securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[8] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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 NASD. All submissions should refer to file number SR–NASD–2003–16 and should be submitted by March 12, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq requests that the Commission approve this filing on an accelerated basis because Nasdaq believes that the proposal does not raise any novel issues. 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 and, in particular, with the requirements of Section 15A(b)(6) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[11]

The Commission notes that the New Dreyer's Common Stock has both callable and puttable features. In particular, shareholders of Dreyer's will receive the Common Stock, subject to the completion of certain transactions in the Merger Agreement, with the option of redeeming all or part of their Common Stock at a price of $83.00 per share during two put periods: (1) The period between December 1, 2005 and January 13, 2006; and (2) the period between April 3, 2006 and May 12, 2006. However, as described in the registration statement, New Dreyer's would be relieved of its redemption obligations upon the occurrence of a substantial adverse change determination or an insolvency event. In addition, the Commission notes that New Dreyer's will retain an option to call the shares of Common Stock, upon Nestle's request, during the period between January 1, 2007 and June 30, 2007, in whole but not in part, at a price of $88.00 per share.

Because of the Common Stock's callable and puttable features, there are several issues regarding trading of this type of hybrid product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the New Dreyer's Common Stock.[12] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[13] and compliance

[7] *See* NASD IM–2110–6, Confirmation of Callable Common Stock.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* 1993 Order, *supra* note 3.

[13] As discussed above, Nasdaq will advise members and employees thereof recommending a transaction in the Common Stock to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of,

Continued

requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Common Stock.

The Commission notes that Nasdaq will distribute a circular to its members that provides guidance regarding members' compliance responsibilities and requirements, including heightened suitability recommendations, when handling transactions in callable puttable common stock, and that highlights the special risks and characteristics associated with the Common Stock. Specifically, among other things, the circular will inform members that customer confirmations involving the New Dreyer's Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security. Nasdaq represents that the circular will also indicate that, given the put and call features of the Common Stock, Nasdaq will suggest that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. Nasdaq further represents that, if a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer pursuant to NASD Rule 2310 and IM–2310–2. The Commission believes that the distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the New Dreyer's Common Stock and who are able to bear the financial risks associated with transactions in the Common Stock will acquire and trade the Common Stock.

In addition, Nasdaq represents that the circular will identify the following specific risks associated with the Common Stock.[14] The circular will note that members should inform customers that the price at which the New Dreyer's Common Stock will trade may be influenced, prior to the expiration of the two put periods, by the existence of the put right. The circular will also note that the final rate of return on the Common Stock may be less than the market price of the Common Stock, and that after the expiration of the two put periods, the market price of the Common Stock may decline significantly. Furthermore, customers should be aware that after the expiration of the call period on July 1, 2007, the New Dreyer's Common Stock will be converted into New Dreyer's class B common stock, and that Nestle will no longer be held to certain controlling interest and sale restrictions, as discussed above. The Commission believes that to some extent the financial risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities, and that the issuers of securities to be listed on Nasdaq or the NYSE or be an affiliate of a company listed on Nasdaq or the NYSE. In addition, the NASD's hybrid listing standards further require that the Common Stock have at least $4 million in market value.

Furthermore, the Commission notes that Nasdaq represents that NASD's surveillance procedures for the Common Stock will be the same as its current surveillance procedures for equity securities, and that Nasdaq represents that such surveillance procedures are adequate for this product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will facilitate the trading of New Dreyer's Common Stock. Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[15] to approve the proposal on an accelerated basis.

The Commission is approving Nasdaq's proposed listing standards for the New Dreyer's Common Stock. The Commission specifically notes that, notwithstanding approval of the listing standards for the Common Stock, other similarly structured products will require review by the Commission prior to being traded on Nasdaq.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2003–16) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3946 Filed 2–18–03; 8:45 am]

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and is able to bear the financial risk of, the transaction.

[14] Telephone conversation between John Nachmann, Senior Attorney, Office of General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

[15] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47356; File No. SR–OC–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by OneChicago, LLC Relating to Initial Listing Standards of Single Stock Futures

February 12, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–7 under the Act,[2] notice is hereby given that on January 23, 2003, OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in items I, II, and III below, which items have been prepared by OneChicago. On January 27, 2003, OneChicago filed Amendment No. 1 to the proposed rule change.[3] On February 5, 2003, OneChicago filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with the CFTC under section 5c(c) of the

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter dated January 24, 2003, from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected technical errors in the proposed rule text and added proposed rule text that was inadvertently omitted in its initial filing.

[4] *See* letter dated February 3, 2003, from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission (''Amendment No. 2''). In Amendment No. 2, the Exchange amended section II.A.2 of the proposal to specify that the proposed rule change was consistent with section 6(b)(5) of the Act. In addition the Exchange amended section II.C of the proposal to state that the Exchange has not received any comments on the proposal.

Commodity Exchange Act [5] on January 23, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to amend its initial listing standards for a security futures product based on a single security (''single stock future'') relating to the pricing of the underlying security.

The text of the proposed rule change appears below. New text is in *italics.* Deleted text is in brackets.

Eligibility and Maintenance Criteria for Security Futures Products

I. Initial listing standards for a security futures product based on a single security.

A. For a security futures product that is physically settled to be eligible for initial listing, the security underlying the futures contract must meet each of the following requirements:

(i)—(vii) No Change

(viii) If the underlying security is a ''covered security'' as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading. For purposes of this provision, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded. Requirement (viii) as Applied to Restructure Securities: Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, OneChicago may ''look back'' to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

(a) The Restructure Security has an aggregate market value of at least $500 million;

(b) The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

(c) The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(d) The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term ''Relevant Percentage'' means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, OneChicago will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, OneChicago will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement (viii), OneChicago may look back to the market price history of the Original Equity Security if: (i) The foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades ''regular way'' on an Exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades ''regular way'' prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $3.00.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, OneChicago will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once OneChicago commences to rely upon a Restructure Security's trading volume and market price history for any trading day, OneChicago will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

(ix) If the underlying security is not a ''covered security'' as defined under section 18(b)(1)(A) of the Securities Act of 1933, [I]it must have had a market price per security of at least $7.50, as measured by the lowest closing price reported in any market in which it has traded, for the majority of business days during the three calendar months preceding the date of selection.

Requirement [(viii)] *(ix)* as Applied to Restructure Securities: Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, OneChicago may ''look back'' to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

(a) The Restructure Security has an aggregate market value of at least $500 million;

(b) The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

(c) The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(d) The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term ''Relevant Percentage'' means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security;

[5] 7 U.S.C. 7a–2(c).

and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, OneChicago will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, OneChicago will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement [(viii)]*(ix)*, OneChicago may look back to the market price history of the Original Equity Security if: (i) The foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades ''regular way'' on an Exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades ''regular way'' prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $7.50.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, OneChicago will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once OneChicago commences to rely upon a Restructure Security's trading volume and market price history for any trading day, OneChicago will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

[(ix)] *(x)* If the underlying security is an ADR:

(a) OneChicago must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying the ADR is traded;

(b) The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading (''Selection Date'');

(c)(1) The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

(2) The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

(3) The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date; or

(d) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

[(x)] (*xi*) OneChicago will not list for trading any security futures product where the underlying security is a Restructure Security that is not yet issued and outstanding, regardless of whether the Restructure Security is trading on a ''when issued'' basis or on another basis that is contingent upon the issuance or distribution of securities.

II. Maintenance standards for a security futures product based on a single security.

A. [Absent exceptional circumstances,] OneChicago will not open for trading any security futures product that is physically settled with a new delivery month, and may prohibit any opening purchase transactions in the security futures product already trading, to the extent it deems such action necessary or appropriate, unless the underlying security meets each of the following maintenance requirements; provided that, if the underlying security is an ETF Share, TIR or Closed-End Fund Share, the applicable requirements for initial listing of the related security futures product (as described in I.A. above) shall apply in lieu of the following maintenance requirements:

(i) It must be registered under section 12 of the Exchange Act.

(ii) There must be at least 6,300,000 shares or receipts evidencing the underlying security outstanding that are owned by persons other than those who are required to report their security holdings pursuant to section 16(a) of the Exchange Act.

(iii) There must be at least 1,600 securityholders.

(iv) It must have had an average daily trading volume (across all markets in which the underlying security is traded) of least 82,000 shares or receipts evidencing the underlying security in each of the preceding 12 months. Requirement (iv) as Applied to Restructure Securities:

If a Restructure Security is approved for a security futures product trading under the initial listing standards in section I, the average daily trading volume history of the Original Equity Security (as defined in section I) prior to the commencement of trading in the Restructure Security (as defined in section I), including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.

(v) It must have had a market price per security of at least $5.00, as measured by the highest closing price reported in any market in which it has traded, for a majority of business days during the preceding six calendar months; provided, however, that OneChicago may waive this requirement and open for trading a security futures product with a new delivery month, if:

(a) The aggregate market value of the underlying security equals or exceeds $50 million;

(b) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all delivery months;

(c) Its average daily trading volume (in all markets in which the underlying security is traded) has been at least 109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months; and

(d) The market price per share or receipt of the underlying security closed at $3.00 or above on a majority of the business days during the preceding six calendar months, as measured by the highest closing price for the underlying security reported in any market in which the underlying security traded, and the market price per share or receipt of the underlying security is at least

$3.00 at the time such additional series are authorized for trading. During the next consecutive six calendar month period, to satisfy this paragraph, the market price per share or receipt of the underlying security must be at least $4.00.

Requirement (v) as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in section I, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.

(vi) If the underlying security is an ADR and was initially deemed appropriate for security futures product trading under paragraph [(viii)(b)] *(x)(b)* or [(viii)(c)] *(x)(c)* in section I, OneChicago will not open for trading security futures products having additional delivery months on the ADR unless:

(a) The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which OneChicago has in place an effective surveillance sharing agreement for any consecutive three-month period is: (1) At least 30%, without regard to the average daily trading volume in the ADR; or (2) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 receipts;

(b) OneChicago has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

(c) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

B—D No Change.

III. No Change.

IV. No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to amend its Eligibility and Maintenance Criteria for Security Futures Products (''Listing Standards'') pertaining to the price requirement of an underlying security for the initial listing of a single stock future. OneChicago's current initial Listing Standards for single stock futures require, among other things, that the market price of the underlying security, as measured by the lowest closing price reported in any market, be at least $7.50 for the majority of business days during the three calendar months preceding the selection. Provided all other initial Listing Standards requirements are met, the proposed rule change would permit a single stock future to be listed on a ''covered security'' as defined under section 18(b)(1)(A) for the Securities Act of 1933 (''Securities Act'')[6] that has a market price of at least $3.00 for the five consecutive business days prior to the date on which OneChicago submits a certificate to The Options Clearing Corporation (''OCC'') for listing and trading the future contract.[7] The market price of the underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The proposed rule change also amends the initial Listing Standards to require that an underlying security that is not a ''covered security'' meet OneChicago's current price requirement that it have a market price of $7.50 for the majority of the trading days for the three calendar months preceding selection.

OneChicago states that the proposed rule change would permit OneChicago to list single stock futures that would be beneficial to investors for hedging and speculative purposes, while still providing adequate protection for investors. Under current market conditions, some securities meet all of the requirements in the initial Listing Standards for securities underlying a single stock future, except for the market price requirement of $7.50. OneChicago believes that if those securities are ''covered securities'' and they meet the other requirements in the initial Listing Standards, it is appropriate to require the underlying security to have a market price of $3.00 or above for the five business days preceding the notification to OCC. A ''covered security'' as used in the proposed rule change would be a security that is listed or authorized for listing on NYSE, Amex, or Nasdaq. As the Chicago Board Options Exchange, Inc. (''CBOE'') noted in its proposed rule change requesting a similar amendment, ''this particular criteria [no longer] serves to accomplish its presumed intended purpose, *i.e.*, to prevent the proliferation of option classes on overlying securities that lack liquidity needed to maintain fair and orderly markets.''[8]

OneChicago states that its initial Listing Standard requirements, as well as the listing requirements of the NYSE, Amex and Nasdaq, would provide adequate investor protection. Under OneChicago's initial Listing Standards, a ''covered security'' would still be required to have: a minimum of 7,000,000 shares owned by public investors;[9] a minimum of 2,000 securityholders;[10] and an average daily trading volume (''ADTV'') of at least 109,000 shares in each of the preceding 12 months[11] in order for OneChicago to list a single stock future on the security. In addition to the initial Listing Standard requirements, OneChicago will monitor and adhere to its maintenance standards for single stock futures.

[6] Section 18(b)(1)(A) of the Securities Act provides that, ''[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange [(''NYSE'')] or the American Stock Exchange [(''Amex'')], or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market [(''Nasdaq'')] (or any successor to such entities). * * *'' 15 U.S.C. 77r(b)(1)(A). The term ''covered security'' would not include those securities defined under section 19(b)(1)(B) of the Securities Act. 15 U.S.C. 77r(b)(1)(B).

[7] The proposed rule change amends OneChicago's Listing Standard I.A.viii and renumbers the subsequent initial listing standards requirements for single stock futures. The proposed rule change also makes a conforming amendment to Listing Standard II.A.vi. In addition, the proposed rule change deletes, ''Absent exceptional circumstances'' in OneChicago's Listing Standard II.A.

[8] *See* Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106 (December 16, 2002) (publishing SR–CBOE–2002–62 for public comment).

[9] OneChicago's Listing Standard I.A.iv.

[10] OneChicago's Listing Standard I.A.v.

[11] OneChicago's Listing Standard I.A.vi. OneChicago notes that the comparable option listing standards requires a trading volume of at least 2,400,000 shares in the preceding 12 months. The Division of Market Regulation's Staff Legal Bulletin No. 15, which provided guidance to exchanges developing listing standards for security futures, states that a minimum monthly trading volume of 2,400,000 million shares is comparable to an average daily trading volume of 109,000 shares for the preceding 12 months. *See* Division of Market Regulation: Staff Legal Bulletin No. 15, Listing Standards for Trading Securities Futures Products (September 5, 2001), n. 6. The 109,000 figure was arrived at by dividing 2.4 million by 22, which is the typical number of trading days in a calendar month.

In addition to investor protections provided by the Listing Standards requirements, the design of the proposed rule change provides safeguards against price manipulation and provides a reliability test for stability in reasonable time period for qualifying the price of the underlying security. The proposed rule change requires that the ''covered security'' have a price on the primary market above $3.00 for five days prior to notifying OCC of OneChicago's intent to list and trade the single stock future. This provision is designed to prevent the manipulation of the price of the ''covered security'' immediately prior to the listing of a single stock future. First, the price of a ''covered security'' must be above $3.00 for five business days, which makes it more difficult for someone to enter the underlying market to manipulate the price. In addition, the price of the ''covered security'' must be on the primary market, *i.e.*, NYSE, Amex or Nasdaq, which would be more liquid and thus more difficult to manipulate. In determining to list any single stock futures, OneChicago must ensure that its own systems, including price dissemination system, have the capacity to handle the potential increased capacity requirements.

Section 6(h)(3)(C) of the Act requires that Listing Standards for security futures ''be no less restrictive than comparable Listing Standards for options traded on a national securities exchange * * *.'' [12] The Commission has approved a similar rule change for the CBOE.[13] Since CBOE has a comparable Listing Standard, OneChicago believes that the proposed rule change meets the requirement of section 6(h)(3)(C) of the Act.[14]

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act [15] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, and is designed to protect investors and the public interest. The proposed rule change would promote competition and is designed to protect investors and the public interest by providing products that could be used by investors for hedging and speculative purposes, while at the same time providing investor protection through the design of the proposed rule change and the Listing Standard requirements that would be applicable.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change will not unduly burden competition. In fact, OneChicago believes the proposed rule change would promote competition by permitting OneChicago to list a broader array of single stock futures, without jeopardizing investor protection.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and no comments on the proposed rule change have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on January 23, 2003, except that the technical changes made in Amendment Nos. 1 and 2 have become effective on January 24, 2003, and February 4, 2003, respectively. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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 these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–01 and should be submitted by March 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3942 Filed 2–18–03; 8:45 am]

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[12] 15 U.S.C. 78f(h)(3)(C).

[13] Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62).

[14] 15 U.S.C. 17f(h)(3)C).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(1).

[17] 17 CFR 200.30–3(a)(75).

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4280]

Imposition of Chemical and Biological Weapons Proliferation Sanctions Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that two foreign persons have engaged in chemical/biological weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authority of which was most recently continued by Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Director, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to Section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)) and Section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2410C(a)) as continued by Executive Order 13222 of August 17, 2001 (hereinafter referred to as the ''Export Administration Act''), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the

following foreign persons have engaged in chemical/biological weapons proliferation activities that require the imposition of measures as described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app 2410C(c)):

NEC Engineers Private, Ltd., and its successors (company originally based in India, but now also operating in the Middle East and Eurasia); and

Hans Raj Shiv (previously residing in India, and believed to be in the Middle East).

Accordingly, until further notice and pursuant to the provisions of section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act (50 U.S.C. app 2410c(c)), the following measures are imposed on these foreign persons and their successors:

1. *Procurement Sanction:* The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons and their successors; and

2. *Import Sanction:* The importation into the United States of products produced by the sanctioned persons and their successors shall be prohibited.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in the Executive Order 12851 of June 11, 1993, and will remain in place for at least one year and until further notice.

Dated: February 11, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–3956 Filed 2–18–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14501]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference of the Merchant Marine Personnel Advisory Committee (MERPAC). The purpose of the teleconference is for MERPAC to discuss and prepare comments to the docket of the Coast Guard's national security legislation for merchant vessel personnel [USCG–2002–14069]. MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: The teleconference call will take place on Tuesday, March 4, 2003, from 1 p.m. until 2 p.m., EST.

ADDRESSES: Members of the public may participate by dialing 1–202–493–2151. Public participation is welcomed; however, the number of teleconference lines is limited, and lines are available first-come, first-served. Members of the public may also participate by coming to Room 1204, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at 202–267–6890 so that he may notify building security officials. You may also gain access to this docket at *http://dms.dot.gov/search/searchFormSimple.cfm.*

FOR FURTHER INFORMATION CONTACT: Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Gould, Assistant to the Executive Director, telephone 202–267–0213, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register** [5 U.S.C. App. 2]. MERPAC is chartered under that Act. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security, and Environmental Protection, on issues of merchant marine personnel such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and developing standards of competency for ship's security officers.

Tentative Agenda

Tuesday, March 4, 2003

1 p.m.–1:05 p.m.

Welcome and Opening Remarks—MERPAC Chairman Andrew McGovern.

1:05 p.m.–1:30 p.m.

Open discussion on the docket of the Coast Guard's national security legislation affecting merchant vessel personnel.

1:30 p.m.–1:50 p.m.

Public comment period.

1:50 p.m.

MERPAC vote on recommended comments to the docket.

2 p.m.

Adjourn.

This tentative agenda is subject to change.

Public Participation

The Chairman of MERPAC is empowered to conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment. The committee will make every effort to hear the views of all interested parties, including the public. Written comments may be submitted to CDR Brian J. Peter, Executive Director, MERPAC, Commandant (G–MSO–1), 2100 Second Street, SW., Washington DC 20593–0001.

Minutes

The teleconference will be recorded, and a summary will be available for public review and copying about 30 days following the teleconference meeting at *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.* This summary will also be available for viewing in the Docket at *http://dms.dot.gov.*

Dated: February 12, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection.

[FR Doc. 03–3977 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD05–03–003]

Navigable Waters and Jurisdiction; Lake Fontana, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice; proposed change to navigability status.

SUMMARY: The Coast Guard plans to modify the agency navigability status of Lake Fontana, an impoundment of Little Tennessee River, wholly located in western North Carolina so that Lake Fontana will no longer be navigable for purposes of Coast Guard jurisdiction. The Coast Guard seeks your comments before we change the navigability status of the lake.

DATES: Comments and related material must reach the Coast Guard on or before March 21, 2003.

ADDRESSES: You may mail comments and related material to Commander, Fifth Coast Guard District Legal Office, Federal Building 2nd Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christine N. Cutter, Legal Advisor, Fifth Coast Guard District, at telephone number (757) 398–6291.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this notice CGD05–03–003, 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 that your submission has reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background

The Coast Guard, in a letter dated January 6, 1954, determined that Lake Fontana, an impoundment of Little Tennessee River, wholly located in western North Carolina, is a navigable body of water of the United States for purposes of Coast Guard jurisdiction. The Coast Guard's determination relied primarily on a letter from the Tennessee Valley Authority (TVA) dated September 24, 1953. The TVA letter further referenced a 1953 tentative decision by the Federal Power Commission (FPC), which determined that the Little Tennessee River was a navigable water of the United States from its mouth to a point above the former site of Bushnell, North Carolina, which is upstream of Fontana Dam at mile marker 61.

After the Coast Guard issued its determination, on March 4, 1954, the Federal Power Commission issued a final decision *In the Matters of Aluminum Company of America, Knoxville Power Company; Carolina Aluminum Company,* Docket Nos. IT–5696; 5697, 5698 Opinion No. 267, 13 F.P.C. 14; 1954. The final decision was rendered after all parties had the opportunity to present additional evidence on the issue of navigability. Briefs and exceptions to the tentative and initial decisions were filed and oral argument was heard on the case. Therefore, the final decision considered all the relevant evidence for determining navigability on the Little Tennessee River. The final decision failed to reference information contained in the tentative decision on logs being floated down the Little Tennessee River from Bushnell, NC. The Federal Power Commission determined that the Little Tennessee River is a navigable body of water of the United States from its mouth to at least the mouth of Abrams Creek at mile 37. Therefore, Lake Fontana, which is formed at mile 61 by the construction of the Fontana Dam, was not considered by the Commission as a navigable body of water of the United States. The Coast Guard did not make a corresponding change to its navigability determination to reflect the FPC's final decision.

In addition, there are no federal court decisions or congressional actions concerning Lake Fontana's navigability. As a point of clarification, the Department of Energy Organization Act abolished the Federal Power Commission (FPC), on October 1, 1977 and the new agency the Federal Energy Regulatory Commission inherited most of the FPC's responsibilities.

Purpose

While the Coast Guard is not required to provide notice of a change in navigability status, this document serves to bring to the attention of the public and the State of North Carolina the Coast Guard's intention to change the navigability status on Lake Fontana that has been in effect since 1954. Reliable evidence as contained in the final decision by the Federal Power Authority supports the navigability of the Little Tennessee River up to mile 37. Therefore, the Coast Guard plans to amend its navigability determination of Lake Fontana to be non-navigable for purposes of Coast Guard jurisdiction.

When making a determination whether a particular body of water qualifies as navigable water for purposes of Coast Guard jurisdiction, the Code of Federal Regulations and federal case law are controlling. The statutory provisions were derived from the test for navigability as pronounced in *The Daniel Ball,* 77 U.S. 557 (1870). Title 33 CFR 2.05–25 (a)(3) defines waters such as Lake Fontana—that is, internal waters not subject to tidal influence—as navigable waters if such waters ''are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce notwithstanding natural or man-made obstruction that require portage.''

The Coast Guard's administrative determination regarding a body of water's navigability status is solely for the purpose of administering and enforcing applicable Coast Guard laws and regulations. This planned change in determination would not be conclusive on the issue of whether a body of water is navigable water for other federal purposes.

Dated: February 5, 2003.

J. D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–3982 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Ankeny Regional Airport, Ankeny, IA

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

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Ankeny Regional Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dave L. Joens, P.E.& P.L.S. at the following address: Polk County Aviation Authority, 5885 NE., 14th Street, Des Moines, IA 50313.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release

property at the Ankeny Regional Airport under the provisions of AIR 21.

On February 6, 2003, the FAA determined that the request to release property at the Ankeny Regional Airport submitted by the Polk County Aviation Authority, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than May 30, 2003.

The following is a brief overview of the request.

The Polk County Airport Authority requests the release of approximately 4.91 acres of airport property. The purpose of this release is to transfer ownership to the Iowa Department of Transportation (IDOT) for an interchange project located south of the airport property. The land is currently not being used for aeronautical purposes. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request in person at the Polk County Airport Authority, Des Moines, Iowa.

Issued in Kansas City, Missouri, on February 6, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–3972 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–B–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping for Air Traffic Procedural Changes Associated With the Northern Utah Airspace Initiative

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA), Northwest Mountain Region, is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(C) that the FAA intends to prepare an Environmental Impact Statement (EIS) for the proposed Northern Utah Airspace Initiative. This Notice of Intent is published as required by the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR parts 1500–1508. This EIS will assess the potential environmental impacts resulting from proposed modifications to air traffic routings in the metropolitan Salt Lake City and surrounding areas. Airports in this area include Salt Lake City International Airport, Ogden-Hinckley Airport, Hill Air Force Base, and the Provo Airport, as well as other smaller general aviation use airports. All reasonable alternatives will be considered including a no-change alternative/option. In order to ensure that all significant issues pertaining to the proposed action are identified, public participation, through public scoping meetings, will be held.

FOR FURTHER INFORMATION CONTACT: Clark Desing, (801) 325–9626, PO Box 22867, AMF, Salt Lake City, Utah, 84122 or see the following Web site: *http://www2.faa.gov/ats/nar/nw_mt/nw_mt_salt.htm.*

SUPPLEMENTARY INFORMATION: The Northern Utah Airspace Initiative will examine the airspace surrounding the Salt Lake City International Airport, up to the en route structure. The airports in the study area are: Salt Lake City International Airport, Ogden-Hinckley Airport, Hill Air Force Base, and the Provo Airport, as well as other smaller general aviation use airports.

In response to existing and forecast aviation demand generating a significant flow of air traffic in the study area, the FAA is examining alternative ways to modify air traffic routes and procedures to avoid degradation of safety, improve efficiency, and meet future traffic demands. The airspace redesign team is using sophisticated modeling tools to develop viable air traffic control (ATC) alternatives to current operations. The FAA will examine methods that will take advantage of new and emerging ATC technologies, improved performance characteristics of modern aircraft, as well as improvements in navigation capabilities. The proposal will address the merits of a 4-corner post concept with consideration of an additional downwind. The project is not associated with any airport development projects or construction of any physical facilities.

As part of the airspace redesign effort, the FAA will provide detailed analyses that will be use to evaluate the potential environmental impacts in the study area. During scoping, and upon publication of a draft EIS and a final EIS, the FAA will be contacting and coordinating with federal, state, and local agencies, as well as the public, to obtain comments and suggestions regarding the EIS for the proposed project. The EIS will assess impacts and reasonable alternatives including a ''no change'' alternative, pursuant to NEPA; FAA Order 1050.1, Policies and Procedures for Assessing Environmental Impacts; DOT Order 5610.1, Procedures for Considering Environmental Impacts; and the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508, and other appropriate Agency guidance.

Public Scoping Process: The FAA will use the scoping process as outlined in the Council on Environmental Quality (CEQ) Regulations and guidelines to facilitate public involvement. Concerned individuals and agencies are invited to express their views either in writing, or by providing oral comments at a scoping meeting. The purpose of a scoping process and scoping meetings are: (1) To provide a description of the proposed action, (2) to provide an early and open process to determine the scope of issues to be addressed and to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EIS, (3) to identify other coordination and any permit requirements associated with the proposed action, (4) to identify and eliminate from detailed study those issues that are not significant or those that have been adequately addressed during a prior environmental review process.

The FAA has scheduled three public scoping meetings. Each meeting will be held from 7 p.m. to 9 p.m. at sites listed below. Each of the meetings will begin with an overview of the project (7 p.m.–7:30 p.m.) and will be followed by an informal open house period (7:30 p.m.–9 p.m.) The open house portion of each public scoping meeting will include redesign displays and graphics and will provide an opportunity for one-on-one interaction between the representatives of the FAA and the general public. Comments will be received via court reporter or written comment forms throughout the duration of the meeting. Formal comments for the record will not be accepted via E-mail. Meeting dates and locations are:

—March 18, 2003—Marriott City Center, Salt Lake City, UT.
—March 19, 2003—Marriott Hotel, Provo, UT.
—March 20, 2003—Marriott Hotel, Ogden, UT.

In accordance with NEPA coordination requirements, the FAA has scheduled one meeting that will be dedicated primarily to federal, state and local agency staff, and Native American

governments. This meeting is scheduled on March 18, 2003, from 1 p.m. to 3 p.m. at the Marriott City Center, Salt Lake City. Although this meeting will be held primarily for the benefit of federal, tribal, state and local agency staff, it will also be open to the public.

The scoping period begins with this announcement. To ensure that all issues are identified, the FAA is requesting comments and suggestions on the project scope from all interested federal, state and local agencies and other interested parties. In furtherance of this effort, the FAA has established an Internet Website that can be accessed at: *http://www2.faa.gov/ats/nar/nw_mt/nw_mt_salt.htm.* Additional information about the Northern Utah Airspace Initiative, including the scoping meeting schedule and meeting locations can be found at this Internet site. Additionally, the FAA will be maintaining the following telephone number for general information: (801) 325–9626.

DATES: The FAA will accept written scoping comments through May 16, 2003. Such comments should be directed to the following address: Northern Utah Airspace Initiative, PO Box 22867, AMF, Salt Lake City, UT 84122.

Issued in Renton, Washington on February 11, 2003.

Raul C. Trevino,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–3975 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–06]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 11, 2003.

ADDRESSES: Send comments on the petition 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–2003–14299 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb ((425) 227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on February 13, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–14299.

Petitioner: Structural Integrity Engineering.

Sections of 14 CFR Affected: 25.783(h); 25.807(g)(1) and (i)(1); 25.810(a)(1); 25.812(b)(2), (e), and (h); 25.813(b); 25.857(e); 25.1445(a)(2); and 25.1447(c)(1).

Description of Relief Sought: To permit Structural Integrity Engineering exemption from the above-referenced regulations to allow carriage of up to four persons in addition to two crewmembers in the flight compartment of Boeing 757–200 converted special freighter airplanes.

[FR Doc. 03–3966 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held March 5–6, 2003, starting at 8:30 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434); Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- March 5:
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items).
- Report from Working Group 1.
- Review of Product Registry Document.
- Review of DO–267 Change 1 Draft.
- March 6:
- Review and Progress DO–267 Change 1 Draft.
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC on February 11, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–3976 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–03–1–00–GLH To Impose of Passenger Facility Charge (PFC) at Mid Delta Regional Airport, Greenville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Mid Delta Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office; 100 West Cross Street, Suite B; Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Darrell Foreman, Airport Director of the City of Greenville, Mississippi at the following address: 166 Fifty Ave., Suite 300; Greenville, MS 38703.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Greenville under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9885. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Mid Delta Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 10, 2003, the FAA determined that the application to impose a PFC submitted by the City of Greenville was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 7, 2003.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: October 31, 2005.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $86,610.

Brief description of proposed project(s):

1. Terminal Area Drainage Improvements and Parking Lot Relocation.

2. Rehabilitate Runway 9/27 and Convert to Taxiway.

3. Terminal Building Fire Escape Stairwell Project.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO—Air Taxi/Commercial Operators filing Form 1800–31.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Greenville, Mississippi.

Issued in Jackson, Mississippi on February 10, 2003.

Wayne Atkinson,

Manager, Jackson Airports District Office.

[FR Doc. 03–3971 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–112–06]

Below Deck Class C Cargo Compartment Smoke Penetration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on smoke penetration tests conducted under the provisions of § 25.857.

DATES: Send your comments on or before March 21, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Stephen Happenny, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Propulsion and Mechanical Systems Branch, ANM–112, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2147; fax (425) 227–1320; e-mail: *stephen.happenny@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. ANM–03–112–06.''

Use the following format when preparing your comments.

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy will further simplify the certification process pertaining to the acceptable amount of smoke penetration permitted into the cabin during a below deck Class C cargo compartment smoke penetration test. It will provide clarification to the test criteria given for the means of compliance as addressed in AC 25–9A as well as supplement that material.

Issued in Renton, Washington, on February 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3974 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–01–03]

Factors To Consider When Reviewing an Applicant's Proposed Human Factors Methods of Compliance for Flight Deck Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA), announces the availability of final policy that clarifies current FAA policy with respect to compliance with human factors-related regulations during certification projects on transport category airplanes.

DATES: This final policy was issued by the Transport Airplane Directorate on February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Boyd, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplanes & Fightcrew Interface Branch, ANM–111, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1138; fax (425) 227–1320; e-mail: *9–ANM–111–human-factors@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on May 16, 2001 (66 FR 27196). Seven (7) commenters responded to the request for comments.

Background

The final policy provides guidance with respect to the recommended content of a Human Factors Certification Plan. A Human Factors Certification Plan is not a required document, but may be included as part of a transport category airplane certification project if an applicant so chooses. These recommendations can be used as a means by which the applicant and the FAA can establish an early and formal written agreement on the methods of compliance for regulations that relate to human factors and that are applicable to the certification project.

The final policy as well as the disposition of public comments received are available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on February 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3973 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New York Susquehanna and Western Railway

[Docket Number: FRA–2002–14086]

The New York Susquehanna and Western Railway (NYSW) seeks a permanent waiver of compliance from the requirement that a *Qualified maintenance person* (QMP), as defined in *Passenger Equipment Safety Standards,* 49 CFR 238.5, be a person whose primary responsibility includes work generally consistent with troubleshooting, inspection, maintenance, or repair of the equipment being inspected or tested. NYSW indicates they are operating passenger service utilizing a single Budd Rail Diesel Car (RDC) over a light density rail line within the City of Syracuse, NY. The service operates between 11:15 a.m. and 6:35 p.m. during the months of June, July, and August, and five days a week the rest of the year. The railroad indicates that they have met all requirements to designate the operating crew as a QMP with the exception of the primary responsibility requirement.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–14086) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 7th Street, SW., Room PL–401 (Plaza Level), Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3983 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

San Luis Central Railroad

[Docket Number FRA–2002–14084]

The San Luis Central Railroad (SLC) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR Part 223, that requires certified glazing for two locomotives. The SLC is located in Monte Vista, Colorado. The SLC states they operate as a short line railroad and have yard limits of 13 miles. Both locomotives are presently equipped with laminated tinted glass with .030 lamination and an AS–1 rating. The present glazing is in good condition.

The two locomotives, specifically SLC 70 and SLC 71, operate alternating one at a time and noted locomotives never operate on any other railroad lines and have a record of good compliance with

the Federal Railroad Administration (FRA). The two locomotives are in very good condition. There is also no record of vandalism on their property.

The field investigation reveals the terrain in the SLC traverses is largely farm grade. The grade of the track is flat with a few short curves.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2002–14084) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3984 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2002–14116

Applicant: Canadian National Railway, Mr. Kenneth J. Bagby, Signals Supervisor, 3460 Bristol Road, Flint, Michigan 48507.

The Canadian National Railway (CN) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, Section 236.408, to the extent that route locking need not be provided for the ''32nd Street Crossover'' power-operated switches at milepost 333.28 in the existing traffic control system at Port Huron, Michigan, on the Flint Subdivision, Midwest Division.

Applicant's justification for relief: The installation is not uncommon in the railroad industry and provides all of the requisite components and safety features of a standard interlocking or an electric lock location that would be found in TCS territory. CN has three similar installations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 7th Street, SW., Room PL–401 (Plaza Level), Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3985 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Wilton Scenic Railroad

[Docket Number FRA–2002–14085]

The Wilton Scenic Railroad seeks a permanent waiver of compliance for two MU passenger type locomotives from the requirements of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all windows, and the requirement to equip the passenger compartments with emergency window exits. The railroad indicates that the MU locomotives numbered RDC 1 and RDC 3 are equipped with glazing material approved for use in Canada. If approved the MU locomotives would be utilized in tourist and scenic train operations between Wilton and Greenfield, New Hampshire, over track owned by the State of New Hampshire and maintained by the Milford Bennington Railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number *e.g.*, Waiver Petition Docket Number FRA–2002–14085) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 7th Street, SW., Room PL–401 (Plaza Level),

Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3986 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 29, 2002. No comments were received.

DATES: Comments must be submitted on or before March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Rita C. Jackson, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5755; FAX: 202–493–2288, or E-MAIL: *rita.jackson@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Service Obligation Compliance Report.

OMB Control Number: 2133–0509.

Type of Request: Extension of currently approved collection.

Affected Public: Every student and graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy student.

Form(s): MA–930.

Abstract: The Maritime Education and Training Act of 1980, imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy graduate who received a student incentive payment. This mandatory service obligation is for the Federal financial assistance the graduate received as a student and requires the graduate to maintain a license as an officer in the merchant marine and to report on reserve status, training, and employment for applicable periods.

Annual Estimated Burden Hours: 1150 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

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 information collection; (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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 10, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–3918 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34311]

United States Steel Corporation—Acquisition of Control Exemption—Delray Connecting Railroad Company

United States Steel Corporation (U.S. Steel), a noncarrier, has filed a notice of exemption to acquire control, through stock purchase, of Delray Connecting Railroad Company (Delray), a Class III railroad and a wholly owned subsidiary of National Steel Corporation (National Steel).[1]

U.S. Steel owns 100% of Transtar, Inc. (Transtar), a noncarrier holding company and, through that ownership, indirectly owns and controls one Class II and four Class III railroads.[2]

The transaction is expected to be consummated early in the second quarter of 2003.

U.S. Steel states that: (i) The railroads (Delray and the Transtar Railroads) do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because U.S. Steel already controls one Class II and four Class III railroads by virtue of its control of Transtar, this grant will be made subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34311, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard J.

[1] On March 6, 2002, National Steel and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court in the Northern District of Illinois (Case 02–08699). Delray did not file a bankruptcy petition and is not a party to the National Steel bankruptcy proceeding. On January 9, 2003, U.S. Steel announced execution of an Asset Purchase Agreement with National Steel and 12 subsidiaries involving U.S. Steel's acquisition of substantially all of their steelmaking and finishing assets.

[2] The ''Transtar Railroads'' are: Birmingham Southern Railroad Company, Elgin, Joliet and Eastern Railway Company (the Class II railroad), The Lake Terminal Railroad Company, McKeesport Connecting Railroad Company, and Union Railroad Company. Common control of these railroads by U.S. Steel (formerly USX Corporation) was authorized by the Board in *USX Corporation—Control Exemption—Transtar, Inc.,* STB Finance Docket No. 33942 (STB served Nov. 30, 2000) and in *Transtar Holdings, L.P.—Corporate Family Exemption—Transtar, Inc.,* STB Finance Docket No. 32411 (STB served Dec. 29, 1993).

Munsch, 600 Grant Street, Room 1500, Pittsburgh, PA 15219–2800 and Vincent P. Szeligo, 1450 Two Chatham Center, Pittsburgh, PA 15219–3427.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: February 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3948 Filed 2–18–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34312]

Big 4 Terminal Railroad Corporation—Acquisition and Operation Exemption—Wabash Central Railroad Corporation

Big 4 Terminal Railroad Corporation (Big 4), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Wabash Central Railroad Corporation (WBRC) and operate approximately 1.5 miles of rail line currently owned by RMW Ventures, L.L.C. (RMW) [1] and currently operated by WBRC.[2] Big 4 is seeking to sublease and operate the following track, terminal facilities, and properties at or near Craigville, Wells County, IN: A 40 foot right-of-way being 20 feet of either side of the center line of the main track from milepost 117 (Railroad Valuation Station #6177 + 60) to milepost 118.53 (Railroad Valuation Station #6258 + 14) on the east side of County Road #204N, together with all connecting spur and yard tracks. Big 4 will connect with WBRC and conduct terminal switching operations at Craigville in order to improve switching service to shippers served by these facilities. WBRC will continue to operate over the remaining portion of the line.

The effective date of the exemption was January 30, 2003 (7 days after the notice was filed) and the parties expected to consummate the transaction on or after January 31, 2003.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34312, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 127 Lexington Avenue, Suite 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: February 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3949 Filed 2–18–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The line was formerly owned by Wabash Central, L.L.C., a Class III rail carrier. In *RMW Ventures, L.L.C.-Corporate Family Transaction Exemption-C&NC, L.L.C., Maumee & Western, L.L.C., and Wabash Central, L.L.C.,* STB Finance Docket No. 33541 (STB served Mar. 10, 1998), Wabash Central, L.L.C., along with two other Class III rail carriers, was merged into RMW.

[2] In 1998, WBRC acquired operating rights over a 26.4-mile line of railroad, including the segment involved here, and incidental trackage rights between Craigville, IN (milepost 117.8), and Van Buren, IN (milepost 108.6). *See Wabash Central Railroad Corporation-Operation Exemption-Wabash Central, L.L.C.,* STB Finance Docket No. 33536 (STB served Jan. 16, 1998).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran

February 19, 2003.

AGENCY: Department of the Treasury; Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: This notice specifies the Secretary of the Treasury's intention to pay on March 21, 2003 certain claims filed pursuant to section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, Public Law no. 106–386, as amended by the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law 107–228. Section 2002 directs the Secretary to make payments to persons who hold certain categories of judgments against Cuba or Iran in suits brought under 28 U.S.C. 1605(a)(7).

This notice also specifies the procedures necessary for persons filing applications after November 26, 2002, to establish eligibility for payments authorized by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (the ''VTVPA''), Public Law no. 106–386, as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law no. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002 (the ''TRIA''), Public Law no. 107–297. The publication of this notice necessarily precedes the making of payments in order to implement the TRIA's amendments to the VTVPA. This notice supersedes the two notices previously published by the Department of the Treasury (''the Treasury'') on November 22, 2000, and December 15, 2000, at 65 FR 70382 and 65 FR 78533, respectively, for all such applications filed after November 26, 2002. The rules set forth in the two preceding notices shall continue to apply to applications filed with the Treasury prior to November 26, 2002, that are still pending before the Treasury. Applications filed with the Treasury before November 26, 2002, that were determined to be ineligible for payment are no longer pending before the Treasury. Those applicants previously determined to be ineligible for payment, but who may now be eligible due to amendments of section 2002, must therefore file new applications with the Treasury pursuant to the rules set forth in this new notice.

This notice also sets forth estimates of the funds available for payment of eligible Iran-related claims for payment under section 2002 that are filed with the Treasury after November 26, 2002.

DATES: This notice is effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: For questions regarding submission of applications, Rochelle E. Stern, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, tel.: 202/622–2500. For legal questions, Office of the Chief Counsel (Foreign Assets Control), tel.: 202/622–2410.

Part 1. Payment of Certain Claims on March 21, 2003

The Treasury expects to complete the processing of payment on March 21, 2003 to certain claimants pursuant to section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (the ''VTVPA''), Public Law No. 106–386, as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228. The claimants scheduled to receive payment on March 21, 2003 are those who filed lawsuits against Iran on June 6, 2000, received judgments in the lawsuit entitled Carlson v. The Islamic Republic of Iran, Civil Case No. 00–CV–1309 (D.D.C.), and filed claims for payment with the Treasury prior to November 26, 2002.

Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (the ''VTVPA''), Public Law No. 106–386, as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002 (the ''TRIA''), Public Law No. 107–297 will hereinafter be referred to as ''section 2002''.

Part 2. Applicants; Deadlines for Submission of Applications

The term ''Applicant,'' as used herein, refers to a person described in section 2002(a)(2) as eligible for payment under such section 2002 and who files a claim for payment with the Treasury after November 26, 2002. A person described in section 2002(a)(2) is

(1) A person who, as of July 20, 2000, held a final judgment awarding compensatory damages on a claim or claims brought under section 1605(a)(7) of title 28, United States Code, against Iran or Cuba, or the right to payment of an amount awarded as a judicial sanction with respect to such claim or claims, or

(2) a person who filed a suit under such section 1605(a)(7) on February 17, 1999, December 13, 1999, January 28, 2000, March 15, 2000, June 6, 2000, July 27, 2000, any other date before October 28, 2000, or January 16, 2002, and holds a final judgment awarding compensatory damages against either Iran (as described below) or Cuba in such suit. With respect to those who filed suits against Iran, such persons must hold final judgments for compensatory damages issued as of November 26, 2002, or must have filed suit on January 16, 2002.

Those who filed claims with the Treasury prior to November 26, 2002, and whose claims were denied, but who may now be eligible for payment due to amendments to Public Law 106–386, must resubmit applications in accordance with this notice. The requirements of Parts 2 through 6 of this notice do not apply to claimants who have already received payment or whose claims are still pending with the Treasury.

Each Applicant must submit a separate, complete application containing all the information and documentation described in Part 3, below. If an Applicant is currently represented by counsel, his or her application must be submitted through that counsel.

Section 2002 distinguishes between final judgments issued as of and after November 26, 2002. In the case of Applicants holding final judgments that were issued as of November 26, 2002, complete applications for payment, as described in Part 3, below, must be received in the Department of the Treasury's Office of Foreign Assets Control by April 7, 2003. In the case of any Applicant holding a final judgment issued after November 26, 2002, in the case filed on January 16, 2002, and identified in section 2002(a)(2)(A) with respect to Iran, complete applications for payment, as described in Part 3, below, must be received in the Office of Foreign Assets Control within 20 calendar days after the date such judgment becomes final.

Part 3. Applications for Payment

Applications for payment under section 2002 must be sent to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Attn: Rochelle E. Stern. Applications must contain all of the information and documentation as specified in this Part 3. Applications must be sent by overnight mail or by overnight courier. Applications sent electronically, via facsimile, by hand delivery, certified mail, or any other means other than overnight mail or overnight courier shall be deemed noncomplying. All information and documentation required by paragraphs (a) through (f) below must be submitted to the noted address by overnight mail or by overnight courier.

All information required by paragraphs (a) through (f) of this Part 3 is to be provided in the order set forth below and numbered correspondingly.

(a) Information Regarding Applicant and Payment.

(1) Information Regarding Applicant: An Applicant shall submit the following information:

(A) name, address, telephone number, and, if available, facsimile number of Applicant and Applicant's social security number or taxpayer identification number; and

(B) if the Applicant is represented by counsel, name(s), address(es), telephone number(s), and facsimile number(s) of Applicant's counsel.

(2) Payment Information: Payments will be made by electronic funds transfer. Payments will be made only to the Applicant or the Applicant's counsel. The application shall designate which of these parties is to receive the payment by including one of the following two statements:

''Payment of amounts owing to [insert name of Applicant] under section 2002 shall be made to [insert name of Applicant].''

''Payment of amounts owing to [insert name of Applicant] under section 2002 shall be made to [insert name of Applicant's counsel].''

An Applicant shall submit the following information:

(A) name of person or entity to whom payment is to be made [insert name of Applicant or Applicant's counsel] (the ''payee'');

(B) American Bankers Association Routing and Transit Code number of the bank holding payee's account (include copy of canceled check or savings deposit slip);

(C) name and address of payee's bank;

(D) payee's bank account number;

(E) type of account (checking or savings); and

(F) social security number or taxpayer identification number of payee.

(b) Documentation on Compensatory Damages.

An Applicant shall submit a copy of the final judgment awarding the Applicant compensatory damages on a claim or claims brought by the Applicant under 28 U.S.C. 1605(a)(7). This copy must be certified by the clerk of the court that awarded the judgment.

In addition, the Applicant must submit a statement signed pursuant to 28 U.S.C. 1746 identifying what proportion, if any, of his compensatory damage award has been paid. This statement must also provide a description of all ongoing attachment and/or execution proceedings relating to the Applicant's judgment, including the case name and number, the name and location of the court where such proceeding has been filed, the date of filing, and the names of all parties involved.

(c) Documentation on Punitive Damages.

An Applicant who elects to receive 110 percent of compensatory damages, as allowed under section 2002(a)(1)(A), shall submit a copy of the final judgment awarding the Applicant punitive damages on a claim or claims brought by the Applicant under 28 U.S.C. 1605(a)(7). This copy must be certified by the clerk of the court that awarded the judgment.

In addition, the Applicant must submit a statement signed pursuant to 28 U.S.C. 1746 identifying what proportion, if any, of his punitive damage award has been paid. This statement must also provide a description of all ongoing attachment and/or execution proceedings relating to the Applicant's judgment, including the case name and number, the name and location of the court where such proceeding has been filed, the date of

filing, and the names of all parties involved.

(d) Documentation on Sanctions.

(1) An Applicant seeking payment of amounts awarded as sanctions by judicial order on April 18, 2000 (as corrected on June 2, 2000) in connection with a claim or claims brought by the Applicant under 28 U.S.C. 1605(a)(7) shall submit a copy of the judicial order of April 18, 2000 (as corrected on June 2, 2000) awarding the Applicant sanctions. The copy must be certified by the clerk of the court that issued the order.

(2) The Applicant must also establish that this order is final and not subject to further appellate review. The Applicant can so establish by providing one of the following:

(A) a copy of a judgment of dismissal by the U.S. Court of Appeals of any pending appeal from the sanctions order, which copy must be certified by the clerk of the court of appeals;

(B) a signed statement that the time to appeal the sanctions order has expired without a notice of appeal having been filed, or a signed written waiver of the right to seek any further review of any adverse aspect of the sanctions order from any party that would have a basis for seeking review of that decision;

(C)(i) a copy of a final decision by the U.S. Court of Appeals on the sanctions order that affirms or otherwise leaves intact the sanctions order, in whole or in part, and that has been certified by the clerk of the Court of Appeals and,

(ii)(I) a citation to the order of the U.S. Supreme Court denying certiorari or dismissing any pending petition for a writ of certiorari;

(II) a signed statement that the time to petition for a writ of certiorari has expired, without such a petition having been filed; or

(III) if the time to petition for a writ of certiorari has not expired, a signed written waiver from all unsuccessful appellants of their right to petition for a writ of certiorari; or

(D) a copy of a final decision by the U.S. Supreme Court on the sanctions order that affirms or otherwise leaves intact the sanctions order, in whole or in part.

(e) Documentation on Final Judgment or Date Suit Commenced.

In order to receive payment, an Applicant must meet one of the following two requirements documenting the final judgment and, where applicable, the date on which the Applicant's suit commenced.

(1) To meet the first requirement, the Applicant must establish that he or she had, as of July 20, 2000, a final judgment for a claim or claims brought under 28 U.S.C. 1605(a)(7) or the right to payment of an amount awarded as a judicial sanction with respect to such claim or claims. The Applicant can establish that he or she had a final judgment for a claim or claims brought under 28 U.S.C. 1605(a)(7) as of July 20, 2000, by submitting the judgment specified in Part 3(b) above, which must be dated July 20, 2000, or earlier, along with all appellate orders on that judgment, if any, and a signed statement demonstrating why further appellate review is unavailable. The Applicant can establish that he or she had a right to payment of an amount awarded as a judicial sanction by submitting the order specified in Part 3(d) above, which must be dated July 20, 2000, or earlier, along with proof that this order is final and not subject to further appellate review.

(2) If an Applicant does not satisfy paragraph (1) above, the Applicant shall submit satisfactory proof of the following:

(A) The date on which the Applicant filed a suit against Iran or Cuba under 28 U.S.C. 1605(a)(7). This proof shall be in the form of a docket sheet or other document that has been certified by the clerk of the court in which the suit was filed. Applicants proceeding under this paragraph shall be eligible for payment only if suit was filed on February 17, 1999, December 13, 1999, January 28, 2000, March 15, 2000, June 6, 2000, July 27, 2000, any other date before October 28, 2000, or January 16, 2002.

(B) That Applicant has a final judgment in a suit described in Part 3(e)(2)(A) above. The Applicant can satisfy this requirement by submitting the judgment specified in Part 3(b) above, along with all appellate orders on that judgment, if any, and a signed statement demonstrating why further appellate review is unavailable. Applicants shall be eligible for payment only if such judgment was issued as of November 26, 2002, with the exception of any final judgment entered in the case filed on January 16, 2002.

(f) Election of Payment Option and Associated Relinquishment.

(1) All Applicants must elect a payment option established by section 2002. If the Applicant has received an award of punitive damages, the Applicant shall elect to receive either 110 percent or 100 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7). If the Applicant has not received an award of punitive damages, the Applicant shall elect to receive 100 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7). It is not within the Department of the Treasury's purview to advise Applicants on which option they should select.

By electing one of these options, the Applicant relinquishes certain claims and rights, as specified in section 2002. See section 2002(a)(2)(B)-(D). If an Applicant elects to receive 110 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7) (110 percent option), the Applicant must relinquish all claims and rights to compensatory damages and amounts awarded as judicial sanctions, as well as all claims and rights to punitive damages. Section 2002(a)(2)(B)–(C).

If an Applicant elects to receive 100 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7) (100 percent option), the Applicant must relinquish all claims and rights to compensatory damages and amounts awarded as judicial sanctions, as well as ''all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to section 1610(f)(1)(A) of title 28, United States Code.'' Section 2002(a)(2)(D). Title 28 U.S.C. 1610(f)(1)(A), in turn, addresses ''any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)) (''TWEA''), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702) (''IEEPA''), or any other proclamation, order, regulation, or license issued pursuant thereto.'' 28 U.S.C. 1610(f)(1)(A). Virtually every transaction involving Cuban property within the jurisdiction of the United States is ''prohibited or regulated'' pursuant to TWEA. Additionally, almost every transaction involving Iranian property within the jurisdiction of the

United States is ''prohibited or regulated'' pursuant to IEEPA. Section 2002(a)(2)(D) therefore prohibits an Applicant who elects the 100 percent option from seeking to execute his or her punitive damage award against, or from seeking to attach, virtually all Iranian or Cuban assets within the jurisdiction of the United States.

To make an election, the Applicant must submit two declarations as set forth in Parts 3(f)(3–4) below. The Applicant must submit (1) either the declaration set forth in Part 3(f)(3)(A) or that set forth in Part 3(f)(3)(B), and (2) the declaration set forth in Part 3(f)(4). All declarations submitted must be completed in full.

In making payments under section 2002, subject to funds availability, the Secretary will pay post-judgment interest on 110 percent of compensatory damages or 100 percent of compensatory damages, according to whether the Applicant elects to receive payment equaling 110 or 100 percent of compensatory damages. The Secretary will not pay post-judgment interest on portions of the judgment for which the Applicant is not entitled to receive payment under section 2002, including amounts awarded as punitive damages. Nor will the Secretary pay post-judgment interest on the amounts awarded as sanctions, as section 2002(a)(1) does not provide for payment of post-judgment interest on sanctions awards.

(2) Section 201 of the Terrorism Risk Insurance Act of 2002 (the ''TRIA''), Public Law No. 107–297 (''section 201'').

Section 201 amends section 2002 by, inter alia, establishing a partial, pro rata payment mechanism, which is described in Part 5 below. This partial payment mechanism, set forth in new subsection (d) of section 2002, will come into effect in the event that the Secretary of the Treasury determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of November 26, 2002, in cases identified in section 2002(a)(2)(a) with respect to Iran. If this determination is made, the payment an Applicant receives will be less than the full amount of unpaid compensatory damages awarded to the Applicant and will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961.

Section 201 also amends section 2002 to provide, in new subsection (d)(5), that any person receiving less than the full amount of compensatory damages awarded to that party in a judgment to which new subsection (d) applies shall not be required to make the election set forth in section 2002(a)(2)(B) (*i.e.*, relinquishing all claims and rights to compensatory damages and judicial sanctions) or, with respect to section 2002(a)(2)(D), the election relating to relinquishment of any right to execute or attach property that is subject to section 1610(f)(1)(A) of title 28, United States Code. However, such person shall be required to relinquish rights set forth (1) in section 2002(a)(2)(C) (*i.e.*, all rights and claims to punitive damages), and (2) in section 2002(a)(2)(D) with respect to enforcement against property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

To take account of new subsection (d)(5), the elections of the 110 percent option and the 100 percent option that appeared in prior **Federal Register** notices on this subject have been amended, as set forth in Part 3(f)(3) below. The amendments provide that, in the event the Secretary makes the determination that funds are inadequate as specified in section 2002(d)(1)(A), the payment the Applicant receives will be less than the full amount of unpaid compensatory damages, and such payment will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961. In that event, the relinquishments already made in the declarations and described in Part 3(f)(1) above shall be null and void, and, in lieu thereof, the Applicant, as required by new subsection (d)(5), relinquishes all rights and claims to punitive damages and all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

(3) To make an election, the Applicant must submit two declarations as set forth in Parts 3(f)(3–4) below. The Applicant must submit (1) either the declaration set forth in Part 3(f)(3)(A) or that set forth in Part 3(f)(3)(B), and (2) the declaration set forth in Part 3(f)(4). The Applicant must sign each declaration pursuant to 28 U.S.C. 1746. All declarations submitted must be completed in full.

To make the election, the Applicant shall submit one of the two declarations set forth in (A) and (B) below. As set forth in Part 3(f)(1) above, applicants who have received awards of punitive damages shall elect either the declaration set forth in (A) or (B) below. Applicants who have not received awards of punitive damages shall use the declaration set forth in (B) below.

(A) ''I, _____ (insert name of Applicant), elect to receive 110 percent of the amount awarded to me as compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, amounts awarded as judicial sanctions on or in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7). By so electing, I state that I have been awarded a judgment that includes an award of punitive damages. I further state, as required by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, P.L. No. 106–386 as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002, Public Law No. 107–297 (''section 2002''), that I relinquish (a) all claims and rights to compensatory damages and amounts awarded as judicial sanctions under such judgments and any related interest, costs, and attorneys fees, and (b) all claims and rights to punitive damages awarded in connection with such claim or claims and any related interest, costs, and attorneys fees. In relinquishing these above-mentioned claims and rights, I recognize that I relinquish any rights to seek writs of attachment, execution, or garnishment, or any other form of post-judgment process intended to obtain partial or complete satisfaction of any amounts awarded in connection with the claim or claims under 28 U.S.C. 1605(a)(7) for which I am electing to receive payment.

''I understand that this relinquishment is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be fully subrogated and assigned to all of my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively 'payees'), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

''In the event that the Secretary of the Treasury determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of November 26, 2002, in cases

identified in section 2002(a)(2)(A) with respect to Iran, I understand that the payment that I receive will be less than the full amount of compensatory damages awarded to me and that such payment will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961. In that event, the relinquishment set forth above shall be null and void and, in lieu thereof, as required by section 2002(d)(5), I hereby relinquish (1) all rights and claims to punitive damages awarded in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7) and any related interest, costs, and attorneys fees, and (2) all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

''I understand that the relinquishment that I make in the event of any pro rata distribution is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be subrogated and assigned, to the extent of such payment, to my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively ''payees''), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

''I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert date).''

(B) ''I, _____ (insert name of Applicant), elect to receive 100 percent of the amount awarded to me as compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, amounts awarded as judicial sanctions on or in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7). By so electing, as required by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, P.L. No. 106–386 as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002, Public Law No. 107–297 (''section 2002''), I relinquish (a) all claims and rights to compensatory damages and amounts awarded as judicial sanctions under such judgments and any related interest, costs, and attorneys fees, and (b) all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to 28 U.S.C. 1610(f)(1)(A). In relinquishing these above-mentioned claims and rights, I recognize that I relinquish any rights to seek writs of attachment, execution, or garnishment, or any other form of post-judgment process directed against property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to 28 U.S.C. 1610(f)(1)(A) and intended to obtain partial or complete satisfaction of any amounts awarded in connection with the claim or claims under 28 U.S.C. 1605(a)(7) for which I am electing to receive payment.

''I understand that this relinquishment is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be fully subrogated and assigned to all of my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively ''payees''), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

''In the event that the Secretary of the Treasury determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of November 26, 2002, in cases identified in section 2002(a)(2)(A) with respect to Iran, I understand that the payment that I receive will be less than the full amount of compensatory damages awarded to me and that such payment will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961. In that event, the relinquishment set forth above shall be null and void and, in lieu thereof, as required by section 2002(d)(5), I hereby relinquish (1) all rights and claims to punitive damages awarded in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7) and any related interest, costs, and attorneys fees, and (2) all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

''I understand that the relinquishment that I make in the event of any pro rata distribution is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be subrogated and assigned, to the extent of such payment, to my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively ''payees''), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

''I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert date).''

(4) In addition, all Applicants shall submit the following declaration, which, pursuant to 28 U.S.C. 1746, must be signed by the applicant and, if the payee is different from the applicant, the payee.

''I/We & _____, (insert name of Applicant) and & _____ (insert name of payee, if different from Applicant) am/are entitled to the entire amount to be paid in this application. No other person, corporation, law firm, or other entity whatsoever either claims or is otherwise entitled to receive any portion of this payment from the United States of America. If any other person, corporation, law firm, or other entity (a ''Third Party'') is ever determined by a final judgment of a court of the United States to be entitled to all or part of the payment made to the Applicant and payee (as named above), we (the Applicant and payee) promise immediately to reimburse, with interest, the United States for whatever amount of money is paid by it to a Third Party, and agree further to indemnify and hold harmless the United States for any such claims for payment asserted by a Third Party against the United States.

''I/we declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert date).''

Part 4. Sources of Funds for Payment

Section 2002 specifies the sources and amount of funds available for the payments authorized by that section.

See section 2002(b). For purposes of funding payments in connection with judgments and sanctions against Cuba, section 2002 provides that the President shall vest and liquidate up to and not exceeding the amount of property of the Government of Cuba and sanctioned entities in the United States or any commonwealth, territory, or possession thereof that has been blocked pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, or regulation issued thereunder. It further provides that for the purposes of paying amounts for judicial sanctions, payment shall be made from funds or accounts subject to sanctions as of April 18, 2000, or from blocked assets of the Government of Cuba. See section 2002(b)(1).

For purposes of funding payments in connection with judgments against Iran, section 2002 provides that the Secretary shall make payments from amounts paid and liquidated from (a) rental proceeds accrued on the date of the enactment of the VTVPA from Iranian diplomatic and consular property located in the United States, and (b) funds not otherwise made available in an amount not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund on the date of the enactment of the VTVPA to the extent provided by section 2002(b)(2)(B). The amount of funds made available by (a), above, will be determined based in part on information provided by the Department of State. The amount of funds initially made available by (b), above, was determined based on information provided by the Department of Defense.

Part 5. Payments to Applicants

Payments described in this Part are made pursuant to section 2002(d).

(a) Judgments issued as of November 26, 2002

(1) Following the expiration of the period for submitting claims as described in Part 2 of this notice, the Secretary promptly will determine whether 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in eligible final judgments issued as of November 26, 2002, to Applicants. See section 2002(d)(1)(A).

(2) In the event that the Secretary determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in eligible final judgments issued as of November 26, 2002 to Applicants in cases identified in section 2002(a)(2)(A) with respect to Iran, the Secretary will, not later than 60 days after making such determination, make payment from such amounts available to be paid under section 2002(b)(2) to each Applicant to which such a judgment has been issued in an amount equal to a share, calculated under section 2002 (d)(1)(B), of 90 percent of the amounts available to be paid under section 2002 (b)(2) that have not been subrogated to the United States under section 2002 as of November 26, 2002.

(3) The share that is payable to an Applicant under (a) of this Part 5, including any Applicant issued a final judgment as of November 26, 2002, in a suit filed on a date added by the amendment made by section 686 of Public Law 107–228, shall be equal to the proportion that the amount of unpaid compensatory damages awarded in a final judgment issued to that Applicant bears to the total amount of all unpaid compensatory damages awarded to all Applicants to whom such judgments have been issued as of November 26, 2002, in cases identified in section 2002(a)(2)(A) with respect to Iran.

(b) Subsequent Judgment

The Secretary will pay to any Applicant awarded a final judgment after November 26, 2002, in the case filed on January 16, 2002, and identified in section 2002 (a)(2)(A) with respect to Iran, an amount equal to a share, calculated under section 2002(d)(2)(B), of the balance of the amounts available to be paid under section 2002(b)(2) that remain following the disbursement of all payments as described in (a) of this Part 5. The Secretary will make such payment not later than 30 calendar days after such judgment becomes final. To the extent that funds are available, the amount paid to such Applicant will be the amount the Applicant would have been paid as described in (a) of this Part 5 if the Applicant had been awarded the judgment prior to November 26, 2002.

(c) Additional Payments

(1) Not later than 30 calendar days after the disbursement of all payments described in (a) and (b) of this Part 5, the Secretary will make an additional payment to each Applicant who received a payment under (a) or (b) of this Part 5 in an amount equal to a share, calculated as described below, of the balance of the amounts available to be paid under section 2002(b)(2) that remain following the disbursement of all payments as described in (a) and (b) of this Part 5.

(2) The share payable to each such Applicant shall be equal to the proportion that the amount of compensatory damages awarded that Applicant bears to the total amount of all compensatory damages awarded to all Applicants who received a payment as described in (a) or (b) of this Part 5.

Part 6. Available Funds for Iran-Related Claims

Congress has directed that payments of eligible Iran-related claims pursuant to section 2002 be made from the following two sources of funds:

(2) Judgments Against Iran.—For purposes of funding payments under subsection (a) in the case of judgments against Iran, the Secretary of the Treasury shall make such payments from amounts paid and liquidated from—

(A) rental proceeds accrued on the date of the enactment of this Act from Iranian diplomatic and consular property located in the United States; and

(B) funds not otherwise made available in an amount not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund on the date of the enactment of this Act.

Section 2002(b)(2).

With respect to the funds referred to in section 2002(b)(2)(A), the Treasury anticipates that approximately $7.8 million in rental proceeds accrued as of October 28, 2000, from Iranian diplomatic and consular property located in the United States will be available for the payment of the eligible claims filed with the Treasury after November 26, 2002, including but not limited to any claims re-filed with the Treasury after having been denied prior to November 26, 2002.

With respect to the funds referred to in section 2002(b)(2)(B), the Treasury anticipates that approximately $14 million will be available for the payment of the eligible claims filed with the Treasury after November 26, 2002, pursuant to section 2002, including but not limited to any claims re-filed with the Treasury after having been denied prior to November 26, 2002.

With respect to the funds referred to in section 20029b)(2)(A), the Treasury anticipates that approximately $14 million will be available for the payment of the eligible claims filed with the Treasury after November 26, 2002, pursuant to section 2002, including but not limited to any claims re-filed with the Treasury after having been denied prior to November 26, 2002.

Part 7. Notice Requirements Inapplicable

This notice advises applicants of the availability of funds pursuant to section 2002 and explains the nature of the information and documentation requirements established by that section. Accordingly, it has been determined that notice and public procedure are not required pursuant to 5 U.S.C. 553(a). Moreover, notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B) because this notice merely explains the requirements of section 2002 and does not affect the substantive rights of applicants under that section. Notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B) because section 2002 requires that payments be made ''promptly,'' see section 2002(a)(1), and it is in the public interest to establish the procedures to request payments without delay.

Part 8. Paperwork Reduction Act

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) pursuant to section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 1505–0177. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection that does not display a currently valid OMB control number. The collection of information specified in this notice is required to enable the Department of the Treasury to determine the eligibility of an applicant under section 2002. The collection of information is voluntary, but it is required to obtain a payment authorized by section 2002. The estimated average burden per applicant is 3 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the agency contact specified earlier in this notice and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

The figures provided above are only estimates of amounts available and may be subject to change.

Dated: February 7, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 12, 2003.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3925 Filed 2–13–03; 1:47 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0227]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys.

The purpose of this submission is to request a revision of a currently approved data collection under 2900–0227. VA plans to incorporate a revision of Part II (Census of Health of Veterans, SF 36 and VA Forms 10–21034 and 20–20134a through f) of the former 2900–0609. The consolidation of these existing data collections will decrease the public's reporting burden. These voluntary customer service surveys meet the requirements of Executive Order 12862, Setting Customer Service Standards.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 21, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–0609'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Nation-wide Customer Satisfaction Surveys.

OMB Control Number: 2900–0227.

Type of Review: Revision of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VHA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VHA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households.

Titles:

a. Prosthetics Care and Service, VA Form 10–0142b.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387.

OMB Control Number: 2900–0227.

Type of Review: Revision of a currently approved collection.

Abstract: Most customer satisfaction surveys will be recurring so that VHA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the

minimum amount of information necessary to determine customer needs and to evaluate VHA's performance.

The areas of concern to VHA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys and focus groups. Participation in the surveys will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VHA will consult with OMB regarding each specific information collection during this approval period.

Affected Public: Individuals or Households.

Estimated Annual Burden: 207,287 hours.

a. Prosthetics Care and Service, VA Form 10–0142b — 7,200.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1 — 35,000.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3 — 160,500.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387 — 4,587.

Estimated Average Burden Per Respondent: 23 minutes.

a. Prosthetics Care and Service, VA Form 10–0142b — 24 minutes.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1 — 30 minutes.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3 — 30 minutes.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387 — 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 546,600.

a. Prosthetics Care and Service, VA Form 10–0142b — 18,000.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1 — 70,000.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3 — 321,000.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387 — 137,600.

Dated: February 5, 2003.

By direction of the Secretary.

Martin Hill,

Management Analyst, Records Management Service.

[FR Doc. 03–4003 Filed 2–18–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 33

Wednesday, February 19, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID–02–002; FRL–7422–3]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

Correction

In the issue of Wednesday, February 12, 2003, on page 7174, in the third column, in the correction of rule document 03–856, under **§ 81.313 [Corrected]**, in the first line, ''§ 83.313'' should read '' § 81.313''.

[FR Doc. C3–856 Filed 2–18–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 19, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow), an endangered species under the Endangered Species Act of 1973, as amended (Act). On June 6, 2002, we proposed that 212 miles (mi) (339 kilometers (km)) be designated as critical habitat for the silvery minnow. The silvery minnow critical habitat designation in the Rio Grande extends from Cochiti Dam, Sandoval County, New Mexico (NM) downstream to the utility line crossing the Rio Grande, a permanent identified landmark in Socorro County, NM, a total of approximately 157 mi (252 km), referred to as the ''middle Rio Grande.'' The designation also includes the tributary Jemez River from Jemez Canyon Dam in NM to the upstream boundary of Santa Ana Pueblo, which is not included. The critical habitat designation defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 300 feet (ft) (91.4 meters (m)) of riparian zone adjacent to each side of the bankfull stage of the middle Rio Grande. The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta within this area are not included in the final critical habitat designation. Except for these areas, the final remaining portion of the silvery minnow's occupied range in the middle Rio Grande in NM is being designated as critical habitat. This publication also provides notice of the availability of the final economic analysis and the final Environmental Impact Statement (EIS) for this final rule.

This final rule and EIS are being issued pursuant to a court order. On November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 6, 1999, critical habitat designation for the minnow and ordered us to issue both an EIS pursuant to the National Environmental Policy Act (NEPA) and a new proposed rule designating critical habitat for the silvery minnow.

DATES: This final rule is effective March 21, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113.

You may obtain copies of the final rule, the economic analysis, or the final EIS from the field office address above or by calling 505–346–2525. All documents are also available from our Web site at *http://ifw2es.fws.gov/Library/.*

If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section above); telephone: 505–346–2525. Division of Endangered Species (see **ADDRESSES** section above); telephone 505–248–6920; facsimile 505–248–6788.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, TX. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth. Adults may reach 3.5 inches (in) (90 millimeters (mm)) in total length (Sublette *et al.* 1990). Its dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail. The fish is silver with emerald reflections. Its belly is silvery white, its fins are plain, and barbels are absent (Sublette *et al.* 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Española, NM, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980). The silvery minnow is extirpated from the Pecos River and also from the Rio Grande downstream of Elephant Butte Reservoir and upstream of Cochiti Reservoir (Bestgen and Platania 1991). The current distribution of the silvery minnow is limited to the Rio Grande between Cochiti Dam and Elephant Butte Reservoir. Throughout much of its historic range, the decline of the silvery minnow has been attributed to modification of the flow regime (hydrological pattern of flows that vary seasonally in magnitude and duration, depending on annual precipitation patterns such as runoff from snowmelt) and channel drying resulting from impoundments, water diversion for agriculture, stream channelization, and perhaps both interactions with non-native fish and decreasing water quality (Cook *et al.* 1992; Bestgen and Platania 1991; Service 1999; Buhl 2001).

Much of the species' life history information detailed below comes from studies conducted within the middle Rio Grande, the current range of the silvery minnow. Nevertheless, we believe that our determinations for other areas outside of the middle Rio Grande, but within the historic range of the silvery minnow, are consistent with the data collected to date on the species' ecological requirements (*e.g.,* Service 1999).

The role of the plains minnow (*Hybognathus placitus*) in the decline and extirpation of the silvery minnow from the Pecos River is uncertain; however, the establishment of the plains minnow coincided with the disappearance of the silvery minnow from the Pecos River (Bestgen and Platania 1991; Cook *et al.* 1992). Cook *et al.* (1992) believed that the non-native plains minnow was introduced into the Pecos drainage prior to 1964, and was probably the result of the release of ''bait minnows'' collected from the Arkansas River drainage. It is unclear, however, if populations of the native silvery minnow were depleted prior to the introduction of the plains minnow, or if the reduction and extirpation of the silvery minnow was a consequence of the interactions between the two species (C. Hoagstrom, U.S. Fish and Wildlife Service, pers. comm. 2001). One theory is that the plains minnow may be more tolerant of modified habitats and, therefore, was able to replace the silvery minnow in the degraded reaches of the Pecos River. Nevertheless, the plains minnow has experienced population declines within its native range from highly variable water levels, unstable streambeds, and fluctuating water temperatures (Cross *et al.* 1985, cited in

Taylor and Miller 1990). Although the interactions (*e.g.,* hybridization or competition) between the silvery minnow and the introduced plains minnow are believed by some to be one of the primary causes for the extirpation of the silvery minnow in the Pecos River, this hypothesis is unsubstantiated (Hatch *et al.* 1985; Bestgen *et al.* 1989; Cook *et al.* 1992). Currently, New Mexico State University is conducting research on the plains minnow and silvery minnow to determine if the two species hybridize. These studies are ongoing and results should be available in 2003 (C. Caldwell, U.S. Geological Survey, Biological Resources Division pers. comm. 2002).

Within its native range, the plains minnow is sympatric (occurs at the same localities) with other species of *Hybognathus,* but is separated ecologically from them. For example, the plains minnow is found in the main river channel where the substrate is predominantly sand, whereas related species such as the western silvery minnow (*Hybognathus argyritis*) predominate in backwaters and protected areas with little to no current and sand or silt substrate (Pflieger 1997). Consequently, if the silvery minnow and plains minnow do not hybridize, they may be ecologically segregated and able to co-exist.

The plains minnow and silvery minnow appear to have little in the way of behavioral or physiological isolating mechanisms and may hybridize (Cook *et al.* 1992); yet the combined effects of habitat degradation (*i.e.*, modification of the flow regime, channel drying, water diversion, and stream channelization) may be another potential explanation for the silvery minnow's extirpation from the Pecos River (Bestgen and Platania 1991; C. Hoagstrom, pers. comm. 2001). We acknowledge that no conclusive data exist to determine the cause of extirpation of the silvery minnow from the Pecos River.

The silvery minnow has also been extirpated from the Rio Grande downstream of Elephant Butte Reservoir, NM, to the Gulf of Mexico, Texas (TX), including the river reach within Big Bend National Park (Hubbs *et al.* 1977; Bestgen and Platania 1991). Reasons for the species' extirpation in the lower Rio Grande are also uncertain. The last documented collection of a silvery minnow in the Big Bend area was 1961, but reexamination of that specimen revealed it was a plains minnow (Bestgen and Propst 1996). Therefore, the last silvery minnow from the lower Rio Grande was apparently collected in the late 1950s (Trevino-Robinson 1959; Hubbs *et al.* 1977; Edwards and Contreras-Balderas 1991).

Prior to measurable human influence on the middle Rio Grande, starting in the 1300's, (Biella and Chapman 1977), the Rio Grande was a perennially flowing, aggrading river with a shifting sand substrate. In general, the river was slightly sinuous and braided, and freely migrated across the floodplain. Strong evidence now suggests that the middle Rio Grande started drying up on a fairly regular basis only after the development of Colorado's San Luis Valley in the 1870's. Prior to this, there are only two examples of its flow ceasing, during prolonged, severe droughts in 1752 and 1861. Over the past century, and particularly in the last few decades, the middle Rio Grande has been frequently dewatered, particularly in the river reach from Isleta Diversion Dam to the San Acacia Diversion Dam (Isleta reach) and the reach from San Acacia Diversion Dam to Elephant Butte Reservoir (San Acacia reach) (Middle Rio Grande Conservancy District (MRGCD) 1999; Scurlock and Johnson 2001; Scurlock 1998).

Decline of the species in the middle Rio Grande probably began in 1916 when the gates of Elephant Butte Dam were closed. Construction of the dam signaled the beginning of an era of dam construction on the mainstem Rio Grande that resulted in five major mainstem dams within the silvery minnow's historic range (Shupe and Williams 1988). These dams (Cochiti, Elephant Butte, Caballo, International Amistad, and International Falcon) allowed manipulation and diversion of the river's flow. Often this manipulation severely altered the flow regime and likely precipitated the decline of the silvery minnow (Bestgen and Platania 1991). Water management and use has resulted in a large reduction of suitable habitat for the silvery minnow. Lack of water is likely the single most important limiting factor for the survival of the species (Service 1999). Agriculture accounts for 90 percent of the water consumption in the middle Rio Grande (Bullard and Wells 1992). The average annual diversion of water in the middle Rio Grande by the MRGCD was 535,280 acre-feet (af) for the period from 1975 to 1989 (U.S. Bureau of Reclamation (BOR) 1993). The silvery minnow historically survived low flow periods because such events were infrequent and of lesser magnitude, and there were no diversion dams to restrict free movement of silvery minnows in the river (59 FR 36988). Concurrent with construction of the mainstem dams was an increase in the abundance of non-native fish (largemouth bass (*Micropterus salmoides*), smallmouth bass (*M. dolomieu*)) as these species were stocked into the reservoirs created by the dams (*e.g.*, Cochiti Reservoir) (Sublette *et al.* 1990). Once established, these species often completely replaced the native fish fauna (Propst *et al.* 1987; Propst 1999).

Development of agriculture and the growth of cities within the historic range of the silvery minnow resulted in a decrease in the quality of river water caused by municipal and agricultural runoff (*i.e.*, sewage and pesticides) that may have also adversely affected the range and distribution of the silvery minnow. Historically there were four other small native fish species (speckled chub (*Macrohybopsis aestivalis*); Rio Grande shiner (Notropis jemezanus); phantom shiner (*Notropis orca*); and Rio Grande bluntnose shiner (*Notropis simus simus*)) within the middle Rio Grande that had similar reproductive attributes, but these species are now either extinct or extirpated (Platania 1991).

The various life history stages of the silvery minnow require shallow waters with a sandy and silty substrate that is generally associated with a meandering river that includes sidebars, oxbows, and backwaters (C. Hoagstrom, pers. comm, 2001; Bestgen and Platania 1991; Platania 1991). However, physical modifications to the Rio Grande over the last century—including the construction of dams, levees, and channelization of the mainstem—have altered much of the habitat that is necessary for the species to persist (Service 1999). Channelization has straightened and shortened mainstem river reaches; increased the velocity of the current; and altered riparian vegetation, instream cover, and substrate composition (BOR 2001a). Adult silvery minnows occur in shallow braided runs over sand substrate, but rarely in habitat with substrate of gravel or cobble (Platania 1991; Dudley and Platania 1997; Platania and Dudley 1997; Remshardt *et al.* 2001).

The silvery minnow is a pelagic spawning species; *i.e.*, its eggs flow in the water column. The silvery minnow is the only surviving small, native pelagic spawning minnow in the middle Rio Grande, and its range has been reduced to only 5 percent of its historic extent. Although the silvery minnow is a hearty fish, capable of withstanding many of the natural stresses of the desert aquatic environment, most individual silvery minnows live only one year (Bestgen and Platania 1991). Thus, a successful annual spawn is key to the survival of the species (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001, 2002b). The

silvery minnow's range has been so greatly restricted that the species is extremely vulnerable to catastrophic events, such as a prolonged period of low or no flow (*i.e.*, the loss of all surface water) (59 FR 36988; Dudley and Platania 2001).

In the middle Rio Grande, the spring runoff coincides with and may trigger the silvery minnow's spawn (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001). For example, 1,850 cubic feet per second (cfs) of water was released from Cochiti Reservoir on May 13, 2002, to provide for silvery minnow spawning. Following the release, a significant spawning event occurred in the middle Rio Grande. During a spawn, semibuoyant (floating) eggs drift downstream in the water column (Smith 1999; Dudley and Platania 2001) (see ''Primary Constituent Elements'' section of this final rule for further information on spawning). However, diversion dams are believed to act as instream barriers and prevent silvery minnows from moving upstream after hatching (Service 2001b; Dudley and Platania 2001; 2002a). In fact, the continued downstream displacement and decline of the silvery minnow in the middle Rio Grande is well documented (Dudley and Platania 2001).

During the irrigation season (approximately March 1 to October 31 of each year) in the middle Rio Grande, silvery minnow often become stranded in the diversion channels (or irrigation ditches), where they are unlikely to survive (Smith 1999; Lang and Altenbach 1994). For example, when the irrigation water in the diversion channels is used on agricultural fields, the possibility for survival of silvery minnows in the irrigation return flows (excess irrigation water that flows from agricultural fields and is eventually returned to the river) is low, because silvery minnows perish in canals because of unsuitable habitat, dewatering, or predation (Lang and Altenbach 1994). Unscreened diversion dams also entrain (trap) silvery minnow fry (fish that have recently emerged from eggs) and semibuoyant eggs (Smith 1998; 1999). However, some irrigation water is returned to the river via irrigation waterways in the reach of the middle Rio Grande from the Isleta reach, which helps sustain flow in certain segments of this reach. Nevertheless, we do not have evidence that these riverside drains offer suitable refugia for the silvery minnow.

Perhaps even more problematic for the silvery minnow in the middle Rio Grande are drought years during the irrigation season when there may be little supplemental water (water that is used to augment river flows) available. Compounding this problem is stream bed aggradation (*i.e.*, the river bottom is rising due to sedimentation) below San Acacia, NM, where the bed of the river is now perched above the bed of the low flow conveyance channel (LFCC). The LFCC is immediately adjacent to and parallels the Rio Grande for approximately 75 mi (121 km) and was designed to expedite delivery of water to Elephant Butte Reservoir, pursuant to the Rio Grande Compact of 1939. The LFCC diverted water from the Rio Grande from 1959 to 1985. Because the river bed is now above the LFCC, waters in the mainstem of the river are drained from the river bed into the LFCC. The LFCC has the capacity to take approximately 2,000 cfs of the river's flow, via gravity. If natural river flow is 2,000 cfs or less, the LFCC can dewater the Rio Grande from its heading at the San Acacia Diversion Dam south to Elephant Butte Reservoir.

However, the LFCC has not been fully operational since 1985 because of siltation of the lower end (*i.e.*, stream bed aggradation) at Elephant Butte Reservoir. Even without water diversion into the LFCC, seepage from the river to the LFCC is occurring and causing some loss of surface flows in the river channel (BOR 2001a). In effect, water is drained from the Rio Grande into the LFCC thereby resulting in water losses in the reach from the San Acacia reach. During some years this can result in prolonged recurring periods of low or no flow.

It is believed that, historically, the silvery minnow was able to withstand periods of drought primarily by retreating to pools and backwater refugia, and swimming upstream to repopulate upstream habitats (Deacon and Minckley 1974; J. Smith, U.S. Fish and Wildlife Service, pers. comm. 2001). Platania (1995) posits that after prolonged recurring periods of low or no flow the silvery minnow may have been able to repopulate downstream habitat the following year because eggs drifted from upstream populations (Platania 1995). Although able to survive droughts historically through such movements, the present-day middle Rio Grande dries and dams prevent upstream movement. As a result silvery minnows can become trapped in dewatered reaches and may die in isolated pools before the river becomes wetted again. The inability of the population to find adequate refugia during prolonged recurring periods of low or no flow and to repopulate extirpated reaches creates a very unstable population (Service 2001b).

In some isolated pools, Smith and Hoagstrom (1997) and Smith (1999) documented complete mortality of silvery minnows in the middle Rio Grande in both 1996 and 1997 during prolonged periods of low or no flow. These studies documented both the relative size of the isolated pool (*i.e.*, estimated surface area and maximum depth) in relation to pool longevity (*i.e.*, number of days the isolated pool existed) and the fish community within isolated pools. Isolated pools found during these conditions typically only lasted for about 48 hours before drying up completely (Smith 1999). Those isolated pools that persisted longer than 48 hours lost greater than 81 percent of their estimated surface area and greater than 26 percent of their maximum depth within 48 hours. Moreover, isolated pools receive no surface inflow, water temperatures increase, and dissolved oxygen decreases; depending on location, size, and duration of the prolonged recurring periods of low or no flow, these factors may result in the death of all fish (Tramer 1977; Mundahl 1990; Platania 1993b; Ostrand and Marks 2000; Ostrand and Wilde 2001). Therefore, when periods of low or no flow are longlasting (over 48 hours), complete mortality of silvery minnows in isolated pools can occur.

Formation of isolated pools also increases the risk of predation of silvery minnows in drying habitats. Predators, primarily fish and birds, have been observed in high numbers in the middle Rio Grande, consuming fish in drying, isolated pools where those fish become concentrated and are more vulnerable to predation (J. Smith, pers. comm. 2001).

The potential for prolonged recurring periods of low or no flow in the middle Rio Grande becomes particularly significant for the silvery minnow below the San Acacia Diversion Dam, where most silvery minnows have been recently captured. In the river reach above (north of) the San Acacia Diversion Dam, return flows from current irrigation operations and other activities are routed back into the mainstem of the middle Rio Grande. At times, this can provide a fairly consistent flow in particular stretches of the Isleta reach. However, at the San Acacia Diversion Dam, once diversions are made (*i.e.*, to irrigation canals, as well as seepage losses to the LFCC) the return flows continue in off-river channels (with a few exceptions at Brown's Arroyo and the 10-mile outfall of the LFCC) until they enter Elephant Butte Reservoir. Thus, unlike in the Isleta reach, the silvery minnow does not receive the benefit of irrigation return flows in the San Acacia reach.

Previous Federal Action

We proposed to list the silvery minnow as an endangered species with critical habitat on March 1, 1993 (58 FR 11821). The comment period, originally scheduled to close on April 30, 1993, was extended to August 25, 1993 (58 FR 19220; April 13, 1993). That extension allowed us to conduct public hearings and to receive additional public comments. Public hearings were held in Albuquerque and Socorro, NM, on the evenings of June 2 and 3, 1993, respectively. After a review of all comments received in response to the proposed rule, we published the final rule to list the silvery minnow as endangered on July 20, 1994 (59 FR 36988).

Section 4(a)(3) of the Act requires that the Secretary, to the maximum extent prudent and determinable, designate critical habitat at the time a species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time the silvery minnow was listed, we found that critical habitat was not determinable because there was insufficient information to allow us to perform the required analyses of the impacts of the designation.

We contracted for an economic analysis of the proposed critical habitat designation in September 1994, and a draft analysis was prepared and provided to us on February 29, 1996. The draft document was then provided to all interested parties on April 26, 1996. That mailing included 164 individuals and agencies, all affected Pueblos in the valley, all county commissions within the occupied range of the species, and an additional 54 individuals who had attended the public hearings on the proposed listing and who had requested that they be included on our mailing list, particularly for the economic analysis. At that time, we notified the public that, because of a moratorium on final listing actions and determinations of critical habitat imposed by Public Law 104–6, no work would be conducted on the analysis or on the final decision concerning critical habitat. However, we solicited comments from the public and agencies on the document for use at the time such work resumed.

On April 26, 1996, the moratorium was lifted. Following the waiver of the moratorium, we reactivated the listing program that had been shut down for over a year and faced a backlog of 243 proposed species listings. In order to address that workload, we published, on May 16, 1996, our Listing Priority Guidance for the remainder of Fiscal Year 1996 (61 FR 24722). That guidance identified the designation of critical habitat as the lowest priority upon which we could expend limited funding and staff resources. Subsequent revisions of the guidance for Fiscal Years 1997 (December 5, 1996; 61 FR 64475) and for 1998–1999 (May 8, 1998; 63 FR 25502) retained critical habitat as the lowest priority for the listing program within the Service. Thus, no work resumed on the economic analysis.

On February 22, 1999, in *Forest Guardians* v. *Babbitt,* Civ. No. 97–0453 JC/DIS, the United States District Court for the District of New Mexico ordered us to publish a final determination with regard to critical habitat for the silvery minnow within 30 days. The deadline was subsequently extended by the court to June 23, 1999. On July 6, 1999, we published a final designation of critical habitat for the silvery minnow (64 FR 36274), pursuant to the court order.

On November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 6, 1999, critical habitat designation because we had not issued an EIS, hence we were ordered to issue both an EIS pursuant to the National Environmental Policy Act (NEPA) and a new proposed rule designating critical habitat for the silvery minnow. This final rule and the EIS are being issued pursuant to that court order.

On April 5, 2001, we mailed approximately 500 copies of a preproposal notification letter to the 6 middle Rio Grande Indian Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta), various governmental agencies, interested individuals, and the New Mexico Congressional delegation. The letter informed them of our intent to prepare an EIS for the proposed designation of critical habitat for the silvery minnow and announced public scoping meetings pursuant to NEPA. On April 17, 23, 24, and 27, 2001, we held public scoping meetings in Albuquerque, NM; Carlsbad, NM; Fort Stockton, TX; and Socorro, NM, respectively. We solicited oral and written comments and input. We were particularly interested in obtaining additional information on the status of the species or information concerning threats to the species. The comment period closed June 5, 2001. We received approximately 40 comments during the EIS scoping process. During April 2001, we contracted with Industrial Economics Incorporated for an economic analysis and the Institute of Public Law at the University of New Mexico School of Law for an EIS on the proposed critical habitat designation.

Following the closing of the scoping comment period, we outlined possible alternatives for the EIS. We held a meeting on September 12, 2001, to solicit input on the possible alternatives from the Rio Grande Silvery Minnow Recovery Team (Recovery Team) and other invited participants including individuals from the Carlsbad Irrigation District, Fort Sumner Irrigation District, the States of New Mexico and Texas, and potentially affected Pueblos and Tribes. Following this meeting, we sent letters to the Recovery Team and other invited participants, including Tribal entities and resource agencies in NM and TX, to solicit any additional information (particularly biological, cultural, social, or economic data) that may be pertinent to the economic analysis or EIS. We received 10 comments in response to our requests for additional information. We fully considered the information provided in the comment letters as we developed the alternatives analyzed in the draft EIS, which included the proposed rule as our preferred alternative.

On June 6, 2002, we proposed that 212 mi (339 km) be designated as critical habitat for the silvery minnow (67 FR 39206). The comment period for the proposed rule, draft EIS, and draft Economic Analysis was originally scheduled to close on September 4, 2002, but was extended until October 2, 2002 (67 FR 57783).

In this final rule, we determine that a river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, TX (lower Rio Grande), and a river reach in the middle Pecos River, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM (middle Pecos River), are essential to the conservation of the silvery minnow. However, these areas are not designated as critical habitat because of our analysis under section 4(b)(2) (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section of this rule). This critical habitat designation includes the middle Rio Grande from Cochiti Dam to the utility line crossing the Rio Grande just east of the Bosque Well as demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), Socorro County, NM, with the Universal Transverse Mercator

(UTM) coordinates of UTM Zone 13: 311474 E, 3719722 N, as referenced with the 1927 North American Datum (NAD27). The designation also includes the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included (*see* the ''Regulation Promulgation'' section of this rule for exact descriptions of boundaries of critical habitat), and no other reaches within the historic range of the silvery minnow. We have also not included four areas of the middle Rio Grande in the critical habitat because of Tribal management plans and other relevant issues (*see* ''Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section of this rule). Therefore, we are only designating some sections of the river reaches currently occupied by the silvery minnow.

This final rule is selected as the preferred alternative in the final EIS, pursuant to NEPA, which we were required to prepare under court order from the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* 206 F. Supp. 2d 1156 (D.N.M. 2000). The two reaches referenced above (*i.e.*, middle Pecos River and lower Rio Grande) were also analyzed in the EIS and Economic Analysis. We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. Therefore, we solicited public comment on all reaches identified in the proposed rule as essential, including whether any of these or other areas should be excluded from the final designation pursuant to section 4(b)(2). As required by law, we have considered all comments received on the proposed rule, the draft EIS, and the draft economic analysis before making this final determination.

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 the species, and estimate time and cost for implementing the recovery measures needed. Although a recovery plan 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 solely on the basis of a recovery plan), the information contained in the Rio Grande Silvery Minnow Recovery Plan (Recovery Plan) was considered in developing this critical habitat designation.

On July 1, 1994, the Recovery Team was established by the Service pursuant to section 4(f)(2) of the Act and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Stakeholder involvement in the development of recovery plans helps minimize the social and economic impacts that could be associated with recovery of endangered species. Numerous individuals, agencies, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). On July 8, 1999, we finalized the Recovery Plan (Service 1999), pursuant to section 4(f) of the Act.

The Recovery Plan recommends recovery goals for the silvery minnow, as well as procedures to better understand the biology of the species. The primary goals of the Recovery Plan are to: (1) Stabilize and enhance populations of silvery minnow and its habitat in the middle Rio Grande valley and (2) reestablish the silvery minnow in at least three other areas of its historic range (Service 1999). The reasons for determining that these three areas were necessary for recovery include: (1) Consideration of the biology of the species (*e.g.*, few silvery minnows live more than 12 to 14 months, indicating the age-1 fish (*i.e.*, all fish born in 2000 that remain alive in 2001 would be age-1 fish) are almost entirely responsible for perpetuation of the species); (2) the factors in each reach that may inhibit or enhance reestablishment and security of the species vary among areas; and (3) it is unlikely that any single event would simultaneously eliminate the silvery minnow from three geographic areas (Service 1999).

In accordance with the Recovery Plan, we have initiated a captive propagation program for the silvery minnow (Service 1999; Brooks 2001). Silvery minnows are currently being propagated at five facilities in NM and one in South Dakota (SD); one additional NM facility will come on-line in 2003. We currently have silvery minnows housed at: (1) The Service's Dexter National Fish Hatchery and Technology Center, NM; (2) the Service's Mora National Fish Hatchery and Technology Center, NM; (3) the City of Albuquerque's Biological Park, NM; (4) the New Mexico State University, NM; (5) the New Mexico Department of Game and Fish's Rock Lake State Fish Hatchery, NM; and (6) the U.S. Geological Survey Biological Resources Division's Yankton Laboratory, SD (J. Brooks, pers. comm., 2002). Progeny of these fish are being used to augment the middle Rio Grande silvery minnow population, but could also be used in future augmentation or reestablishment programs for the silvery minnow in other river reaches (J. Remshardt, New Mexico Fishery Resources Office, pers. comm. 2001).

We have also salvaged and transplanted silvery minnows within the middle Rio Grande in recent years (Service 1996, 1998, 1999, 2000, 2001, 2002). Approximately 225,500 silvery minnow larvae and adults have been released (*i.e.*, stockings from captive bred fish or translocated from downstream reaches) since May 1996 (J. Remshardt, U.S. Fish and Wildlife Service, pers. comm. 2001). For example, in late 2001, the University of New Mexico (UNM) released 11,900 silvery minnows into the San Acacia Reach. In June 2002, we released 2,500 marked silvery minnows within the Angostura Reach. These fish were marked to determine the movement of silvery minnows in the wild. Results of studies of the effectiveness of these releases will be useful for evaluating future efforts to reintroduce the species. These results should be available in 2003 (R. Dudley and S. Platania, UNM, pers. comm. 2002).

We have also continued working with the Recovery Team since the Recovery Plan was finalized. We believe this critical habitat designation and our conservation strategy (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section below) are consistent with the Recovery Plan (Service 1999). The purpose of the Recovery Plan is to outline the research and data collection activities that will identify measures to ensure the conservation of the silvery minnow in the wild. We believe this critical habitat designation and our conservation strategy are consistent with the recommendations of the Recovery Plan and Recovery Team.

Summary of Comments and Recommendations

In the June 6, 2002, proposed rule, we requested all interested parties to submit comments or information concerning the designation of critical habitat for the silvery minnow (67 FR 39206). During the comment period, we held public hearings in Socorro and Albuquerque on June 25, and 26, 2002, respectively. We published newspaper notices inviting public comment and announcing the public hearings in the

following newspapers in NM: Albuquerque Journal, Albuquerque Tribune, Socorro Defensor Chieftain, Sante Fe New Mexican, and Las Cruces Sun. Transcripts of these hearings are available for inspection (*see* **ADDRESSES** section). The comment period was originally scheduled to close on September 4, but was extended until October 2, 2002 (September 12, 2002; 67 FR 57783). We contacted all appropriate State and Federal agencies, Tribes, county governments, scientific organizations, and other interested parties and invited them to comment. On June 6, 2002, we hosted a teleconference to provide a short presentation and answer questions by reporters on all aspects of the proposed critical habitat designation, the draft economic analysis, and draft EIS. We also provided notification of these documents through e-mail, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, Tribes, and interest groups. We also published all of the associated documents on our Region 2 Internet site following their release on June 6, 2002.

We solicited five independent experts who are familiar with this species to peer review the proposed critical habitat designation. Only one of the peer reviewers submitted comments, and these supported the proposed designation. We also received a total of 34 oral and 54 written comments. Of the oral comments, 10 supported critical habitat designation and 24 opposed designation. Of the written comments, 17 supported critical habitat designation, 22 opposed designation, and 15 were neutral or provided additional information. We reviewed all comments received for substantive issues and new data regarding critical habitat and the silvery minnow, the draft economic analysis, and the draft EIS. In the following summary of issues we address all comments received on all three documents during the comment periods and public hearing testimony. Comments of a similar nature are grouped into issues.

Issue 1: Biological Concerns

(1) *Comment:* Some commenters state that the extent of critical habitat proposed by us is inadequate to address survival and recovery of the species (*e.g.*, critical habitat for the silvery minnow should be expanded beyond the current proposal). Recommendations for additional areas designated include the Rio Grande from Caballo to the NM-TX border, the area from the confluence of the Rio Conchas to the downstream boundary of Big Bend National Park, and the Pecos River from Sumner to Brantley Reservoir.

Our Response: Our analysis of the following two areas—(1) the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM; and (2) the river reach in the lower Rio Grande in Big Bend National Park downstream of the National Park boundary to the Terrell/Val Verde County line, TX—finds that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them (*see* ''Exclusions Under Section 4(b)(2)'' section). Although we believe these areas are essential to the conservation of the silvery minnow, these areas are not designated as critical habitat.

It is critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. We believe that one of the goals of the Recovery Plan can be fulfilled by reestablishing the silvery minnow in areas of its historic range using the flexibility provided for in section 10(j) of the Act. In order to achieve recovery for the silvery minnow, we need assistance from local stakeholders to ensure the success of reestablishing the minnow in areas of its historic range. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (E. Hein, U.S. Fish and Wildlife Service, pers. comm, 2002). It is important for recovery of this species that we have the support of the public when we move toward meeting the second recovery goal of reestablishing the species in areas of its historic range.

The reasons why other areas of the silvery minnow's historic range were not designated as critical habitat are detailed within the ''Reach-by-Reach Analysis'' section below. If, in the future, we determine from information or analysis that those areas designated in this final rule need further refinement or if we identify and determine additional areas to be essential to the conservation of the species and requiring special management or protection, we will evaluate whether a revision of critical habitat is warranted at that time.

(2) *Comment:* The current proposal for critical habitat for the silvery minnow is contrary to the recommendations of the Rio Grande Silvery Minnow Recovery Team and the Recovery Plan. The proposed designation is deficient in its omission of critical habitat in the ''three other areas within its historic range'' as required by the Recovery Plan. Our proposal to not designate the lower Rio Grande as critical habitat has no factual basis.

Our Response: It is important to note that we utilized the recommendations of the Recovery Team in the Recovery Plan, consistent with this definition of conservation, to conclude that the middle Rio Grande and the middle Pecos River from Sumner Dam to Brantley Dam, NM, and the lower Rio Grande from the upstream boundary of Big Bend National Park downstream through the area designated as a wild and scenic river to the Terrell/Val Verde County line, TX, are ''essential to the conservation of'' the silvery minnow. Although the middle Pecos River and the lower Rio Grande are not designated as critical habitat, we believe they are important for the recovery of the silvery minnow. Thus, we concur with the Recovery Plan that reestablishment of the silvery minnow within additional geographically distinct areas, within its historical range, is necessary to ensure the minnow's survival and recovery (Service 1999). However, recovery is not achieved by designating critical habitat. The Act provides for other mechanisms that will provide for reestablishment of the minnow outside of the middle Rio Grande and the eventual recovery of the silvery minnow. In addition, please see responses 1 and 44 for information related to this particular issue.

(3) *Comment:* The Service appears to be greatly concerned that critical habitat could jeopardize the trust and spirit of cooperation that has been established over the last several years because critical habitat designation would be viewed as an unwarranted and unwanted intrusion in the middle Pecos and lower Rio Grande. However, the same arguments can be made in the middle Rio Grande.

Our Response: The middle Pecos and lower Rio Grande are essential to the conservation of the silvery minnow. Still, the silvery minnow has been extirpated from these areas of its historic range and we believe that the appropriate means to potentially reestablish the species is through use of the 10(j) experimental population rule (*see* ''Exclusions Under Section 4(b)(2)'' section). We also have not included areas within the middle Rio Grande where we believe adequate special management is in place and because of other relevant issues (*see* ''Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section).

However, we determine that other areas of the middle Rio Grande meet the definition of critical habitat, and we did not exclude these areas under section 4(b)(2) based upon economic or other relevant impacts.

We are actively involved with ensuring conservation benefits to the listed species within the middle Rio Grande by participating in a collaborative working group to develop a long-term strategy/solution (Middle Rio Grande Endangered Species Act Collaborative Program). We believe this type of cooperative program is an important opportunity to achieve and facilitate conservation of the minnow, while allowing water activities to continue.

(4) *Comment:* It is well documented that the Rio Grande has historically gone dry. The current proposal to keep the river running throughout the year is not reasonable, feasible, or necessary. You are attempting to create a habitat that has never existed. The proposed rule does not identify minimum flow requirements to maintain the primary constituent elements. Critical habitat will only increase the ''bureaucratic red tape,'' not silvery minnow habitat.

Our Response: Critical habitat primarily focuses on the maintenance of habitat features identified as primary constituent elements. Critical habitat does not serve to create these features where they do not currently exist.

We agree that some areas designated as critical habitat within the middle Rio Grande have the potential for periods of low or no flow under certain conditions (*see* ''Primary Constituent Elements'' section). We also recognize that the critical habitat designation specifically includes some areas that have lost flow periodically (MRGCD 1999; Scurlock and Johnson 2001; Scurlock 1998). We nevertheless believe these areas are essential to the conservation of the silvery minnow because they likely serve as connecting corridors for fish movement between areas of sufficient flowing water (*e.g., see* Deacon and Minckley 1974; Eberle et al. 1993). Additionally, we believe the designated critical habitat is essential for the natural channel geomorphology (the topography of the river channel) to maintain habitat, such as pools, by removing or redistributing sediment during high flow events (*e.g., see* Simpson *et al.* 1982; Middle Rio Grande Biological Interagency Team 1993). Therefore, we believe that the inclusion of an area that has the potential for periods of low or no flow as critical habitat will ensure the long-term survival and recovery of silvery minnow. As such, we believe that the primary constituent elements as described in this final rule provide for a flow regime that allows for short periods of low or no flow.

The primary constituent elements identified below provide a qualitative description of those physical and biological features necessary to ensure the conservation of the silvery minnow. We did not identify quantitative estimates of specific minimum thresholds (*e.g.,* minimum flows or depths), because we believe these estimates vary seasonally and annually, and by river reach within the designated critical habitat. Thus, we believe these thresholds are appropriately enumerated through section 7 provisions 7(a)(1) and 7(a)(2) (*e.g., see* Service 2001b), which can be easily changed if new information reveals effects to critical habitat in a manner or extent not previously considered (*see* 50 CFR 402.16(b)).

We based this final rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). We have designated only river reaches that currently contain the primary constituent elements (described below) during all or a part of the year and that are currently occupied by the minnow. We did not include river reaches where the current or potential suitability for the silvery minnow is unknown. Consequently, we are not attempting to create habitat conditions or minimum flow requirements, but rather, we will review projects that have a Federal nexus to ensure that any proposed actions do not adversely affect the current primary constituent elements to the extent that the designated critical habitat will be adversely modified or destroyed.

(5) *Comment:* The silvery minnow is doing very well in its current situation and is not vulnerable to a single catastrophic event. The captive breeding program is flourishing and it seems reasonable that you could release many millions of silvery minnows each spring. Therefore, you should not condemn the river to support a species that has an arbitrary designation and is not truly endangered.

Our Response: The purpose of the Act is to conserve listed species and the ecosystems on which they depend. Relegating a species to captivity does not conserve the ecosystem on which they depend. Controlled propagation is not a substitute for addressing factors responsible for an endangered or threatened species' decline. Therefore, our first priority is to recover wild populations in their natural habitat wherever possible, without resorting to the use of controlled propagation. This position is fully consistent with the Act. Moreover, there has been insufficient time to develop a captive propagation management plan that captures the majority of genetic variability of the minnow in the wild to maximize the low genetic diversity in captively propagated silvery minnows (Turner 2002).

We reviewed the best scientific and commercial data available to determine that the silvery minnow should be classified as an endangered species on July 20, 1994 (59 FR 36988). Procedures found at section 4(a)(1) of the Act, and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. There is no evidence to suggest that the silvery minnow is recovered, and recovery goals outlined in the Recovery Plan have not yet been met. Therefore, we do not agree that the silvery minnow is ''doing very well in its current situation.'' Additionally, the silvery minnow occupies less than 5 percent of its historic range, and the likelihood of extinction from catastrophic events is high because of its limited range (Hoagstrom and Brooks 2000, Service 1999).

(6) *Comment:* In the proposed rule, the Service suggests that the primary constituent elements for the silvery minnow and Pecos bluntnose shiner are compatible. However, if this were the case, the silvery minnow would not be extirpated from the Pecos River.

Our Response: We continue to believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat (*e.g.,* clean permanent water; a main river channel habitat with sandy substrate; and a low velocity flow (February 20, 1987; 52 FR 5295)) are compatible with our conservation strategy for repatriating the silvery minnow. There are no conclusive data to substantiate any reasons for extirpation of the silvery minnow from the Pecos River. Primary constituent elements are those physical and biological habitat components that are essential for the conservation of the species, and are not determined based upon the species' presence. The absence of silvery minnows from the Pecos River does not mean that the minnow's primary constituent elements are not present. (Also refer to the ''Background'' section for information on the role of the plains minnow (*Hybognathus placitus*) in the decline and extirpation of the silvery minnow from the Pecos River).

(7) *Comment:* One of the most significant threats to native fish in the southwestern United States is non-native fish; however, the Service did not provide any information on whether non-native fish affect the silvery minnow or its habitat.

Our Response: In the proposed critical habitat designation rule, we stated: ''Habitat alteration and loss, and non-native competition, predation, and other effects are inextricably intertwined and have contributed substantially to the endangered status of the silvery minnow (Service 1999; Dudley and Platania 2001). Furthermore, habitat alteration has been a significant contributor to non-native fish invasion, competition, and adverse effects. In turn, non-native species have likely contributed significantly to the inability of native fish, such as the silvery minnow, to persist in altered environments (Hubbs 1990; Propst 1999)'' (June 6, 2002; 67 FR 39206).

(8) *Comment:* There is a notable lack of data in your reports concerning the plains minnow found within the middle Rio Grande.

Our Response: Although the plains minnow was found infrequently in a survey of bait-fishing stores within the Rio Grande Basin (Schmitt 1975), the plains minnow has never been documented in the wild within the middle Rio Grande (R. Dudley, American Southwest Ichthyological Research Foundation, pers. comm., 2002; K. Bestgen, Colorado State University, Larval Fish Laboratory, pers. comm., 2002). The silvery minnow and plains minnow can be distinguished from each other by morphological and genetic differences (Bestgen and Propst 1996; Cook *et al.* 1992). Therefore, we believe that ''a lack of data'' is reflective of a lack of presence of the plains minnow in the middle Rio Grande.

(9) *Comment:* Critical habitat could result in the loss of flood pulses for uses such as periodic flooding of the bosque.

Our Response: The silvery minnow requires a spike in early spring to trigger spawning (Platania and Dudley 2000). Critical habitat will not result in the loss of this pulse of water. In fact, this hydrologic event could also periodically flood some areas of the bosque (bosque is the riparian areas adjacent to the Rio Grande).

(10) *Comment:* One commenter believes the Service overlooked important information that silvery minnows can bury in the wet sand and survive extensive periods, especially when the river bed is dry. This commenter states that when the river is dry, silvery minnows have been found by digging in the sand.

Our Response: There is no information in the scientific literature or provided by biologists researching the silvery minnow to indicate that the species can either bury underground or survive in the wet sand when the river is dry. Available evidence indicates that silvery minnows die only minutes after being removed from water.

(11) *Comment:* The Service should consider the use of irrigation ditches to recover the silvery minnow.

Our Response: Ephemeral or perennial irrigation canals and ditches, including the LFCC (*i.e.,* downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the headwaters of Elephant Butte Reservoir) do not offer suitable refugia and are not useful for conservation of the silvery minnow because they do not contain the primary constituent elements and the habitat is not sufficient to support viable populations of silvery minnow for extended periods of time (*see also* BOR 2001c). Silvery minnows found in canals and ditches are believed to represent silvery minnows that became entrapped due to the diversion of irrigation water from the mainstem middle Rio Grande. Nevertheless, we are aware that a study is being conducted by New Mexico State University to evaluate the usefulness of irrigation canals and ditches to the silvery minnow (Thompson 2002). We will assess the results of this study when they are available.

(12) *Comment:* Why does the Service indicate that agricultural runoff is detrimental to the silvery minnow, when the return flows are an important source of water for the species?

Our Response: We recognize that under current irrigation operations, the delivery of irrigation water and associated return flows play an important role in supporting fish survival in the lower reaches of the river. The return flows also help to provide water to meet Rio Grande Compact delivery obligations. Irrigation water deliveries to MRGCD and the six middle Rio Grande Pueblos provide ''carriage'' water that facilitates the more efficient delivery of supplemental water to benefit the silvery minnow. However, as noted in the background section, development of agriculture and the growth of cities within the historic range of the silvery minnow may have resulted in a decrease in the quality of river water through municipal and agricultural runoff (*i.e.,* sewage and pesticides).

Issue 2: Procedural and Legal Compliance

(13) *Comment:* The U.S. Army Corps of Engineers (Corps) should be held responsible for the plight of the silvery minnow because they constructed Cochiti Dam and drastically altered the species' habitat.

Our Response: The effects of past and ongoing human and natural factors leading to the current status of the silvery minnow is called the environmental baseline. The environmental baseline is a snapshot of the species' status at any point in time, and is updated when we conduct a section 7 biological opinion. No single entity can be held responsible for the status of the silvery minnow. However, the Corps is (as are many other entities) included in the Middle Rio Grande Endangered Species Act Collaborative Program and is part of the long-term solution to develop and implement activities to conserve the minnow.

(14) *Comment:* We must specify in the final rule for critical habitat whether the experimental population under section 10(j) of the Act would be essential or nonessential.

Our Response: When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species on the basis of the best available information. Any future recovery efforts, including repatriation of the species to areas of its historical range under section 10(j) of the Act, will be conducted in accordance with the pertinent sections of the Act, NEPA, and Federal rulemaking procedures. A NEPA analysis is necessary to carefully consider information concerning every significant environmental impact among all the alternatives and select a preferred alternative. We find that nonessential designations garner wider and more meaningful public support. However, at this time we cannot determine the type of 10(j) rule that may be proposed for the minnow.

(15) *Comment:* The establishment of experimental populations is purely speculative because according to the Service's regulations, the establishment of an experimental population requires an agreement among the Service, affected States, Federal agencies, and landowners. An agreement is unlikely to happen.

Our Response: We believe that the use of section 10(j) will encourage local cooperation through management flexibility. Our regulations state that we shall consult with appropriate State fish

and wildlife agencies, local government entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules (50 CFR 17.81(d)). As noted above, any future recovery efforts, including reintroduction of the species to areas of its historic range, will be conducted in accordance with NEPA and the Act.

(16) *Comment:* Executive Orders 12866 and 12988 appear to apply to the proposed designation of critical habitat.

Our Response: We again read through the comments and information provided concerning Executive Orders 12866 (''Regulatory Planning and Review'') and 12988 (''Civil Justice Reform''). While the commenter did not adequately explain the rationale for why they believe our initial determinations in the proposed critical habitat designation were inadequate, we found nothing to warrant changing our original determinations about the applicability of these Executive Orders.

(17) *Comment:* How can critical habitat include the Isleta reach that the District Court for the District of New Mexico has determined could be dry? The District Court order provides for the potential draining of Heron Reservoir. If the current drought continues through 2003, potentially 75 percent of critical habitat could be dry. The court order from the District Court changes all of the previous analyses and conclusions concerning critical habitat designation. The Service has not considered Judge Parker's recent court order to provide water for the silvery minnow. The Service must consider and analyze all sources of storage water that will now be used for the silvery minnow.

Our Response: On September 23, 2002, the District Court for the District of New Mexico ordered the following: (1) The BOR must provide sufficient flows of water for the remainder of 2002 to maintain a flow of 50 cfs at San Acacia Diversion Dam, and to maintain a flow in the Albuquerque Reach from Angostura Diversion Dam to Isleta Diversion Dam; (2) if necessary to meet these flow requirements for the remainder of 2002, the BOR must release water from Heron Reservoir in 2002; and (3) the Federal Government must compensate those, if any, whose contractual rights to water are reduced in order to meet the flow requirements (*Rio Grande Silvery Minnow* v. *Keys,* Civ. No. 99–1320 JP/RLP–ACE).

In a court order issued October 16, 2002, the Tenth Circuit Court of Appeals stayed the District Court's order (*Rio Grande Silvery Minnow* v. *Keys,* Civ. No. 02–2254, 02–2255, 02–2267). The court order from the District Court for the District of New Mexico is currently under appeal in the Tenth Circuit Court of Appeals and a written decision has not been issued. On the basis of the consultation history of the silvery minnow, we do not anticipate that the voluntary supplemental water program discussed in responses to comments 56 and 57 will change. Because we anticipate that supplemental flows to avoid destruction or adverse modification of critical habitat will be similar, if not identical, to what is currently required to avoid jeopardizing the species, we do not believe that critical habitat will result in additional flow requirements during consultation. Nevertheless, future section 7 consultations will evaluate whether proposed actions jeopardize the continued existence of the silvery minnow or adversely modify or destroy critical habitat. Each consultation will be evaluated on a case-by-case basis following our regulations (50 CFR part 402).

(18) *Comment:* The Service should consider water table augmentation to satisfy the primary constituent elements rather than flow augmentation. Habitat restoration activities need to move forward quickly because the supplemental water program cannot continue at the current level.

Our Response: We appreciate these and other numerous suggestions we received regarding special management considerations. Water table augmentation and habitat restoration activities may provide for the maintenance and improvement of one or more of the primary constituent elements important for the species' long-term conservation. These types of special management activities, as well as other measures to avoid or minimize incidental take, will be reviewed during consultations with Federal agencies. (Refer to our response to comment 3 above for information on the collaborative working group.)

(19) *Comment:* The Service should consider the affidavits that were filed in September 2002, in response to the court case (*Rio Grande Silvery Minnow* v. *Keys,* Civ. No. 99–1320 JP/RLP–ACE). These include: Dr. Thomas Wesche, Subhas K. Shah, Sterling Grogan, Dr. Richard Valdez, Christopher S. Altenbach, John Whipple, John M. Stomp III, Rolf-Schmidt-Peterson, F. Lee Brown, and Walter G. Hines.

Our Response: We have considered the affidavits and found that none of the information appears to contradict the relevant conclusions for this final designation of critical habitat.

(20) *Comment:* The Service needs to consult with the State Department and Mexico as directed by Executive Order 12114 because the designation of critical habitat in the lower Rio Grande may have international implications.

Our Response: We are not designating critical habitat along the international border in the lower Rio Grande. We did not consult with the State Department and Mexico because we believe that the action of designating critical habitat within the middle Rio Grande will not have significant effects on the environment outside the geographical borders of the United States and its territories.

(21) *Comments:* The economic analysis and proposed critical habitat demonstrate a complete disregard for the unique culture and historic heritage associated with agriculture within the middle Rio Grande.

Our Response: As described in the final EIS, we are aware of the unique heritage associated with agriculture within the middle Rio Grande. Still, the regulatory requirements associated with critical habitat do not apply to any agricultural activities, including farming or livestock grazing, or any other activity carried out on private land that does not require and/or involve a Federal permit, authorization, or funding. Because the silvery minnow is listed as endangered, Federal agencies already are required to consult with us on any of their actions that are likely to adversely affect the species and to ensure that their actions do not jeopardize the species' continued existence, regardless of whether critical habitat has been designated. Therefore, we do not believe the designation of critical habitat for the silvery minnow will result in any significant additional regulatory burden on landowners or affect the use of their private property.

(22) *Comment:* No one was aware that the silvery minnow was going to be listed in 1994. Once a species is listed, critical habitat appears to be an unavoidable consequence.

Our Response: On February 19, 1991, about 80 prelisting proposal letters of inquiry were mailed to various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. On March 20, 1992, we held a meeting in Albuquerque, NM, with various interested governmental and private entities to explore existing or potential flexibility in water delivery schedules that might avoid dewatering of the Rio Grande within the range of the silvery minnow. In the March 1, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the

development of a final rule. The comment period originally scheduled to close on April 30, 1993, was extended until August 25, 1993 (58 FR 19220), to conduct public hearings and allow submission of additional comments. We also published notices of the proposed listing in five local newspapers and mailed copies of the proposed rule to list the silvery minnow as endangered to 148 different government agencies, private organizations, and interested individuals, including all counties having lands that border on or were within the area being proposed for critical habitat designation. Two public hearings were also held. Prior to listing the silvery minnow as endangered, we fully met the requirements of the Act for public notification. As discussed in the ''Previous Federal Action'' section of this rule, section 4 of the Act requires us to designate critical habitat at the time of listing, unless a determination is made that such designation is not prudent or not determinable. If a not determinable determination is made, we would have an additional year to make such a determination.

(23) *Comment:* The proposed rule and associated documents did not mention how critical habitat and section 7 consultation may affect the National Pollution Discharge Elimination System, water quality issues, or flood control structures.

Our Response: The EIS analyzed the impacts to the Albuquerque Metropolitan Arroyo Flood Control Authority, National Pollution Discharge Elimination System (NPDES) permitting, and other impacts on water quality (also see ''Effect of Critical Habitat Designation'' below). The final EIS found that the silvery minnow will most likely be protected by existing water quality standards, and that changes to current EPA discharge permitting activities are expected to be minimal, although the possibility exists for EPA's consultations with us to change as more becomes known about the water quality needs of the silvery minnow.

It is important to note that section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the ''destruction or adverse modification'' of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Where no such Federal agency action is involved, critical habitat designation has no effect on private landowners, State, or Tribal activities.

(24) *Comment:* How will critical habitat affect the City of Albuquerque's Drinking Water Project?

Our Response: Analysis of effects to listed species will be addressed in detail during section 7 consultation between the BOR and us. The section 7 consultation will determine whether the City of Albuquerque's Drinking Water Project jeopardizes the continued existence of the silvery minnow or adversely modifies or destroys critical habitat. As we have in the past, we will continue to work with the City of Albuquerque on conservation issues for the silvery minnow (*see* our response to comment 57 below).

(25) *Comment:* The Service proposed a 300-ft (91.4-m) lateral width for the boundary of critical habitat, but there is no site specific information to determine whether any particular area even has a floodplain or whether the floodplain, if present, extends 300 ft (91.4 m).

Our Response: We recognize that the lateral width of riparian areas fluctuates considerably in the middle Rio Grande. The 300-ft (91.4-m) lateral width includes the riparian zone, if present, that is adjacent to each side of the middle Rio Grande. We believe the riparian zone adjacent to the river channel provides an important function for the protection and maintenance of the primary constituent elements and is essential to the conservation of the species.

Developed lands within the 300-ft (91.4-m) lateral width are not considered critical habitat because they do not include the primary constituent elements. These lands were specifically excluded from the designation and include: developed flood control facilities, existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion and irrigation canals outside of natural stream channels, the low flow conveyance channel, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments.

(26) *Comment:* The Service only considered excluding the Cochiti or San Acacia Reach. No other reaches were considered for exclusion within the middle Rio Grande.

Our Response: We did not include four areas within the Angostura and Isleta Reaches (*see* ''Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section below). Additionally, we solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat. We requested information on any lands included in the proposed rule for which there was special management and protection in place such that those lands could not be included as critical habitat. We reviewed and considered all of the information and comments received and concluded that special management or protection is provided only for the management plans we received during the comment period from the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta. Consequently, no other areas were determined to be not essential for inclusion for the final critical habitat designation.

(27) *Comment:* The City of Albuquerque requested that we exclude existing projects, facilities, and structures within the designated critical habitat.

Our Response: The City of Albuquerque did not provide a list describing the specific projects, facilities, or structures. However, some existing facilities and structures are excluded from the designation because they do not include the primary constituent elements. See response to comment 25 and the ''Regulation Promulgation'' section of this rule for specific exclusions.

(28) *Comment:* The designation of critical habitat will seize control of our water through Federal regulations and Federal courts. Elected officials and State Engineers are constitutionally responsible for decisions on state water management.

Our Response: An area designated as critical habitat is not a refuge or sanctuary for the species. Listed species are protected by the Act whether or not they are in an area designated as critical habitat.

We published required determinations in the proposed and final rules, including one in accordance with Executive Order 13132, which considered whether this rule has significant Federalism effects (*see* ''Required Determinations'' section below). We requested information from and coordinated development of the

proposed and final rules with appropriate resource agencies in NM and TX (*e.g.*, during the EIS scoping and proposed rule public comment period). During the open comment period for the proposed rule, we met on several occasions with the New Mexico Interstate Stream Commission (NMISC) to further coordinate and address issues concerning the designation of critical habitat for the silvery minnow.

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 two formal consultations, one of which included a formal conference, with the Corps and BOR, and non-Federal entities over actions related to water operations on the middle Rio Grande (Service 2001b, 2002a). In our experience, the vast majority of such projects can be successfully implemented with, at most, minor changes that avoid significant economic impacts to project proponents.

(29) *Comment:* Other than the initial scoping letter, the City of Socorro or Bernalillo County was not contacted for either development of the EIS or economic analysis. Several other commenters voiced concern that they were not directly contacted for their opinions on the economic impacts of critical habitat designation.

Our Response: On April 5, 2001, the **Federal Register** notice announcing public scoping meetings and development of a draft EIS was mailed to the Mayor of Socorro and the Socorro County Board of Commissioners and to Bernalillo County Commissioners. Moreover, on October 4, 2001, our EIS contractor mailed letters to the Chairman of Socorro County Board of Commissioners and the Bernalillo County Manager, and on August 22, 2001, a letter was mailed to the Mayor of the City of Socorro requesting specific information for the development EIS. We did not receive any response to these letters. Economic Analysis contractors utilized databases with information provided by the County of Socorro.

It was not feasible to contact every potential stakeholder in order for us to develop a draft economic analysis. We believe we were able to understand the issues of concern to the local communities on the basis of our review of public comments submitted on the proposed rule and draft economic analysis, transcripts from public hearings, and detailed discussions with 65 local governments. To clarify issues, we solicited information and comments from representatives of Federal, State, Tribal, and local government agencies, as well as some landowners.

(30) *Comment:* The amount of time and information available were insufficient for more detailed responses.

Our Response: On June 6, 2002, we published the proposed critical habitat determination in the **Federal Register** (67 FR 39205), announced public hearings, and invited public comment for 90 days. The public hearings were held on June 25 and 26. These public hearings were also announced in several newspapers (described above under the introduction of the ''Summary of Comments and Recommendations'' section). On June 6, we mailed the proposed rule and information on how to obtain the draft economic analysis and draft EIS to over 600 different interested parties. All of the documents were also available at the hearings, from us by request, or by download from our Web site. On August 28, we mailed a prepublication notice of the comment period extension. The comment period was subsequently extended and closed on October 2, 2002.

(31) *Comment:* The Service held public hearings only to fulfill a legal obligation and will not pay attention to any public comment.

Our Response: All comments received, including oral comments provided at the public hearing, were carefully evaluated before we made a final determination. In fact, we used special management plans received during the public comment period and other relevant issues to determine specific areas to not include for the final critical habitat designation.

(32) *Comment:* Some commenters asked whether critical habitat designation would affect the building or maintenance of flood control systems (*e.g.*, levee) to protect the town of Socorro and other areas within the designation.

Our Response: Levees are specifically excluded from the designation (*see* ''Regulation Promulgation'' section below). Since 1995, the Corps has entered into section 7 consultation with us regarding its water operations, flood control and levee maintenance, bridge construction, section 404 permitting under the Clean Water Act, and other activities. Through this process, we have reviewed various Corps projects to ensure that the continued existence of the silvery minnow is not jeopardized and that previously designated critical habitat was not adversely modified or destroyed. Since the silvery minnow was federally listed, no Corps projects have been stopped, delayed, or altered in a significant way resulting from section 7 consultation. The draft EIS noted that the Corps will likely propose a design and develop a plan for construction that would permit levees to be rehabilitated without adversely modifying critical habitat.

It is also important to note that we have a special category of section 7 consultation, and corresponding regulations (50 CFR 402.05) called ''Emergency Consultations.'' The consultation process does not affect the ability of an agency to respond to emergency events such as levee failure or fire. During emergency events, our primary objective is to provide recommendations for minimizing adverse effects to listed species without impeding response efforts. During emergency events, protecting human life and property comes first every time. Consequently, no constraints for protection of listed species or their critical habitat are ever recommended if they place human lives or structures (*e.g.*, houses) in danger. We are currently working with many of our Federal partners to provide technical assistance, coordination, and, in some instances, section 7 consultation for proactive projects to reduce the potential for emergency events (*e.g.*, wildland urban interface fuels management).

(33) *Comment:* The designation of critical habitat will impose section 9 restrictions against taking of silvery minnow in areas that do not currently have those restrictions (*e.g.*, within the headwaters of Elephant Butte Reservoir).

Our Response: Section 9 of the Act prohibits the harm or harassment of individuals of listed species. There are no section 9 take prohibitions for critical habitat. Within the middle Rio Grande, prohibitions against take are in effect regardless of whether or not critical habitat has been designated because we consider this area occupied by the silvery minnow. Whether or not a species has designated critical habitat, it is protected from any actions resulting in an unlawful take under section 9 of the Act.

(34) *Comment:* The Service needs to provide specific analyses on whether each reach contains or is void of primary constituent elements. The constituent elements described are vague and violate 50 CFR 424.12(c), lack sufficient detail and justification, and should include a more specific description that defines what constitutes critical habitat. Several commenters were concerned that the mapping lacked precision for use by the public and the critical habitat boundaries are ambiguous and difficult

to identify. Information is available for us to refine the 300-foot lateral width including National Wetlands Inventory data. The Rio Grande Compact Engineer Advisor from the State of Colorado submitted comments in October 2001 that suggested we use the ''daily'' Elephant Butte Reservoir water line as the lower terminus of critical habitat. Comments submitted in October 2002 suggested that the boundary as proposed would change from day to day and create total chaos in the operation of Elephant Butte Dam and Reservoir.

Our Response: The critical habitat designation includes the middle Rio Grande from Cochiti Dam to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), Socorro County, NM. The designation also includes the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included. (see the ''Regulation Promulgation'' section of this rule for exact descriptions of boundaries of critical habitat). We believe that with the revision to the downstream terminus of critical habitat, the boundary should be clear. Moreover, this final rule describes in the greatest detail possible the primary constituent elements important to the silvery minnow. In addition, please see responses to comments 26 and 45 for information related to this particular issue.

In our proposal and this final rule, we indicate our belief that the primary constituent elements provide for a flow regime that allows for short periods of low or no flow. In the proposal, we also highlighted the difficulties in describing the existing conditions of areas with low or no flow and solicited further information to refine the primary constituent elements and how they relate to the existing conditions (*e.g.,* flow regime). We noted that flow requirements are dynamic and change during the year and among years. The status of the species also contributes to specific flow requirements at specific areas or stream gages, for example. Consultation under section 7, rather than regulation, is the proper procedure for outlining specific flow requirements.

During the comment period we requested, but did not receive, any information that would either enable us to further refine the primary constituent elements or conduct further analysis on whether particular reaches contained or lacked one or more primary constituent elements. Further, while we welcome and encourage additional studies on the biological requirements of the silvery minnow, we believe the best available information has been used in defining the primary constituent elements necessary for the species' conservation. Nevertheless, we recognize that not all of the developed lands area within the boundaries of the designation will contain the habitat components essential to the conservation of the silvery minnow. For this reason, some developed lands are excluded by definition (*see* the ''Regulation Promulgation'' section below).

We considered National Wetlands Inventory data and other sources of information to refine the lateral width of the designation. Because of the dynamic nature of the Rio Grande and the corresponding ephemeral nature of wetland and riparian vegetation adjacent to the river (Middle Rio Grande Biological Interagency Team 1993; Taylor *et al.* 1999; BOR 2001c), we believe that using National Wetlands Inventory or other data to select the lateral width of critical habitat would not be consistent with our regulations (50 CFR 424.12(c)), which do not allow us to use ephemeral reference points. Consequently, we are designating critical habitat using specific limits and reference points.

(35) *Comment:* Depletion of stored water in reservoirs by supplemental water releases to benefit critical habitat will affect BOR's ability to deliver water to the MRGCD.

Our Response: According to BOR (2001c), the voluntary supplemental water program for the silvery minnow is not expected to have an adverse affect on the MRGCD. Thus, it is the Service's understanding that BOR's voluntary supplemental water program will be consistent with existing laws and contracts to ensure delivery of water to the MRGCD and to the six middle Rio Grande Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta) (BOR 2001c). Moreover, section 7 consultation has been occurring regardless of critical habitat designation because of the Federal listing alone. We note that despite one of the State's worst droughts in 50 years, ''the Rio Grande helped some farms grow bumper crops of alfalfa * * *'' (Albuquerque Tribune December 16, 2002).

(36) *Comment:* One commenter believes that the proposed rule should be incontrovertible, but it is currently laced with supposition and conjecture, and it contains no conclusive data.

Our Response: As required by section 4(b)(2), the Service used the best available scientific and commercial data. In accordance with our policy published on July 1, 1994 (59 FR 34270), we sent the proposed rule to five peer reviewers to solicit their expert opinions. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We received only one reply from our peer reviewers. The peer reviewer concluded that our proposal was scientifically sound.

(37) *Comment:* It does not appear that your EIS analyzed evaporation losses from restoration activities.

Our Response: This issue is discussed in the EIS. We concluded that the extent to which riverine and riparian restoration results in a net gain or net loss to the water supply depends on the design of the project.

(38) *Comment:* Several commenters suggested that the San Acacia reach be excluded from the designation because of economic or other relevant impacts.

Our Response: This is described as alternative D in the EIS. The analysis in the EIS found a lower likelihood that habitat essential for the conservation of the silvery minnow would be preserved if this reach were excluded from the critical habitat designation. We also conclude in this final rule that this area is essential to the conservation of the silvery minnow because it likely serves as connecting corridors for fish movements between areas of sufficient flowing water (*e.g., see* Deacon and Minckley 1974; Eberle *et al.* 1993). Moreover, this reach is important because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999).

(39) *Comment:* Several commenters noted that the San Acacia reach has historically experienced prolonged periods of low or no flow, but the construction of reservoirs has actually benefitted the silvery minnow by allowing runoff to extend over a longer time period than was previously possible.

Our Response: The construction and operation of reservoir dams has changed the natural flow regime of the river and thus may affect the survival of the Rio Grande silvery minnow. In the proposed rule, we acknowledged the historic periods of drying in the middle Rio Grande and suggested that reservoirs can facilitate management of water on the Rio Grande to avoid prolonged periods of low or no flow and provide sufficient flowing water during critical time periods, such as from May to October (Service 2001a, 2001b). Reservoirs and diversion dams have fragmented the middle Rio Grande and prevented silvery minnows from movement upstream after hatching

(Service 2001b; Dudley and Platania 2001; 2002a). Still, availability of flow is likely not the only factor affecting the silvery minnow (July 20, 1994; 59 FR 36988).

(40) *Comment:* The designation of critical habitat within the middle Rio Grande will Federalize the water administration and usurp the powers of TX, NM, and Colorado to regulate their water.

Our Response: Designation of critical habitat will not affect the authorities of TX, NM, and Colorado to regulate their water. In fact, critical habitat applies only to actions carried out, funded, or permitted by the Federal Government.

(41) *Comment:* The proposed rule suggests that future section 7 consultations regarding the critical habitat designation will be analyzed on a case-by-case basis and can provide for flexibility. However, one commenter was concerned that current consultations will affect the outcome of future consultations, resulting in overly restrictive measures.

Our Response: Our regulations require that we use the best scientific and commercial data available for consultations (50 CFR 402.14(d)). This information is used to update and analyze the effects of past and ongoing human and natural activities or events that have led up to the current status of the species and its habitat. One of the benefits of formal consultation is that we are required to provide an up-to-date biological status of the species or critical habitat (*i.e.*, environmental baseline), which is used to evaluate a proposed action. Consequently, the status of the species or critical habitat influences the outcome of a particular consultation more than when that consultation is conducted.

(42) *Comment:* If the bankfull width of the middle Rio Grande increases, would the additional area be considered critical habitat? It is not clear which lands within the critical habitat boundary are considered critical habitat.

Our Response: Lands are considered critical habitat when they are within critical habitat boundaries, contain one or more of the primary constituent elements, and require special management and protection. In this case those boundaries are based in part on the bankfull stage, which can easily be determined by visual or physical indicators including: the top of the highest depositional features (*e.g.*, point bars), staining of rocks, exposed root hairs, and other features (Rosgen 1996). Federal actions conducted in areas within or outside the boundary of the mapped critical habitat that do not contain any of the primary constituent elements would not trigger a section 7 consultation unless those activities may affect the silvery minnow or the primary constituent elements in the adjacent critical habitat (*see* ''Effect of Critical Habitat Designation'' section).

(43) *Comment:* The Service cannot substitute the proposed conservation strategy for critical habitat; critical habitat triggers section 7 consultation, whereas the proposed conservation strategy offers no protection to the silvery minnow.

Our Response: We believe that the benefits of excluding the middle Pecos River and lower Rio Grande outweigh the benefits of their inclusion as critical habitat (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section below). We conclude that the exclusion of these areas is consistent with the Recovery Plan (Service 1999) and consistent with our regulations (50 CFR 424.19), and that the added management flexibility provided under section 10(j) will be beneficial to the conservation of the silvery minnow. Additionally, the adverse modification standard serves to preserve the status quo of critical habitat during section 7 consultations. But critical habitat, by itself, does not help to reestablish minnows into areas where they have been extirpated—a primary goal of the Recovery Plan for the minnow.

(44) *Comment:* If the lateral boundary of critical habitat extends from the bankfull stage, how does one determine the point of bankfull stage when the Rio Grande is not at this stage?

Our Response: Bankfull stage is the point at which the river overflows its lowest bank, which is the elevation at which flow can be carried by the main channel before spilling over into the floodplain. The bankfull stage is not defined by water, and can easily be determined by visual or physical indicators including: the top of the highest depositional features (*e.g.*, point bars), staining of rocks, exposed root hairs, and other features (Rosgen 1996).

(45) *Comment:* The designation for the silvery minnow and related documents are flawed and inaccurate, contain numerous errors, and make improper assumptions.

Our Response: As previously discussed, section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We published our proposed designation of critical habitat for the silvery minnow in the **Federal Register** on June 6, 2002 (67 FR 39206). The draft EIS and draft economic analysis of the proposed critical habitat designation were made available for review and public comment concurrently with the proposed rule during the public comment period. Based on the public comments received during the open comment period, a final EIS and final Economic Analysis of critical habitat for the silvery minnow were completed. These documents and this final rule addressed or took into consideration information and concerns raised through the comment period. Please refer to the final EIS and final Economic Analysis. Copies of both the draft and final EIS and the draft and final economic analysis are in the supporting record for this rulemaking and can be inspected or obtained by contacting the New Mexico Ecological Services Field Office (refer to the **ADDRESSES** section of this rule).

(46) *Comment:* The draft economic analysis is not a full analysis. It is still an incremental analysis, and it is not in compliance with the recent Tenth Circuit Court ruling on the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) critical habitat.

Our Response: The economic analysis is a full analysis. Our standard best practice in economic analyses is to apply an approach that measures costs, benefits, and other impacts arising from a regulatory action against a baseline scenario of the world without the regulation. Guidelines on economic analyses, developed in accordance with the recommendations set forth in Executive Order 12866 (''Regulatory Planning and Review''), for both the Office of Management and Budget and the Department of the Interior, note the appropriateness of the approach: ''The baseline is the state of the world that would exist without the proposed action. All costs and benefits that are included in the analysis should be incremental with respect to this baseline.'' When viewed in this way, the economic impacts of critical habitat designation involve evaluating the ''without critical habitat'' baseline versus the ''with critical habitat'' scenario. Impacts of a designation equal the difference, or the increment, between these two scenarios. Measured differences between the baseline and the scenario in which critical habitat is designated may include (but are not limited to) changes in land use, environmental quality, property values, or time and effort expended on consultations and other activities by Federal landowners, Federal action agencies, and, in some instances, State and local governments and/or private third parties. Incremental changes may

be either positive (benefits) or negative (costs).

In *New Mexico Cattle Growers Ass'n* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277, however, the Tenth Circuit recently held that the baseline approach to economic analysis of critical habitat designations used by us for the southwestern willow flycatcher designation was ''not in accord with the language or intent of the ESA.'' In particular, the court was concerned that we had failed to analyze any economic impact that would result from the designation, because it took the position in the economic analysis that there was no economic impact from critical habitat that was incremental to, rather than merely co-extensive with, the economic impact of listing the species. We had therefore assigned all of the possible impacts of critical habitat designation to the listing of the species, without acknowledging any uncertainty in this conclusion or considering such potential impacts as transaction costs, reinitiations, or indirect costs. The court rejected the baseline approach incorporated in that designation.

In our analysis, we addressed the Tenth Circuit's concern that we give meaning to the Act's requirement of considering the economic impacts of critical habitat designation by acknowledging the uncertainty of assigning certain post-designation economic impacts (particularly section 7 consultations) as having resulted from either the listing or the designation. We believe that for many species the designation of critical habitat has a relatively small economic impact, particularly in areas where consultations have been ongoing with respect to the species. This is because the majority of the consultations and associated project modifications, if any, already consider habitat impacts and, as a result, the process is not likely to change significantly as a result of the designation of critical habitat. Nevertheless, we recognize that the nationwide history of consultations on critical habitat is not broad, and, in any particular case, there may be considerable uncertainty whether an impact results from the critical habitat designation or the listing alone. We also understand that the public wants to know more about the kinds of costs section 7 consultations impose and frequently believes that critical habitat designation could require additional project modifications. Therefore, the final economic analysis incorporates two baselines. One addresses the impacts of critical habitat designation that may be ''attributable co-extensively'' to the listing of the species. Because of the potential uncertainty about the benefits and economic costs resulting from critical habitat designations, we believe it is reasonable to estimate the upper bounds of the cost of project modifications on the basis of the benefits and economic costs of project modifications that would be required by consultation under the jeopardy standard. It is important to note that the inclusion of impacts attributable co-extensively to the listing does not convert the economic analysis into a tool to be considered in the context of a listing decision. As the court reaffirmed in the southwestern willow flycatcher decision, ''the ESA clearly bars economic considerations from having a seat at the table when the listing determination is being made.'' The other baseline, the lower boundary baseline, will be a more traditional rulemaking baseline. The economic analysis attempts to provide our best analysis of which of the effects of future section 7 consultations actually result from the regulatory action under review (*i.e.*, the critical habitat designation). These costs will in most cases be the costs of additional consultations, reinitiated consultations, and additional project modifications that would not have been required under the jeopardy standard alone, as well as costs resulting from uncertainty and perceptional impacts on markets. The final economic analysis provides a detailed study concerning the baseline and potential incremental effects of the designation of critical habitat for the silvery minnow, and we believe it is in compliance with the Tenth Circuit's decision in *New Mexico Cattle Growers Ass'n* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277.

Issue 3: Tribal and Pueblo Concerns

(47) *Comment:* The Service is legally mandated to have Government-to-Government consultations with affected Tribes and Pueblos. The designation will affect the trust assets of Tribes and Pueblos. Will the designation of critical habitat affect the Pueblos of Taos, San Juan, or the Jicarilla Apache Nation?

Our Response: In accordance with 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'' (May 4, 1994; 59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we recognize the need to consult with Federally recognized Indian Pueblos and Tribes on a Government-to-Government basis. Section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes.

We were available to confer with the affected Indian Pueblos and Tribes during the comment period for this proposed rule. Recognizing our Federal trust responsibility, we met with the following Pueblos and Tribes (some meetings were to provide technical assistance and are not considered Government-to-Government consultations): Jicarilla Apache Nation (October 22, 2001; January 9 and 25, 2002; March 7, 2002), San Juan (December 11, 2001; February 25, 2002; September 6, 2002), Isleta (July 25, 2002; August 8 20, 2002), Sandia (October 22, 2001; February 12, 2002; September 25, 2002), Santa Ana (December 11, 2001; July 9 and 10, 2002; August 2 and 6, 2002; September 13, 2002), Santo Domingo (August 8, 2002), and Taos Pueblos (April 2, 2002; September 11, 2002; October 23, 2002) to discuss how they might be affected by the designation of critical habitat or other issues related to the Act. We provided technical assistance to Santo Domingo, Santa Ana, Sandia, and Isleta Pueblos in the development of their management plans (*see* ''Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section of this rule below).

The designation of critical habitat is not anticipated to impact Indian Trust Assets, which are legal interests in assets held in trust by the United States Government for Tribes and Pueblos. Water rights are considered an Indian Trust Asset. For an impact to occur, the designation of critical habitat would need to diminish the Tribe's access to or the value of any Indian Trust Asset. For example, the BOR recently indicated that the six middle Rio Grande Pueblos would receive prior and paramount water deliveries through November 15, 2002, and that future deliveries of prior and paramount water for the six middle Rio Grande Pueblos will also be ensured. Prior and paramount water deliveries are not dependent on, and are not expected to affect, supplemental water deliveries for the silvery minnow (BOR 2002). We also do not believe that other Tribes or Pueblos (*e.g.*, Taos and San Juan Pueblos, Jicarilla Apache Nation) outside of the critical habitat designation will be affected. We believe that the consultation history of the silvery minnow demonstrates that previous section 7 consultations have not affected or impaired Indian Pueblo

and Tribal trust resources within the area we are designating as critical habitat (*e.g., see* Service 2001b). During consultation, measures taken to avoid destruction or adverse modification of critical habitat will likely be similar if not identical to what is currently required to avoid jeopardizing the silvery minnow. Consequently, we do not believe that critical habitat will result in requirements during consultation, and do not believe critical habitat will affect Indian Trust Assets.

(48) *Comment:* The Service completely omits Pueblos from the analysis under the Regulatory Flexibility Act.

Our Response: We are certifying that this final rule will not have a significant effect on a substantial number of small entities, including Indian Tribes and Pueblos (*see* ''Required Determinations'' section below).

(49) *Comment:* Critical habitat will require the maintenance of river flows which will adversely affect Pueblos by limiting the amount of water available. Pueblos may have substantial unused water rights. If critical habitat limits depletions, the designation would disproportionately affect Pueblos.

Our Response: We do not anticipate that the designation of critical habitat will alter the administration of the supplemental water program. Thus, delivery of water to middle Rio Grande contractors and Pueblos is ensured (BOR 2001c). Environmental justice-related impacts of preferred alternatives for critical habitat designation are discussed in Chapter 4 of the EIS. Nothing in the final rule or the EIS is intended to preclude new depletions resulting from the exercise of senior Indian water rights. In addition, please see response to comment 48 for information related to this particular issue.

Issue 4: Other Relevant Issues

(50) *Comment:* The Service has continued to ignore the economic consequences of designating critical habitat for the silvery minnow on the Pecos River.

Our Response: The Pecos River is not designated as critical habitat for the silvery minnow.

(51) *Comment:* In the Economic Analysis, why is it assumed that all the water required to meet supplemental flows will all come from NM agriculture? The Rio Grande flows through three states, so why will the burden of ensuring the survival of the silvery minnow be placed upon the water users in the middle Rio Grande? Are interstate water rights transfers (*i.e.,* sale or lease) possible under existing Federal or State law?

Our Response: The Economic Analysis assumed that water resources in NM are limited, which is demonstrated by an active market in which water rights move between willing buyers and sellers within the confines of State and Federal regulations. From 1976 to 2000, the purchasers of water rights in the middle Rio Grande were generally municipalities (61 percent of purchasers); however, other sectors participate as buyers in this market as well. During the same time frame, the sellers of water rights in the middle Rio Grande were primarily agriculture (90 percent of sellers) reflecting the fact that the majority of the water rights (as measured by total volume of water reflected in these rights) are currently held in the agriculture sector. Given these data, it was assumed that any water provided to the silvery minnow by supplementing present water flow conditions would come from currently held irrigation water rights because these tend to have greater flexibility than water rights for municipal or commercial uses. Thus, the economic analysis focused on the area within the middle Rio Grande for providing supplemental water, and did not consider interstate transfers of water. In general, our economic analyses consider the impacts within the geographic area being proposed as critical habitat. For example, in this case the economic analysis considered the area proposed as critical habitat in the middle Rio Grande, as well as the other two areas found to be essential to the conservation of the minnow (*i.e.,* middle Pecos River and Lower Rio Grande). While interstate water rights transfers (*i.e.,* sale or lease) may be possible under existing Federal or State law, we concluded that such transfers were beyond the scope of our economic analysis.

(52) *Comment:* The Economic Analysis severely underestimates the costs associated with providing 40,000 af of supplemental water because it did not estimate transaction costs associated with the purchase or lease of water rights.

Our Response: Easter *et al.* (1999) found that transaction costs associated with purchase or lease of water rights must be kept low for an effective water market. For example, they estimated that transaction costs range from about $17 to $190 per af. Another example indicates that a 10 percent commission is common for completing the sale or lease of a water right in NM (Turner 2002a; *http://www.waterbank.com/Agreements/Agency%20Agreement.htm*). Based on these and other data, the final Economic Analysis estimates that the average transaction cost is likely $333 and $183 for the Rio Grande and Pecos, respectively. Consequently, the estimated transaction costs would be approximately 7 to 10 percent of the total price of an acre-foot. These estimates do not change our required determinations below.

(53) *Comment:* The Service should have used the Upper Rio Grande Water Operations Model (URGWOM) to determine the amount of supplemental water to meet the target flow of 50 cfs at the San Marcial Floodway gage. The Service did not use the best scientific and commercial data available because you failed to engage the State of New Mexico and use their expertise, data, and models.

Our Response: On September 5, 2001, we invited the NMISC to participate in the development of the EIS as a cooperating agency. On October 3, 2001, the NMISC accepted our invitation. On April 9, 2002, the Service requested the expert review of the preliminary predecisional draft EIS and preliminary predecisional draft economic analysis from the NMISC, as a cooperating agency. We requested the review because the NMISC has jurisdiction by law or special expertise over water resources and environmental impacts involved with the Service's action of designating critical habitat. We specifically requested that the review focus on the accuracy of information and analyses as described in the draft documents. On April 25, 2002, the NMISC requested additional information from the Service and our contractors. During the open comment period for the proposed rule, we met on July 2 and 22, 2002, with the NMISC to further coordinate the designation of critical habitat and clarify the additional information requested. Nevertheless, we could not rely on data from URGWOM to develop the final rule because the information has yet to be submitted.

A focal point of discussions with the NMISC was the use of URGWOM for estimating the amount of supplemental water needed to maintain flows in the middle Rio Grande. During these meetings and in a July 16, 2002, letter, we indicated that on the basis of discussions between our contractor and the NMISC, and according to the May 9, 2002, notes from the URGWOM Steering Committee meeting, we understood that URGWOM was still being calibrated and validated. It was also our understanding that URGWOM and the relevant input and output data have not been tested by all the cooperating agencies for the

Upper Rio Grande Water Operations Review EIS and would not be made publicly available until this occurs. As noted in the April 11, and September 12, 2002, notes from the URGWOM Steering Committee meetings: (1) The consensus of the Steering Committee members was that the latest version of URGWOM should not be released until it has been tested and is ready for public use; (2) the data and results for various model runs were not totally successful, but furthered the model debugging, testing, and evaluation; (3) the middle Rio Grande valley water depletions are modeled too high; (4) the water planning model is currently simplistic and rough; and (5) water operations modeling is still undergoing troubleshooting, repairs, and enhancements. Thus, we conclude that URGWOM is not available for use in the economic analysis.

Nevertheless, during the July 22, 2002, meeting with the NMISC, it was agreed that the NMISC would run URGWOM and provide detailed comments, data, output, and interpretation to us during the open comment period on this and other relevant analyses. We also requested that the NMISC assist us in determining the economic costs of providing water to meet Rio Grande Compact delivery obligations separate from the economic costs of leaving water in the river for the silvery minnow. The NMISC indicated in its October 2, 2002, comments on the proposed critical habitat designation that the data and analyses were nearly complete and a report interpreting the results would be submitted in November 2002. Additional comments or data were not submitted. If additional comments or data had been submitted after October 2, 2002, we would not have considered them in the development of this final rule, the economic analysis, or the EIS because the data, analyses, and report would not have been submitted during the open comment period, and other parties would not have had the full opportunity to review and comment on the material.

Section 4(b)(2) of the Act states critical habitat shall be designated on the basis of the best scientific data available. We must make this determination on the basis of the information available at this time, and we are not allowed to delay our decision until further information is submitted. Therefore, we conclude the current hydrological model used in the economic analysis is the best scientific information available at this time, as required by the Act.

(54) *Comment:* The Economic Analysis appears to underestimate the amount of supplemental water that is required to maintain flows specified by the biological opinion on the middle Rio Grande.

Our Response: From our experience, it is nearly impossible to guarantee continuous flow in the middle Rio Grande at all times of the year, regardless of the extremity of conditions. As a result, our analysis calculates the annual deficit of water below the required minimum flow in the 95th percentile and the 50th percentile worst-case (*e.g.,* driest) year. This calculation results in an average annual deficit of 40,427 af/year in the middle Rio Grande. This estimate of supplemental water is within the range of other estimates of supplemental water required to maintain instream flow in the middle Rio Grande. Since 1996, the BOR has leased water each year to maintain instream flow during this dry period. In 2001, 22,000 af of supplemental water, from the conservation water agreement, was released and was sufficient to meet the supplemental flow requirements outlined in the June 29, 2001, biological opinion (J. Smith, pers. comm., 2002). In addition, Balleau Groundwater, Inc. (1999) estimated that it would require 52,600 af of water released from Cochiti to maintain a flow of 200 cfs at San Acacia in an average year. Therefore, we believe our estimate of approximately 40,000 af of supplemental water is accurate.

(55) *Comment:* The Service's analyses do not take into account upstream storage that would be needed to provide for supplemental flows, nor did the Service address storage of native water when storage is restricted in upstream reservoirs (*e.g., see* Rio Grande Compact, Article VII).

Our Response: The hydrologic model used in the economic analysis did not attempt to model the location of water used to supplement instream flow, but rather provided the amount of supplementary water needed at the San Acacia (middle Rio Grande) and Acme (middle Pecos River) gages. We did not identify sources of supplemental water (*e.g.,* storage) within this designation, because these sources can vary annually. Moreover, the Federal agencies have discretion on selecting specific sources and storage of supplemental water (BOR 2001c; Corps 2001). The amount of supplemental flows will be dependent upon the environmental baseline of the silvery minnow, the proposed action by the Federal agency, and those discretionary actions that are part of the consultation.

(56) *Comment:* Future supplemental water will not be available in the middle Rio Grande as it was from 1996 to 2002.

Our Response: As with all biological opinions, if the Federal action agency, (*i.e.*, the BOR in the June 29, 2001, biological opinion) cannot meet the measures described in the biological opinion that must be undertaken, reinitiation of formal consultation is required. In the middle Rio Grande, if supplemental water is not available to meet target flows contained in a biological opinion, then reinitiation of consultation would be required. Reinitiation of consultation has no bearing on the designation of critical habitat for the silvery minnow.

(57) *Comment:* The designation will steal water from an already drought-stricken area. Critical habitat will devastate the farming culture.

Our Response: The maintenance of river flows has been implemented through BOR's voluntary supplemental water program. This program is being implemented within the existing water rights framework, including Federal Indian water rights, San Juan-Chama contract rights, and state law water rights administered by the State of New Mexico. Supplemental flows to avoid destruction or adverse modification of critical habitat will likely be similar if not identical to what is currently required to avoid jeopardizing the species.

During the 2000 irrigation season, most of the supplemental water used to support the silvery minnow was provided through BOR leases of San Juan-Chama Project water from the City of Albuquerque. The City in turn provided that water to the MRGCD to finish the irrigation season, while allowing native Rio Grande flows to remain in the river without diversion. Moreover, in June 2002, the City of Albuquerque signed two agreements to provide 40,000 af of water to the BOR for supplemental flows for the silvery minnow and an additional 70,000 af of water to extend the MRGCD irrigation season from June to September 2002.

The BOR supplemental water program has been implemented on a year-to-year basis since 1997. During this period, no irrigation water has been used to augment river flows without being replaced (BOR 2001c). For example, the water that was leased from San Juan-Chama contractors and released during 2000 was used by MRGCD for irrigation and was exchanged for an equivalent amount of native Rio Grande water to provide supplemental flows for the silvery minnow. We believe that these types of collaborative actions will continue and do not anticipate that the

amount of supplemental instream flow, required by past section 7 consultations (*e.g.*, Service 2001b), will increase because an area is designated as critical habitat.

(58) *Comment:* The Service should analyze the impacts on groundwater, urban development, and operation of canals and other irrigation structures.

Our Response: The EIS analyzes impacts on water rights and management, land ownership and use, social and economic impacts, and a variety of other environmental consequences.

(59) *Comment:* The Service should consider the positive impact of critical habitat designation in the region's economy.

Our Response: The potential benefits of critical habitat are described in the economic analysis and EIS.

(60) *Comment:* It is currently impossible with the natural flow regime (*i.e.,* after all managed uses of water are curtailed) to maintain the primary constituent elements related to water flow. The primary constituent element that indicates conditions ''do not increase prolonged periods of low or no flow'' presume a baseline is known.

Our Response: Critical habitat is designated on the basis of existing conditions within each of the river reaches. We acknowledge that some of these areas have the potential for no to low flow during certain seasons or years. This primary constituent element provides water of sufficient flows to reduce the formation of isolated pools, and is essential to the conservation of the silvery minnow because the species cannot withstand permanent drying of long stretches of river. In addition, please see response to comment 35 for information related to this particular issue.

(61) *Comment:* There is not enough information known about the silvery minnow or about the impacts of the designation to perform the required analyses.

Our Response: This final determination constitutes our best assessment of areas needed for the conservation of the silvery minnow. We must make this determination on the basis of the information available at this time, and we may not delay our decision until more information about the species and its habitat are available. *Southwest Center for Biological Diversity* v. *Babbitt,* 215 F.3d 58 (D.C. Cir. 2000).

(62) *Comment:* The Service concludes that low or no-flow conditions have become more prevalent in the last few decades. The hydrological data demonstrate that this is not true. These unfounded claims indicate that a thorough hydrologic analysis of the middle Rio Grande should be completed using hydrological variability techniques (*e.g.*, Richter *et al.* 1997).

Our Response: We have revised the ''Background'' section of this final rule. We are participating in the Upper Rio Grande Basin Water Operations Review and EIS with the Joint Lead Agencies and other cooperators, including the Corps, BOR, and the NMISC, to comprehensively review the water operations activities that are conducted under the existing authorities in the Rio Grande Basin above Fort Quitman, TX. Hydrological variability techniques (*e.g.*, Richter *et al.* 1997) can guide river managers to define and adopt interim management targets before conclusive long-term research results are available. The Federal agencies have discretion when selecting specific river management targets and activities (*e.g.,* sources and storage of supplemental water (BOR 2001c; Corps 2001)). Consequently, hydrological variability techniques could be applied to river management targets and activities at the discretion of the Federal agencies, but are beyond the scope of this designation.

(63) *Comment:* One commenter questioned why, although approximately 200,000 af of water were released in the summer of 2000 to save the silvery minnow from extinction, the species suffered one of its most significant declines during this artificially wet period. NM and other signatories of the Rio Grande Compact cannot afford this waste of water.

Our Response: In the spring of 2000, as a result of court-ordered mediation (*Minnow* v. *Keys,* Civ. No. 99–1230 JP/KBM–ACE), BOR, through voluntary leases and repayment agreements, and in cooperation with other entities, provided 168,000 af of water to the Rio Grande for the silvery minnow and for irrigation purposes during the year 2000. Data from silvery minnow population monitoring studies in 2001 indicated a slight increase of the population in the Angostura, Isleta, and San Acacia Reaches (Dudley and Platania 2001). Without efforts to maintain at least some flow in the Rio Grande in 2000, it is likely that the silvery minnow might have been extirpated from the middle Rio Grande (Dudley and Platania 2001). It is also important to note that, at least partially as a result of these supplemental flows, NM realized a credit of 100,000 af toward its current and future delivery obligations to TX under the Rio Grande Compact (BOR 2001c).

(64) *Comment:* Because of the silvery minnow, the Service has not allowed the BOR to maintain a channel through the delta area north of Elephant Butte Reservoir.

Our Response: On May 8, 2000, we received a biological assessment from BOR concerning the creation of a temporary channel through the upstream delta of Elephant Butte Reservoir. BOR proposed to implement several conservation measures-these were included and described in their biological assessment as part of the project. On August 4, 2000, we completed consultation by concurring with BOR's determination that the project ''may affect but is not likely to adversely affect'' the silvery minnow or its designated critical habitat, that it ''may affect but is not likely to adversely affect'' the southwestern willow flycatcher, and that it will have ''no effect'' on the bald eagle. During September 2000 and April 2001, BOR provided supplementary information and clarifications on the project activities. No additional effects were anticipated and it is our understanding that BOR is proceeding with the construction of the temporary channel in full compliance with its responsibilities under the Act. In a letter dated August 30, 2002, from the Service's New Mexico Ecological Services Field Office to the New Mexico Office of the State Engineer, we reiterated that environmental compliance with the Act had been achieved. In the letter, we specifically asked whether the State Engineer believed that further environmental clearances were required for the completion of the temporary channel. We did not receive a response to the August 30, 2002, letter.

(65) *Comment:* Many environmental groups are using the silvery minnow to further their agendas of stopping growth and development.

Our Response: The recovery of the silvery minnow follows our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Numerous individuals, agencies, environmental groups, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). We believe this stakeholder involvement will minimize the social and economic impacts that could be associated with recovery of this endangered species.

Section 4(a)(3) of the Act requires that the Secretary, to the maximum extent prudent and determinable, designate critical habitat at the time a species is

listed as endangered or threatened. As noted under the ''Background Section'' above, when the silvery minnow was listed as endangered in 1994, we found that critical habitat was not determinable. Subsequently, we were ordered to publish a final determination regarding critical habitat for the silvery minnow, *Forest Guardians* v. *Babbitt,* Civ. No. 97–0453 JC/DIS. On July 6, 1999, we published a final designation of critical habitat for the silvery minnow (64 FR 36274), pursuant to the court order.

Critical habitat will affect private, State, or Tribal activities when Federal funding, permitting, or authorization is involved. If there is Federal involvement, consultation will be completed within the statutory time frames. The process of section 7 consultation does not stop growth or development.

(66) *Comment:* Your last economic analysis found that there would be no impacts associated with the designation of critical habitat for the silvery minnow.

Our Response: We were required to prepare a new critical habitat designation under the court order from the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* 206 F. Supp. 2d 1156 (D.N.M. 2000). We prepared a new economic analysis, a draft EIS, and a new proposed rule pursuant to that court order. A new economic analysis was completed to address this revised final designation, the previous economic analysis is not reflective of this designation or our current approach for analyzing economic impacts.

(67) *Comment:* The economic analysis only considered the middle Rio Grande as an entire unit and did not evaluate economic impacts to different areas within the middle Rio Grande. An economic analysis that does not take local land and water use into account does not disclose the full economic costs of the designation and is of no benefit to the Service or the public.

Our Response: The economic analysis includes specific analyses within the area designated as critical in the middle Rio Grande by estimating the cost of designating critical habitat in each of the five reaches. The analysis utilized all information provided by the Federal, State, local, and Tribal respondents operating in the area, including models created by and technical assistance from the New Mexico State University Agricultural Extension Service. Information concerning the local and regional economy was analyzed to conclude that there would not be significant economic impacts associated with the designation of critical habitat for the silvery minnow (*see also* the ''Economic Analysis'' section of this rule).

(68) *Comment:* The draft economic analysis uses alfalfa as the basis for calculating the cost of forgone production and secondary economic impacts. The estimated economic impacts were likely underestimated because alfalfa makes up about 56 percent of the agricultural crops in the middle Rio Grande. The costs of forgone production on the other 44 percent of agricultural crops would likely be higher, since alfalfa is a relatively low-value, high-water-consuming crop.

Our Response: Based on interviews with local crop scientists and because of the dominant status, annual planting cycle, and relatively high water requirements of alfalfa, the economic analysis assumes that acres retired from planting will be those devoted to the alfalfa crop. However, the economic analysis indicated that this assumption is likely to be conservative and to overstate effects on the regional economy when compared with modeling reductions in water available to other crops. A second calculation using a reduction in hay production is included in the final economic analysis to provide comparison. Modeling the same reductions in water available to the second most prevalent crop in each study area (pasture hay for the middle Rio Grande and cotton for the Pecos) produces a total value of forgone production that is 3 percent less than that produced by modeling removals from alfalfa. Given that 90 percent of the irrigated acreage in the middle Rio Grande study area and over 75 percent of the irrigated acreage in the Pecos study area are devoted to the two dominant crops, it is likely that water removed from irrigation would come from one of these two crops, validating the assumptions set forth in the economic analysis.

(69) *Comment:* The draft economic analysis does not consider that NM has had an active water market for years and many farmers have not chosen to sell their water rights. Consequently, the acquisition of water to meet supplemental flows may not be available.

Our Response: Under New Mexico State law, users of water must hold a water right. Such rights are treated as property rights, and are traded in a market. Since a competitive market exists for water rights in NM, it is assumed that the price of these rights represents the expected economic benefit of water made available by these rights, in its highest and best use. That is, in paying for water rights, buyers are making clear the implicit value of the water to them. The economic analysis concluded that (1) there is an active market in NM to move water to uses other than the original use; (2) there are multiple buyers and sellers of water rights; and (3) the price of water rights can be predicted from expected underlying economic factors.

Studies and historic and current data indicate that ''water flows uphill toward money'' (Brookshire *et al.* 2002; Hall 2002). In other words, water will move toward the highest valued use in accordance with the economy. For example, 90 percent of all water rights transferred (*i.e.*, leased or sold) in the middle Rio Grande from 1976 to 2000 were previously held by irrigation (Brookshire *et al.* 2002). Consequently, we believe that the voluntary acquisition of water to meet supplemental flows will be available.

(70) *Comment:* The economic analysis underestimates the farmland removed from production to provide for supplemental flows.

Our Response: The economic analysis used models created by the New Mexico Cooperative Extension Service and NM agricultural statistics from the New Mexico Agricultural Statistics Service to estimate costs and returns for the State's farming industry in 2001. The commenter did not provide any data for us to consider and did not explain why he or she believes our estimates to be inadequate.

(71) *Comment:* Agricultural production in the middle Rio Grande valley is on a scale that does not allow comparison to agriculture elsewhere in the United States. Consequently, the values of agriculture are as much social and cultural as they are economic. The Service should consider these values before finalizing the designation.

Our Response: The economic analysis estimated: (1) The opportunity cost of water needed to supplement instream flow; (2) direct, indirect, and induced economic effects resulting from the resulting changes in the use of water, including cultural and secondary impacts on water sellers and communities; and (3) costs of section 7 consultations. The EIS also analyzed the social and economic impacts, impacts on land use, and impacts on cultural resources. Please refer to the economic analysis and EIS for a complete analysis of these impacts.

(72) *Comment:* The economic analysis assumed that the market for water rights may not result in actual delivery of ''wet water'' (*i.e.*, water in the river) once the middle Rio Grande is adjudicated.

Our Response: Water rights in the middle Rio Grande are not adjudicated and much of the water uses are not metered (Whitney *et al.* 1996). Adjudicating water rights (*i.e.*, a judicial determination and definition of water rights within a river system that quantifies and establishes the legal right to use water) in the middle Rio Grande would, in conjunction with a metering program, allow for improved administration of water rights and improved water management (Whitney *et al.* 1996). However, an adjudication may not be completed for the middle Rio Grande in the foreseeable future.

The State Engineer of New Mexico has indicated that as water markets begin to develop in the state, there will be a natural tendency to attempt to transfer paper water rights (New Mexico Office of the State Engineer 2001). The State Engineer is charged with water rights adjudications (New Mexico Office of the State Engineer 2001). The existing adjudication system is being examined to allow the entire State to be adjudicated (New Mexico Office of the State Engineer 2001). Moreover, the State Engineer of New Mexico has three criteria that must be met in order for state law water rights to be transferred: (1) The right must be valid, with a valid priority date; (2) the water must be put to beneficial use; and (3) the transferred water right must not impair the rights of others, including compact deliveries. For these reasons, we believe that the sale or lease of water rights will result in the delivery of ''wet water.''

(73) *Comment:* The prevailing price of water rights in the middle Rio Grande will substantially increase when more than 40,000 af water rights are sold and removed from the water rights market.

Our Response: The price of water rights is significantly affected by the type of buyer (*e.g.*, municipal, private, Federal/State) and has increased in NM over the last several decades (Brookshire *et al.* 1999). However, water markets remain highly localized, with significantly different prices in each market. Nevertheless, the value used in the economic analysis reflects the current price of water rights resulting from the voluntary acquisition of supplemental water. We expect these types of voluntary programs to continue, and do not anticipate that the amount of supplemental water (*i.e.*, demand) in previous consultations (*e.g.*, Service 2001b) will increase because critical habitat is designated. In addition, please see response to comment 57 for information related to this particular issue.

(74) *Comment:* The economic analysis does not explain why a 20-year time period was selected.

Our Response: The economic analysis stated that activities occurring greater than 20 years in the future are difficult to predict, and the outcomes of such activities are even more uncertain. The 20-year time horizon was selected because population forecasts as well as local and regional planning documents use similar time horizons.

(75) *Comment:* The economic analysis does not explicitly address whether the benefits of excluding a particular reach outweigh the benefits of including the reach as critical habitat.

Our Response: We use the economic analysis and other relevant information to conduct analyses under section 4(b)(2) of the Act. If relevant to a particular critical habitat designation, these considerations are included in the final rule (50 CFR 424.19). For a detailed discussion, *see* the ''Exclusions Under Section 4(b)(2) of the Act'' and ''Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' sections below.

Summary of Changes From the Proposed Rule

In the development of this final designation of critical habitat for the silvery minnow we made several changes to the proposed critical habitat designation based on our review of public comments received on the proposed designation, the draft economic analysis, and the draft EIS and further evaluation of lands proposed as critical habitat. As discussed in the ''Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section of this final rule, we evaluated the lands proposed as critical habitat for the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta. Because each of these Pueblos submitted management plans that provide for special management considerations or protections for the silvery minnow and because of other relevant issues, (*see* ''Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section below), these lands were not included in the final critical habitat designation.

The downstream boundary of critical habitat differs from that described in the proposed rule. In the proposal, the boundary was Elephant Butte Reservoir Dam, with the reservoir specifically excluded by definition (June 6, 2002; 67 FR 39206). However, in this final rule, we selected the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980). This downstream boundary of critical habitat was selected because it is a permanent identified landmark that is found on a standard topographic map. The area below this boundary (*i.e.*, from the utility line downstream to Elephant Butte Reservoir Dam) has the potential to be inundated by the reservoir and may not provide those physical or biological features essential to the conservation of the species and is therefore not designated as critical habitat.

During the open comment period, the BOR provided GIS maps that identified the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980) (M. Porter, BOR, pers. comm., 2002). Consequently, we revised the boundary for the designation because we find that the area downstream of the utility line is not essential to the conservation of the silvery minnow and we believe that the boundary, as originally proposed, was confusing as evidenced by many commenters, including the Elephant Butte Irrigation District, the NMISC, and others.

We further reviewed existing information (Platania and Dudley 2001a) to determine if the area from the designated critical habitat boundary to the headwaters of Elephant Butte Reservoir is essential to the conservation of the silvery minnow. For example, the location for the silvery minnow spawning study (Platania and Dudley 2000, 2001a) is just downstream of the critical habitat boundary. The study location was selected to maximize the potential number of silvery minnow eggs collected by rescuing those eggs destined to drift into Elephant Butte Reservoir. Currently, if silvery minnow spawn in the area from the designated critical habitat boundary to the headwaters of Elephant Butte Reservoir, the floating eggs would enter the reservoir in just a few hours. Once the eggs and larvae enter the reservoir, they would be subjected to predation (Platania and Dudley 2001a). We find that silvery minnow eggs and larvae in this reach contribute little to the survival or recovery of the species. Consequently, the area from the designated critical habitat boundary to the headwaters of Elephant Butte Reservoir is not essential to the conservation of the silvery minnow. Because of these reasons, we also believe that the exclusion of this area

from the designated critical habitat will not lead to the extinction of the species. It should be noted that the Service, in collaboration with other State and Federal agencies, rescues silvery minnow eggs in the lower San Acacia Reach for use in captive propagation and subsequent augmentation of the silvery minnow in the middle Rio Grande.

Exclusions Under Section 4(b)(2) of the Act

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. Our analysis of the following two areas: (1) The river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM; and (2) the river reach in the lower Rio Grande in Big Bend National Park downstream of the National Park boundary to the Terrell/Val Verde County line, TX, concludes that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them. Therefore, we are not designating these areas as critical habitat.

(1) Benefits of Inclusion

The benefits of inclusion of the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM, would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. Historically, no consultations have occurred on the Pecos River for the silvery minnow since the area is not occupied by the species. However, while critical habitat designation could provide some benefit to the silvery minnow, in fact, consultations are already occurring for another listed fish with similar habitat requirements. The Pecos bluntnose shiner (*Notropis simus pecosensis*) was federally listed in 1987 and portions of the Pecos River are designated as critical habitat for the Pecos bluntnose shiner (February 20, 1987; 52 FR 5295). As stated in the ''Criteria for Identifying Critical Habitat'' section of this rule, these fish species belong to the same guild of broadcast spawners with semibuoyant eggs and also spawn during high flow events with eggs and larvae being distributed downstream (Bestgen *et al.* 1989). Therefore, flow regime operations in this reach that benefit the Pecos bluntnose shiner also provide benefits to silvery minnow habitat. We also believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat are compatible with the primary constituent elements for the silvery minnow (*see* ''Criteria for Identifying Critical Habitat'' section below). Thus, we find that little additional benefit through section 7 consultation would occur as a result of the overlap between habitat suitable for the silvery minnow and the Pecos bluntnose shiner listing and critical habitat designation.

In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including the middle Pecos River because the final rule identifies all areas that are essential to the conservation of the silvery minnow, regardless of whether all of these areas are included in the regulatory designation. Consequently, we believe that the informational benefits will be provided to the middle Pecos River, even though this reach is not designated as critical habitat.

The economic analysis recognizes that while consultations regarding the Pecos River will occur without a silvery minnow critical habitat designation, those consultations would not consider the silvery minnow. However, because of the similar life history requirements of these species, we do not anticipate that the outcomes of such consultations would be altered. We recognize, as does the economic analysis, that the middle Pecos River area (as described above) covers about twice the length of the area designated for the Pecos bluntnose shiner. Historically, two formal consultations and two informal consultations occurred annually for the Pecos bluntnose shiner. The economic analysis assumes that twice as many consultations would occur if this area were designated as critical habitat for the silvery minnow, since the area would be doubled in size. However, the economic analysis also recognizes that this is likely an overstatement of the actual increase in consultations because consultations frequently occur on projects located outside of Pecos bluntnose shiner critical habitat, because of the interdependent nature of the river system and the presence of the species. Consequently, we do not believe that designating critical habitat within this river reach would provide additional benefits for the silvery minnow, because currently the activities that occur outside of critical habitat designated for the Pecos bluntnose shiner are also the subject of consultation. In the absence of the silvery minnow, we find little benefit to including this river reach in the critical habitat for the silvery minnow because of the presence of the Pecos bluntnose shiner and its designated critical habitat. Current and ongoing conservation activities for the Pecos bluntnose shiner are compatible with those of the silvery minnow such that reestablishment of the silvery minnow in this stretch of river should not be precluded in the future. Thus, we determine that any additional benefit from a designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below in the ''Benefits of Exclusion'' section.

The benefits of inclusion of the river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, TX, would also result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. However, as indicated in the economic analysis, we anticipate very little consultation activity within this area. The economic analysis (section 6.3.3) estimates that over the next 20 years there would be a total of 12 formal consultations and 6 informal consultations if silvery minnow critical habitat were designated. The only Federal action that we are aware of within the river reach of the lower Rio Grande downstream of Big Bend National Park is the Big Bend National Park oversight and permitting authority for float trips, scientific research permits, environmental education, and law enforcement (R. Skiles, Big Bend National Park, pers. comm. 2001). Therefore, unless there are other types of Federal permitting or authorization within this area, private and State-owned lands would not be affected. Additional activities that were used to estimate the numbers of consultations

for this area include: National Park management activities (*e.g.*, pesticide application and fishing regulations), U.S. International Boundary and Water Commission channel maintenance activities, certain Service activities (*e.g.*, fire management plans, fish stocking), and the U.S. Environmental Agency (EPA) NPDES permitting for the Presidio or Lajitas wastewater treatment facility. We find sufficient regulatory and protective conservation measures in place from the consultations regarding the activities described above. We believe there would be little benefit to a designation in this reach because this area is protected and managed by the National Park Service and the number of consultations expected to occur in this area is relatively low.

As above, we believe that heightened public awareness of a listed species and its habitat may facilitate conservation efforts. Nevertheless, we believe that there would be little additional informational benefit gained from including the lower Rio Grande within designated critical habitat for the silvery minnow because we have identified in this final designation those areas that we believe are essential to the conservation of the species. For these reasons, we determine that any additional benefit of designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below.

(2) Benefits of Exclusion

As discussed in the ''Recovery Plan'' section of this rule, the primary goals of the silvery minnow Recovery Plan are to: (1) Stabilize and enhance populations of the silvery minnow and its habitat in the middle Rio Grande valley; and (2) reestablish the silvery minnow in at least three other areas of its historic range (Service 1999). We believe that the best way to achieve the second recovery goal will be to use the authorities under section 10(j) of the Act. Consequently, this final rule outlines our conservation strategy that we believe is consistent with the species' Recovery Plan. The conservation strategy is to reestablish the silvery minnow, under section 10(j) of the Act, within areas of its historic range, possibly including the river reach in the middle Pecos River and the river reach in the lower Rio Grande. Since the silvery minnow is extirpated from these areas and natural repopulation is not possible without human assistance, we believe a 10(j) rule is the appropriate tool to achieve this recovery objective. Nevertheless, any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act. An overview of the process to establish an experimental population under section 10(j) of the Act is described below.

Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are the following: (1) The population is geographically separate from non-experimental populations of the same species (*e.g.*, the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, certain section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: Section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with us on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be ''essential'' to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

In order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represent an agreement between us, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (*see* 50 CFR 17.81(d)).

The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

The second goal of the Recovery Plan is to reestablish the silvery minnow in areas of its historic range. We strongly believe that, in order to achieve recovery for the silvery minnow, we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of reestablishing the minnow in the middle Pecos River and lower Rio Grande areas. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (Patlis 2001). We believe it is important for recovery of this species that we have the support of the public when we move toward meeting the second recovery goal. It is

critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. The current population of silvery minnow in the middle Rio Grande is in an imperiled state, making reestablishment into other portions of its historic range extremely important.

As noted above, nonessential experimental populations located within the National Park System are treated, for purposes of section 7 of the Act, as if they are listed as threatened (50 CFR 17.83(b)). Thus, a nonessential experimental population established in the river reach in the lower Rio Grande downstream of the Big Bend National Park boundary (*i.e.*, within the reach designated as a wild and scenic river) to the Terrell/Val Verde County line, TX, would be treated, for purposes of section 7, as a threatened species because this area is a component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service and is considered part of the National Park System (16 U.S.C. 1281(c)). These lands downstream of Big Bend National Park are owned by the State of Texas (Black Gap Wildlife Management Area) and approximately 12 to 15 private landowners. The National Park Service's management authority in the wild and scenic river designation currently extends 0.25 mi from the ordinary high water mark.

For the past two years, Big Bend National Park has been working on a management plan for the ''outstanding remarkable values of the Rio Grande wild and scenic river'' (F. Deckert, Big Bend National Park, pers. comm. 2002). The development of the river management plan has involved stakeholders, including private landowners and the State of Texas. Throughout the stakeholder-based planning process, the Park has built trust among diverse and competing interests by encouraging open dialogue regarding various river management issues. If critical habitat were designated in this river reach, the introduction of additional Federal influence could jeopardize the trust and spirit of cooperation that has been established over the last several years (F. Deckert, pers. comm. 2002). The designation of critical habitat would be expected to adversely impact our, and possibly the Park's, working relationship with the State of Texas and private landowners, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion.

The National Park Service expects to complete and finalize its management plan and EIS in 2003. We will review the river management plan when the draft EIS is released to suggest management recommendations for this river reach that are consistent with the recovery needs of the silvery minnow. We believe this area has the greatest potential for repatriating the species within an area of its historic range and believe this river reach also has the greatest potential for developing an experimental population under section 10(j) of the Act. In order for an experimental population to be successful, the support of local stakeholders—including the National Park Service, the State of Texas, private landowners, and other potentially affected entities—is crucial. In light of this and the fact that the river management plan will soon be completed, we find that significant benefits result from excluding this river reach from designation of critical habitat.

On the middle Pecos River, we acknowledge that the NMISC has been actively acquiring and leasing water rights to meet the State's delivery obligations to TX as specified in the Pecos River Compact and pursuant to an Amended Decree entered by the U.S. Supreme Court. For example, between 1991 and 1999, $27.8 million was spent on the Pecos River water rights acquisition program. NM faced a shortfall in its Pecos River Compact delivery obligations for the year 2001 and the possibility of priority administration, in which the State Engineer would order junior water rights holders not to use water. Given this tight water situation and the Pecos River Compact delivery obligations, we believe that the flexibility of section 10(j) would be especially appropriate in the middle Pecos. Economic costs associated with endangered species management and critical habitat designation for the silvery minnow are discussed in the economic analysis. There are a variety of current and potential future costs associated with the ongoing water management and water reallocation on the middle Pecos River. The economic analysis and EIS discuss and analyze these costs in greater detail. We used the economic analysis and EIS to make our determinations on the benefits of including or excluding areas from the designation of critical habitat. Prior to making our final determination, we considered comments on the economic and other relevant impacts of all of the areas we determined to be essential for the conservation of the silvery minnow.

In summary, we believe that the benefits of excluding the middle Pecos River and lower Rio Grande outweigh the benefits of their inclusion as critical habitat. Including these areas may result in some benefit through additional consultations with Federal agencies whose activities may affect critical habitat. However, overall this benefit is minimal because of the presence of the Pecos bluntnose shiner and its critical habitat in the middle Pecos River and the minimal number of estimated future consultations that are expected to occur within Big Bend National Park and the wild and scenic river designation that extends beyond the Park's boundaries. On the other hand, an exclusion will greatly benefit the overall recovery of the minnow by allowing us to move forward using the flexibility and greater public acceptance of section 10(j) of the Act to reestablish minnows in other portions of its historic range where it no longer occurs. This is likely the most important step in reaching recovery of this species and we believe that section 10(j), as opposed to a critical habitat designation, is the best tool to achieve this objective. Thus, we believe that an exclusion of these two areas outweighs any benefits that could be realized through a designation of critical habitat and we have not included these two areas within this critical habitat designation.

The Pecos River and lower Rio Grande reaches were historically occupied but are currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). The silvery minnow occupies less than 5 percent of its historic range, and the likelihood of extinction from catastrophic events is high because of its limited range (Hoagstrom and Brooks 2000; Service 1999). However, if critical habitat were designated in the middle Pecos River or lower Rio Grande, the likelihood of extinction of the species from the occupied reach of the middle Rio Grande would not decrease because critical habitat designation is not a process to reestablish additional populations within areas outside of the current known distribution. We believe that the exclusion of the river reaches of the middle Pecos River and the lower Rio Grande will not lead to the extinction of the species.

Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)

In the proposed rule for the designation of critical habitat for the silvery minnow (June 6, 2002; 67 FR 39213), we indicated that if any management plans are submitted during the open comment period, we would

consider whether such plans provide adequate special management or protection for the species. We also indicated that we would use this information in determining which, if any, river reaches or portions of river reaches within the middle Rio Grande should not be included in the final designation of critical habitat for the silvery minnow. We based this discussion on section 3(5) of the Act, which defines critical habitat, in part, as areas within the geographical area occupied by the species ''on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection.'' We noted that ''special management considerations or protection'' is a term that originates in the definition of critical habitat and that adequate special management consideration or protection can be provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. The three criteria identified in the proposed rule for determining if a plan provides adequate special management or protection are as follows: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan or agreement must provide assurances that the conservation management strategies will be implemented; and (3) the plan or agreement must provide assurances that the conservation management strategies will be effective (*i.e.,* provide for periodic monitoring and revisions as necessary).

In a recent opinion (*Center for Biological Diversity* v. *Norton, Civ. No. 01–409 TUC DCB* D. Ariz. Jan. 13, 2003), a federal district court determined that our definition of critical habitat, as it applies to special management, is not correct. The court stated that ''whether habitat does or does not require special management is not determinative on whether the habitat is ''critical'' to a threatened or endangered species.'' Although we do not necessarily agree with the court's analysis, we nevertheless do not intend to delete areas from this final designation because additional special management is not required. We do however, as explained below, believe that the management plans submitted by the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta during the comment period provide for special management of the silvery minnow on their lands and we have, as explained below, excluded their lands under section 4(b)(2) of the Act.

During the open comment period, we worked with the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta to develop voluntary measures to conserve the silvery minnow on their lands. These Pueblos each completed special management plans for the silvery minnow and submitted them to us during the open comment period. Excluding the Tribal lands in this designation of critical habitat for the silvery minnow will not adversely affect the conservation and future delisting of the species. Whether or not a species has designated critical habitat, that species is protected from any actions resulting in an unlawful take, under section 9 of the Act, and from Federal actions that could jeopardize the species' continued existence. The four Pueblo plans are summarized below:

(1) Santo Domingo Tribe Rio Grande Silvery Minnow Management Plan (Santo Domingo management plan): A resolution was passed by the Santo Domingo Tribal Council for the Santo Domingo management plan to exercise the Tribe's sovereign status and provide for special management protections and conservation of the silvery minnow. The Santo Domingo management plan sets the goal of gathering and analyzing data to formulate and prioritize actions to improve the status of these lands. Additionally, the Santo Domingo Tribe will attempt to secure funding to: (1) Determine and quantify the extent of the silvery minnow population and habitat found on Santo Domingo lands; (2) develop management actions and strategies to address the threats to the species and provide protection of silvery minnow populations and habitat; (3) develop methods and protocols for gathering, storing, and monitoring data for the Rio Grande watershed; and (4) analyze, revise, and strengthen the Santo Domingo management plan to promote long-term improvement of the watershed and protect the silvery minnow and other species.

The Santo Domingo Tribe intends to coordinate with us to follow methods and protocols that were provided to the Tribe in 2001 to survey for silvery minnows or habitat, to conduct water quality sampling, to develop water quality standards, and to devise relocation or augmentation protocols (Santo Domingo 2002; Service 2001e). The Santo Domingo management plan organizes these activities into silvery minnow population and habitat monitoring, silvery minnow research, bosque (the riparian areas adjacent to the Rio Grande) restoration, and data sharing. Because Santo Domingo commits to implementing these activities, we find that the Santo Domingo management plan provides significant conservation benefit to the silvery minnow. We believe that the resolution passed by the Santo Domingo Tribal Council and the development of the Santo Domingo management plan demonstrate that the management plan will be implemented. The Santo Domingo management plan specifically provides periodic updates as appropriate, including updates based upon silvery minnow population and habitat monitoring and research.

(2) Santa Ana Management Plan: During the open comment period, the Pueblo of Santa Ana submitted comments and a draft safe harbor agreement to us. The comments and draft safe harbor agreement indicate that the Pueblo is currently enhancing, restoring, and maintaining habitat for the silvery minnow and other species. The Pueblo's current natural resource programs—along with the draft safe harbor agreement—will, along with providing other conservation benefits, serve as the foundation for managing the silvery minnow and other species within the Pueblo's lands. The Pueblo has actively coordinated with us to implement these voluntary conservation programs to augment the silvery minnow population within its lands and intends to continue its existing natural resource management programs that currently provide special management considerations or protections for the silvery minnow. These programs include ecosystem restoration, range and wildlife, water resources, GIS, and environmental education. The ecosystem restoration program concentrates on the restoration of riparian, wetland, and riverine systems by eradicating non-native plant species and restoring native wildlife habitat, including habitat for the silvery minnow. Its current scope includes developing methods and implementing bosque, wetland, and channel restoration along the Rio Grande within the boundaries of the Pueblo and in the Rio Jemez watershed. The range and wildlife program concentrates on improving the health of the Pueblo's rangeland. The water resources program is responsible for surface water and groundwater projects and programs ongoing and in development at the Pueblo. Activities currently being implemented and anticipated to continue focus on water quality standards development, technical support for water rights establishment, conserving riparian areas, improving

water quality, and reestablishing natural hydrologic processes. These natural resource management programs will collect monitoring data such as water quality information, stream geomorphologic assessments, aquatic studies, and vegetation surveys. We expect that periodic updates of information as well as water management improvements will occur because their natural resource programs incorporate monitoring and adaptive management principles.

We believe that Santa Ana Pueblo currently provides, and will continue to provide, special management for the conservation of the silvery minnow through its existing natural resource management programs. Because Santa Ana commits to implementing the activities described above, we conclude that the management of Santa Ana Pueblo lands and those described under the draft safe harbor agreement provide significant conservation benefit to the silvery minnow. We believe that the existing natural resource program and draft safe harbor agreement demonstrate that these voluntary management activities will be implemented. In fact, we have previously commented that Santa Ana's active restoration program includes many standard recommendations we make concerning fish and wildlife and their habitat, such as expansion of shallow, low-velocity habitat in the Rio Grande, creation and restoration of riparian and wetland areas, protection and enhancement of aquatic habitat, and establishment of native plant species in riparian areas cleared of non-native vegetation (Service 2001f). The Santa Ana natural resource program and draft safe harbor agreement also provide for periodic updates as appropriate.

(3) Pueblo of Sandia Bosque Management Plan (Sandia management plan): A resolution passed by the Pueblo of Sandia Tribal Council adopts the management plan. The resolution, among other things, identifies that the Sandia management plan formalizes bosque restoration activities, thus demonstrating the Pueblo's commitment to protect the bosque, including the silvery minnow. The Sandia management plan provides a conservation benefit to the silvery minnow by enhancing and restoring the species' habitat through bosque restoration efforts, water quality monitoring, fire prevention activities, wetland enhancements, and natural pond restoration. The goals of the Sandia management plan are to: (1) Create and sustain diverse habitats within the bosque; (2) reduce and eradicate invasive species; (3) plant native grasses, trees, and shrubs; (4) increase water retention and yield of the riparian area; (5) encourage the reintroduction of native species, including the silvery minnow and the Southwestern willow flycatcher; and (6) continue water quality monitoring to determine if degradation has contributed to the decline of the silvery minnow. The Pueblo also developed specific objectives to provide for special management considerations or protections of the silvery minnow, including: determining silvery minnow distribution, abundance, mesohabitat and habitat preference, and evaluating water quality impacts. Additionally, the Pueblo will prepare a feasibility study for creating silvery minnow habitat and will continue cooperative research efforts with us.

As an example of current protection, Sandia Pueblo has surface water quality standards pursuant to the Clean Water Act. To support these standards, the Pueblo has an intensive monitoring program to assess water quality compliance in relation to its established standards. In addition, the Pueblo is currently engaged with us in conducting a water quality study. The study is designed to assess water quality in relation to the silvery minnow and its habitat. The results of this study will be used to develop and promote long-term strategies that will protect and conserve the silvery minnow.

We find that the Sandia management plan is complete and provides significant conservation benefit to the silvery minnow as described above. We believe that the resolution passed by the Pueblo of Sandia Tribal Council concerning the Sandia management plan demonstrates that the management plan will be implemented. The Sandia management plan also will be periodically updated, as appropriate, on the basis of results of ongoing Federal and State agency programs and studies.

(4) The Pueblo of Isleta Riverine Management Plan: Rio Grande Silvery Minnow (Isleta management plan). A resolution passed by the Tribal Council of the Pueblo of Isleta adopts the Isleta management plan. The resolution, among other things, demonstrates the Pueblo's commitment through the Isleta management plan to protect, conserve, and promote the management of the silvery minnow and its associated habitat within the boundaries of Isleta Pueblo. Management activities covered by the Isleta Management Plan include silvery minnow population monitoring, habitat protection, and habitat restoration.

As an example of current protection, Isleta Pueblo has surface water quality standards pursuant to the Clean Water Act. The EPA has taken the surface water quality standards developed by Isleta Pueblo into consideration in the development of point source discharge permits; these standards minimize potential water quality impacts on water uses and resources, including the protection of the silvery minnow. The Pueblo regularly monitors compliance with these surface standards, and is currently engaged with us in conducting a water quality study. The study is designed to assess water quality in relation to the silvery minnow and its habitat. The results of this study will be used to develop and promote long-term strategies that will protect and conserve the silvery minnow.

The Isleta management plan sets the overall management goals of (1) determining, quantifying, and assessing silvery minnow populations within Isleta Pueblo; (2) developing and refining management actions to address potential threats to the silvery minnow; (3) prescribing measures to sustain existing silvery minnow populations and habitat and enhance numbers; and (4) promoting a comprehensive integrated resource management approach for the riverine ecosystem. These goals, conducted in cooperation with the FWS, will be accomplished by silvery minnow population and habitat assessment and monitoring, including surveys, egg sampling and collection, and silvery minnow rescues.

We find that the Isleta management plan is complete and the commitment to implement the activities described above provides significant conservation benefit to silvery minnow. We believe that the resolution passed by the Tribal Council of the Pueblo of Isleta concerning the final Isleta management plan demonstrates that the management plan will be implemented. The Isleta management plan specifically provides periodic updates as appropriate, including updates based upon silvery minnow population, habitat, and water quality monitoring and studies.

Section 4(b)(2) allows the Service to exclude areas form critical habitat designation if the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat, unless exclusion would result in the extinction of the species. If excluding an area from a critical habitat designation will provide substantial conservation benefits, and at the same time including the area fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it.

The Service has analyzed the benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. A major factor in the analysis described below is that, even if excluded, these river reaches owned and managed by the Pueblos will nonetheless receive special management and protection through the Pueblos management plans, which were submitted during the open comment period for the proposed rule. Under these management plans, the silvery minnow will benefit from monitoring, restoration, enhancement, and survey efforts. The Service has also determined that exclusion would not result in the extinction of the species.

(1) Benefits of Inclusion

There are few additional benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta in this critical habitat designation beyond what will be achieved through the implementation of their management plans. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. If adequate protection can be provided in another manner, the benefits of including any area in critical habitat are minimal. The economic analysis found that the Bureau of Indian Affairs (BIA) has no consultation history for the silvery minnow (*i.e.*, no consultations have been conducted since the species was listed). However, the economic analysis found that, consultations may occur in the future for water trades or voluntary leasing that would benefit the silvery minnow. The economic analysis estimated 6 informal consultations may occur over the next 20 years, resulting from these beneficial water trades, but that no formal consultations were likely. These consultations would occur regardless of whether critical habitat is designated, because the species occupies these four areas. Section 7 consultation under the jeopardy standards will still be required for activities affecting the silvery minnow. Beyond these informal consultations, we do not expect any additional consultations.

Although we believe the likelihood of additional consultations is small, consultation requirements under section 7 of the Act would be triggered as a result of the funding or permitting processes administered by the Federal agency involved. The benefit of critical habitat designation would ensure that any actions funded by or permits given by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, projects would still trigger consultation requirements under the Act because the silvery minnow is currently present in the middle Rio Grande. Given that no consultations have occurred with the BIA or the Pueblos since the silvery minnow was listed as endangered in 1994 and the overall low likelihood of Federal projects being proposed in these areas, the Service believes there is almost no regulatory benefit of a critical habitat designation in this area. Consequently, the designation of critical habitat in these areas would provide minimal, if any, regulatory benefit to the species.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the silvery minnow and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, the Pueblos are already working with the Service to address the habitat needs of the species. Further, these areas were included in the proposed designation, which itself has reached a wide audience, and has thus provided information to the broader public about the conservation value of these areas. Thus, the educational benefits that might follow critical habitat designation, such as providing information to the BIA , BOR, or Pueblos on areas that are important for the long-term survival and conservation of the species, have already been provided by proposing these areas as critical habitat. Alternatively, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat. For example, the educational aspects are likely greater for these areas if they are not included in the designation because the Pueblos will continue to work cooperatively toward the conservation of the silvery minnow, which will include continuing, initiating, and completing scientific studies (*see* discussion below). For these reasons, then, we believe that designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation under the jeopardy standard.

(2) Benefits of Exclusion

The benefits of excluding the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta from designated critical habitat are more significant. The proposed critical habitat designation included 29.5 mi (47.5 km) of river through these areas. We believe that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta to develop and implement Tribal conservation and natural resource management plans for their lands and resources within the Rio Grande ecosystem, which includes the silvery minnow and its habitat; (2) the establishment and maintenance of effective working relationships to promote the conservation of the silvery minnow and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the life history and habitat requirements of the species; and (4) providing conservation benefits to the Rio Grande ecosystem and the silvery minnow and its habitat that might not otherwise occur.

As detailed above, we met with Pueblos and Tribes to discuss how each might be affected by the designation of critical habitat. During the open comment period, we established effective working relationships with the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta. As part of our relationship, we provided technical assistance to each of these four Pueblos to develop voluntary measures to conserve the silvery minnow and its habitat on their lands. These voluntary measures are contained within special management plans that each of these Pueblos submitted during the open comment period (*see* discussion above). These actions were conducted in accordance with 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); Executive Order 13175; and the relevant provision of the Departmental

Manual of the Department of the Interior (512 DM 2). We believe that these Pueblos should be the governmental entities to manage and promote the conservation of the silvery minnow on their lands. During our meetings with each of these Pueblos, we recognized and endorsed their fundamental right to provide for resource management activities, including those relating to the Rio Grande ecosystem. Much of our discussions centered on providing technical assistance to the Pueblos to develop, continue, or expand natural resource programs such that the designation of critical habitat for the silvery minnow would likely be unnecessary.

We find that other conservation benefits could be provided to the Rio Grande ecosystem and the silvery minnow and its habitat by excluding the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta from the designation. For example, as part of maintaining an effective working relationship with each Pueblo, conservation benefits, including silvery minnow augmentation, population and habitat monitoring, silvery minnow research, habitat restoration, and the development of water leases may be possible. In fact, during our discussions with each of the Pueblos, we were informed that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. To this end, we found that each Pueblo would prefer to work with us on a Government-to-Government basis. For these reasons, we believe that our working relationships with the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta would be maintained if they are excluded from the designation of critical for the silvery minnow. We view this as a substantial benefit.

Proactive voluntary conservation efforts are necessary to promote the recovery of the silvery minnow (Service 1999). Consideration of this issue is especially important in areas where the status of the species is uncertain or unknown. Recovery of the silvery minnow will require access to all areas of the middle Rio Grande and permission for monitoring and other efforts (*e.g.,* augmentation of the existing population, water leasing, etc). Because we have not had permission from the Pueblos within the Cochiti reach, surveys to determine the status of the silvery minnow have not been conducted since the mid-1990s (Platania 1995; Hoagstrom and Brooks 2000). Pueblo cooperation is essential to obtain permission for these monitoring activities. As described above, the Santo Domingo intends to coordinate with us to survey for silvery minnows or habitat, to conduct water quality sampling, to develop water quality standards, and to devise relocation or augmentation protocols. Santa Ana Pueblo will continue to actively coordinate with us to implement a variety of voluntary conservation programs to augment the silvery minnow population within its lands and intends to continue its existing natural resource management programs that currently provide special management considerations or protections for the silvery minnow. Sandia Pueblo intends to enhance and restore the species' habitat through bosque restoration efforts, water quality monitoring, fire prevention activities, wetland enhancements, and natural pond restoration. Finally, Isleta Pueblo intends to protect, conserve, and promote the management of the silvery minnow and its associated habitat including population monitoring, habitat protection, habitat restoration, and continued water quality standards. Consequently, we view each of the special management plans as a starting point for cooperative and productive relationships that have the potential to provide additional substantive conservation benefits to the silvery minnow and its habitat. The additional benefits would be less likely if critical habitat was designated because the Pueblos view critical habitat as an intrusion on their ability to manage their own lands and trust resources.

The special management plans and comments submitted by each of the Pueblos documents that meaningful collaborative and cooperative scientific studies will begin or continue within their lands. These commitments demonstrate the willingness of each of the Pueblos to work cooperatively with us toward landscape-scale conservation efforts that will benefit the silvery minnow. Each of the Pueblos has committed to several ongoing or future management, restoration, enhancement, and survey activities that would not occur as a result of critical habitat designation. The Pueblos of Sandia and Isleta are currently participating in a water quality study with us. Santo Domingo Pueblo indicated that, among other activities, it will attempt to secure funding to implement silvery minnow and habitat inventories, water quality sampling, and the development of water quality standards. Santa Ana indicated that water quality data, stream geomorphology assessments, and aquatic and vegetation studies will continue. Therefore, we believe that the results of these or other similar studies will be used to develop and promote long-term strategies that will protect and conserve the silvery minnow and its habitat within the Pueblo lands of Santa Domingo, Santa Ana, Sandia, and Isleta. The benefits of excluding these areas from critical habitat will encourage the continued cooperation and development of data-sharing protocols and scientific studies as part of implementing the special management plans. If these areas were designated as critical habitat, we believe it is unlikely that much of this information would be available to us.

In addition to management actions described above to address the conservation needs of the silvery minnow, we discussed with each of the Pueblos possible future amendments to the special management plans to include voluntary conservation efforts for other listed species and their habitat (*e.g.,* southwestern willow flycatcher). All of the Pueblos indicated their willingness to work cooperatively with us to benefit other listed species. However, these future voluntarily management actions will likely be contingent upon whether lands on these four Pueblos are designated as critical habitat for the silvery minnow. Thus, a benefit of excluding these lands would be future voluntary conservation efforts that would benefit other listed species.

In summary, the benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta in critical habitat are small, and are limited to minor educational benefits. The benefits of excluding these areas from being designated as critical habitat for silvery minnow are more significant, and include encouraging the continued development and implementation of the special management measures such as monitoring, survey, enhancement, and restoration activities that are planned for the future or are currently being implemented. These programs will allow the Pueblos to manage their natural resources to benefit the Rio Grande ecosystem and silvery minnow, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the species that would not otherwise be available to encourage and maintain cooperative working relationships. We find that the benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas.

As noted above, the Service may exclude areas from the critical habitat designation only if it is determined, ''based on the best scientific and

commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' Here, we have determined that exclusion of the Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta from the critical habitat designation will not result in the extinction of the silvery minnow. First, activities on these areas that may affect the silvery minnow will still require consultation under section 7 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on these lands, activities that occur on these lands cannot jeopardize the continued existence of the silvery minnow. Second, each of the Pueblos have committed to protecting and managing according to their special management plans and natural resource management objectives. In short, the Pueblos have committed to greater conservation measures on these areas than would be available through the designation of critical habitat. With these natural resource measures, we have concluded that this exclusion from critical habitat will not result in the extinction of the silvery minnow. Accordingly, we have determined that the Pueblo lands of Santa Domingo, Santa Ana, Sandia, and Isleta should be excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species. For this reason, we are excluding from this critical habitat designation the Pueblo lands of Santa Domingo, Santa Ana, Sandia, and Isleta.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat designation on the best scientific and commercial data available, 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 if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat helps focus conservation activities by identifying areas that are essential to the conservation of the species and alerting the public and land management agencies to the importance of an area to conservation. Within areas currently occupied by the species, critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Where no such Federal agency action is involved, critical habitat designation has no bearing on private landowners, State, or Tribal activities. Aside from the added protection provided under section 7, critical habitat does not provide other forms of protection to designated lands.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits. Critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans under section 10 of the Act, or conservation planning efforts for other species if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the silvery minnow, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan (Service 1999), data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the previous proposed and final rule, draft economic analysis, and environmental assessment. We have emphasized areas known to be occupied by the silvery minnow and described other river reaches that were identified in the Recovery Plan which we believe are important for possible reintroduction and recovery (Service 1999).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat designations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and, within areas currently occupied by the species, may require special management considerations or protection. Those physical and biological features may include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The various life-history stages of the silvery minnow require diverse habitats. The following discussion summarizes the biological requirements of the silvery minnow relevant to identifying the primary constituent elements of its critical habitat.

The silvery minnow historically inhabited portions of the wide, shallow rivers and larger streams of the Rio Grande basin, predominantly the Rio Grande and the Pecos River (Bestgen

and Platania 1991). Survey results indicated that adults were common in shallow and braided runs over sand substrate, and almost never occurred in habitats with bottoms of gravel or cobble, while young-of-year fish (less than 1 year old) occupied shallow, low-velocity backwaters with sand-silt substrates (Dudley and Platania 1997; Platania and Dudley 1997; Platania 1991; Remshardt *et al.* 2001). Young-of-year silvery minnows were infrequently found at the same time in the same habitat as adults. River reaches dominated by straight, narrow, incised (deep) channels with rapid flows are not typically occupied by the silvery minnow (Bestgen and Platania 1991).

The habitats most often occupied by silvery minnow were characterized by low (<20 cm) to moderate depths (31 to 40 cm), little (<10 cm/s) to moderate (11 to 30 cm/s) water velocity, and silt and sand substrata (Dudley and Platania 1997; Remshardt *et al.* 2001). It is believed that silvery minnow select debris piles, pools, and backwaters as habitat, and generally avoid main channel runs (Dudley and Platania 1997).

The silvery minnow is believed to be a generalized forager, feeding upon items suspended in the water column and items lying on the substrate (*e.g.*, plankton, algae, diatoms) (Sublette et al. 1990; Dudley and Platania 1997; Service 1999). The silvery minnow's elongated and coiled gastrointestinal tract suggests that detritus (partially decomposed plant or animal matter), including sand and silt, is scraped from the river bottom (Sublette et al. 1990). Other species of *Hybognathus* have similar food habits, consuming rich organic ooze and detritus found in silt or mud substrates (Pflieger 1997).

The silvery minnow is a pelagic spawner, with each female capable of producing an average of 3,000 semibuoyant, non-adhesive eggs during a spawning event (Platania 1995; Platania and Altenbach 1998). Collection of eggs in the middle of May, late May, early June, and late June suggest a contracted spawning period in response to a spring runoff or spike (increase in flow that occurs when winter snows melt) (Service 1999; BOR 2001a). However, the peak of egg production appears to occur in mid-May (Smith 1998, 1999). If the spring spike occurs at the wrong time or is reduced, then silvery minnow reproduction could be impacted. Similar to other species of *Hybognathus* in other drainages (Lehtinen and Layzer 1988; Taylor and Miller 1990), the silvery minnow appears capable of multiple spawns. For example, a late spawn was documented in the Isleta and San Acacia reaches on July 24, 25, and 26, 2002, following a high flow event produced by a thunderstorm (see also Dudley and Platania 2002d). This spawn was smaller than the typical spawning event in May, but a significant number of eggs was collected (N = 496) in 2 hours of effort (J. Smith, NMESFO, pers. comm. 2002). In 2002, small spawning events (a few eggs in each spawn) have been documented in all reaches except the Cochiti Reach as late as August 7 (J. Smith, NMESFO, pers. comm. 2002).

Platania (1995, 2000) found that early development and hatching of eggs is correlated with water temperature. Silvery minnow eggs raised in 30°C water hatched in about 24 hours, while eggs reared in 20°C water hatched within 50 hours. Eggs were 1.6 mm (0.06 in) in size upon fertilization, but quickly swelled to 3 mm (0.12 in). Recently hatched larval fish are about 3.7 mm (0.15 in) in standard length and grow about 0.15 mm (0.005 in) per day during the larval stages. Eggs and larvae remain in the drift for 3 to 5 days, and may be transported from 134 to 223 mi (216 to 359 km) downstream depending on river flows and habitat conditions (*e.g.*, debris piles, low velocity backwaters) (Platania and Altenbach 1998). About 3 days after hatching, the larvae begin moving to low-velocity habitats where food (mainly phytoplankton and zooplankton) is abundant and predators are scarce. Because eggs and larvae can be swept downstream, where recruitment (that portion of young-of-the-year fish added to the breeding population) of fish may be poor in the current degraded condition of the middle Rio Grande (*e.g.*, channelization, banks stabilization, levee construction, disruption of natural processes throughout the floodplain, etc.), adequate stream length appears to be an important determinant of reproductive success.

Platania (1995) indicated that the downstream transport of eggs and larvae of the silvery minnow over long distances may have been, historically, beneficial to the survival of their populations. This behavior could have promoted recolonization of reaches impacted during periods of natural drought (Platania 1995). Alternatively, in a natural functioning river system (*e.g.*, a natural, unregulated flow regime), a variety of low-velocity refugia (*e.g.*, oxbows, backwaters, etc.) would have been available for silvery minnow, and lengthy downstream drift of eggs and larvae may not have been common (J. Brooks, U.S. Fish and Wildlife Service pers. comm., 2001). Currently, the release of floating silvery minnow eggs may replenish downstream reaches, but the presence of the diversion dams (Angostura, Isleta, and San Acacia Diversion Dams) prevents recolonization of upstream habitats (Platania 1995). As upstream reaches are depleted upstream, and diversion structures prevent upstream movements, population decline of the species within river reaches may occur through loss of connectivity (*i.e.*, preventing upstream movement of fish). Silvery minnows, eggs, and larvae are also transported downstream to Elephant Butte Reservoir, where it is believed that survival of these fish is highly unlikely because of poor habitat, and, more importantly, because of predation from reservoir fishes (Service 2001b). The population center (*i.e.*, the river reach that contains the majority of adult silvery minnows) is believed to have moved farther downstream over the last several years (Dudley and Platania 2001; 2002a; 2002b). For example, in 1997, it was estimated that 70 percent of the silvery minnow population was found in the reach below San Acacia Diversion Dam (Dudley and Platania 1997). Moreover, during surveys in 1999, over 95 percent of the silvery minnows captured occurred downstream of San Acacia Diversion Dam (Dudley and Platania 1999a; Smith and Jackson 2000). Probable reasons for this distribution include: (1) The spawning of semibuoyant eggs during the spring and early summer high flows, resulting in downstream transport of eggs and larval fish; (2) diversion dams that restrict or preclude the movement of fish into upstream reaches; and (3) reduction in the amount of available habitat due to the current degraded condition of some areas within the middle Rio Grande (*e.g.*, channelization, streambed degradation, reduction in off-channel habitat, and the general narrowing and incising of the stream channel) (Platania 1998; Lagassee 1981; BOR 2001).

Most Great Plains streams are highly variable environments. Fish in these systems (*e.g.*, the Rio Grande) are subjected to extremes in water temperatures, flow regimes, and overall water quality conditions (especially the concentration of dissolved oxygen). Native fish in these streams often exhibit life history strategies and microhabitat preferences that enable them to cope with these natural conditions. For example, Matthews and Maness (1979) reported that the synergistic (combined) effects of high temperature, low oxygen, and other

stressors probably limit fishes in streams of the Great Plains.

The silvery minnow evolved in a highly variable ecosystem, and is likely more tolerant of elevated temperatures and low dissolved oxygen concentrations for short periods than other non-native species. Although little is known about the upper tolerance limits of the silvery minnow, when water quality conditions degrade, stress increases, and fish generally die (*e.g.*, see Matthews and Maness 1979; Ostrand and Wilde 2001). Generally, it is believed that during periods of low flow or no flow, Great Plains fishes seek refugia in large isolated pools, backwater areas, or adjoining tributaries (Deacon and Minckley 1974; Matthews and Maness 1979). Fish in these refugia strive to survive until suitable flow conditions return and these areas reconnect with the main river channel. This pattern of retraction and recolonization of occupied areas in response to flow and other habitat conditions is typical of fishes that endure harsh conditions of Great Plains rivers and streams (Deacon and Minckley 1974; Matthews and Maness 1979).

Localized reductions in abundance are not typically a concern where sufficient numbers of the species survive, because river reaches can be recolonized when conditions improve. However, habitat conditions such as oxbows, backwaters, or other refugia that were historically present on the Rio Grande and Pecos River and were a component of natural population fluctuations (*e.g.*, extirpation and recolonization) have been dramatically altered or lost (Bestgen and Platania 1991; Hoagstrom 2000; BOR 2001a, 2001b). Over the past several decades, the extent of areas in the Rio Grande and Pecos Rivers that have periodically lost flow has increased due to human alterations of the watersheds and stream channels and diversion of the streamflows (Service 1994).

Variation in stream flow (*i.e.*, flow regime) strongly affects some stream fish (Schlosser 1985). For example, juvenile recruitment of some stream fish is highly influenced by stable flow regimes (Schlosser 1985; Hoagstrom 2000). When sufficient flows persist and other habitat needs are met, then recruitment into the population is high. Silvery minnows and other Great Plains or desert fishes cannot currently survive when conditions lead to prolonged recurring periods of low or no flow of long stretches of river (Hubbs 1974; Hoagstrom 2000). Fish mortality likely begins from degraded water quality (*e.g.*, increasing temperatures, p.H., and decreasing dissolved oxygen) and loss of refuge habitat prior to prolonged periods of low or no flow (J. Brooks, pers. comm 2001; Ostrand and Wilde 2001). For instance, a reduction of stream flow reduces the amount of water available to protect against temperature oscillations, and high temperatures from reduced water flow frequently kill fish before prolonged periods of no flow occurs (Hubbs 1990).

It is also possible that fish may subsequently die from living under suboptimal conditions or that their spawning activities may be significantly disrupted (Hubbs 1974; Platania 1993b). Such conditions are in part responsible for the current precarious status of the silvery minnow. For example, management of water releases from reservoirs, evaporation, diversion dams, and irrigation water deliveries have resulted in dewatered habitat—causing direct mortality and isolated pools that cause silvery minnow mortality as a result of poor water quality and predation from other fish and predators. Despite efforts to manage water resources to benefit the silvery minnow, periods of intermittency have and continue to occur. Portions of the middle Rio Grande were dewatered in the period 1996 through 2001 (Service 2001b; J. Smith, pers. comm. 2001). In 1996, about 34 mi (58 km) out of the 56 mi (90 km) from the San Acacia Diversion Dam to Elephant Butte Reservoir were dewatered. In 1997, water flows ceased at the south boundary of the Bosque del Apache National Wildlife Refuge, resulting in the dewatering of 14 mi (22.5 km) of silvery minnow habitat. In 1998, the Rio Grande was discontinuous within the Bosque del Apache National Wildlife Refuge, dewatering about 20 mi (32 km) of habitat. In 1999, flows ceased about 1 mi upstream of the Bosque del Apache National Wildlife Refuge northern boundary, dewatering about 24 mi (39 km) of habitat. A similar event occurred in 2000, but not to the extent of the 1999 drying. In 2001, approximately 9 combined mi (14 km) of river dried within the Bosque del Apache National Wildlife Refuge and south of San Marcial (Smith 2001). Drying occurred during the 2002 irrigation season in the Isleta and San Acacia Reaches. Between June and August 2002, approximately 25 mi of river in the San Acacia Reach and 14 mi in the Isleta Reach dried. Because of prolonged recurring periods of low or no flow through multiple years, the status of the silvery minnow has declined to alarmingly low levels (Dudley and Platania 2001, 2002a, 2002b, 2002c, 2002d, 2002e).

The primary constituent elements identified below provide a qualitative description of those physical and biological features necessary to ensure the conservation of the silvery minnow. We acknowledge that if thresholds were established as part of a critical habitat designation, they could be revised if new data became available (50 CFR 424.12(g)); however, the process of new rulemaking can take years (*see* 50 CFR 424.17), as opposed to reinitiating and completing a formal consultation, which takes months (*see* 50 CFR 402.14). Formal consultation provides an up-to-date biological status of the species or critical habitat (*i.e.*, environmental baseline) which is used to evaluate a proposed action during formal consultations. Consequently, we believe it is more prudent to pursue the establishment of specific thresholds through formal consultation.

This final rule does not explicitly state what might be included as special management for a particular river reach within the middle Rio Grande. We anticipate that special management actions will likely be developed as part of the section 7 consultation process. Special management might entail a suite of actions including re-establishment of hydrologic connectivity within the floodplain, widening the river channel, or placement of woody debris or boulders within the river channel (J. Smith, pers. comm., 2001).

It is important to note that some areas within the middle Rio Grande critical habitat have the potential for periods of low or no flow under certain conditions (*e.g.*, *see* discussion above on middle Rio Grande). We recognize that the critical habitat designation specifically includes some areas that have lost flow periodically (MRGCD 1999; Scurlock and Johnson 2001; Scurlock 1998). It is our belief that the river reach below San Acacia Diversion Dam on the middle Rio Grande is likely to experience periods of low or no flow under certain conditions, and we are not able to predict with certainty which areas will experience these conditions. We believe this area is essential to the conservation of the silvery minnow because it likely serves as connecting corridors for fish movements between areas of sufficient flowing water (*e.g., see* Deacon and Minckley 1974; Eberle *et al.* 1993). Additionally, we believe this area is essential for the natural channel geomorphology (the topography of the river channel) to maintain or re-create habitat, such as pools, by removing or redistributing sediment during high flow events (*e.g., see* Simpson *et al.* 1982; Middle Rio Grande Biological Interagency Team 1993). Therefore, we

believe that the inclusion of an area that has the potential for periods of low or no flow as critical habitat will ensure the conservation of the silvery minnow. As such, we believe that the primary constituent elements as described in this final rule could allow for short periods of low or no flow. Because of the difficulties in describing the existing conditions of this area (*see* above) and defining the primary constituent elements to reflect such a flow regime, we solicited comments in the proposed critical habitat designation rule for information related to the designation of critical habitat in this area that may experience periods of low or no flow, and, in particular, the primary constituent elements and how they related to the existing conditions (*e.g.*, flow regime). We did not receive any additional information or comments on these areas to refine the primary constituent elements in this final designation.

Federal agencies with discretion over water management actions that affect critical habitat will be required to consider critical habitat and possibly enter into consultation under section 7 of the Act. These consultations will evaluate whether any Federal discretionary actions destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. The adverse modification analysis will likely evaluate whether the adverse effect of prolonged recurring periods of low or no flow is of sufficient magnitude (*e.g.*, length of river) and duration that it would appreciably diminish the value of critical habitat for the survival and recovery of the silvery minnow. For example, the effect of prolonged periods of low or no flow on the habitat quality (*e.g.*, depth of pools, water temperature, pool size) and the extent of fish mortality is related to the duration of the event (Bestgen and Platania 1991). All of these factors will be analyzed under section 7 of the Act, if they are part of an action proposed by a Federal agency. Additionally, any Federal agency whose actions influence water quantity or quality in a way that may affect critical habitat or the silvery minnow must enter into section 7 consultation with us. Still, these consultations cannot result in biological opinions that require actions that are outside an action agency's legal authority and jurisdiction (50 CFR 402.02).

We determined the primary constituent elements of critical habitat for the silvery minnow based on studies on their habitat and population biology, including, but not limited to the following studies: Bestgen and Platania 1991; Service 1999; Dudley and Platania 1997, 2001, 2002a; Platania and Altenbach 1998; Platania 1991, 2000; Service 2001; Smith 1998, 1999; Hoagstrom 2000; Remshardt *et. al* 2001. The primary constituent elements are as follows:

1. A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to the following: Backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity—all of which are necessary for each of the particular silvery minnow life-history stages in appropriate seasons. The silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low or no flow, and a relatively constant winter flow (November through February);

2. The presence of low-velocity habitat (including eddies created by debris piles, pools, or backwaters, or other refuge habitat (*e.g.*, connected oxbows or braided channels)) within unimpounded stretches of flowing water of sufficient length (*i.e.*, river miles) that provide a variety of habitats with a wide range of depth and velocities;

3. Substrates of predominantly sand or silt; and

4. Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1 °C (35 °F) and less than 30 °C (85 °F) and reduce degraded water quality conditions (decreased dissolved oxygen, increased pH, etc.).

We determined that these primary constituent elements of critical habitat provide for the physiological, behavioral, and ecological requirements of the silvery minnow. The first primary constituent element provides water of sufficient flows to reduce the formation of isolated pools. We conclude this element is essential to the conservation of the silvery minnow because the species cannot withstand permanent drying (loss of surface flow) of long stretches of river. Water is a necessary component for all silvery minnow life-history stages and provides for hydrologic connectivity to facilitate fish movement. The second primary constituent element provides habitat necessary for development and hatching of eggs and the survival of the silvery minnow from larvae to adult. Low-velocity habitat provides food, shelter, and sites for reproduction, which are essential for the survival and reproduction of silvery minnow. The third primary constituent element provides appropriate silt and sand substrates (Dudley and Platania 1997; Remshardt *et al.* 2001), which we and other scientists conclude are important in creating and maintaining appropriate habitat and life requisites such as food and cover. The final primary constituent element provides protection from degraded water quality conditions. We conclude that when water quality conditions degrade (*e.g.*, water temperatures are too high, pH levels are too low, and dissolved oxygen concentrations are too low), silvery minnows will likely be injured or die.

Criteria for Identifying Critical Habitat

The primary objective in designating critical habitat is to identify areas that are considered essential for the conservation of the species, and to highlight specific areas where management considerations should be given highest priority. In determining critical habitat for the silvery minnow, we have reviewed the overall approach to the conservation of the silvery minnow undertaken by the local, State, Tribal, and Federal agencies operating within the species' historic range since the species' listing in 1994, and the previous proposed (March 1, 1993; 58 FR 11821) and final critical habitat rules (July 6, 1999; 64 FR 36274). We have also outlined our conservation strategy to recover the species (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section above) and considered the features and steps necessary for recovery and habitat requirements described in the Recovery Plan (Service 1999). We considered information provided by our New Mexico Fishery Resources Office and other biologists, and also utilized our own expertise. We also reviewed the biological opinion issued June 29, 2001, to the BOR and the Corps for impacts to the silvery minnow from water operations in the middle Rio Grande (Service 2001b), and the biological opinion issued to the BOR for discretionary actions related to water management on the Pecos River in NM (Service 2001a). We reviewed available information that pertains to the habitat requirements of this species, including material received during the initial

public comment period on the proposed listing and designation, the information received following the provision of the draft economic analysis to the public on April 26, 1996, the comments and information provided during the 30-day comment period that opened on April 7, 1999, including the public hearing, and the comments and information received during the 60-day comment period opened on April 5, 2001, for the notice of intent to prepare an EIS and public scoping meetings held on April 17, 23, 24, and 27, 2001 (April 7, 1999; 64 FR 16890). We also considered information and comments received on the recent proposal to designate critical habitat (June 6, 2002; 67 FR 39206).

Since the listing of the silvery minnow in 1994 (July 20, 1994; 59 FR 36988), no progress has been made toward reestablishing this species within unoccupied areas (*e.g.*, river reaches on the middle Pecos, lower Rio Grande). Because the silvery minnow has been extirpated from these areas, Federal agencies have not consulted with us on how their discretionary actions may affect the silvery minnow. We conclude these areas (*e.g.*, river reaches on the middle Pecos and the lower Rio Grande) are essential to the conservation of the minnow, but we have not designated them as critical habitat (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section).

This critical habitat designation differs from the final critical habitat designation we made in 1999 (July 6, 1999; 64 FR 36274), which was subsequently set aside by court order. The differences also reflect the best scientific and commercial information analyzed in the context of the final Recovery Plan (*see* ''Recovery Plan'' discussion above) and our conservation strategy for this species. Although we could have designated two additional critical habitat units to respond to the Recovery Plan's recommendation that additional areas are required to achieve recovery (Service 1999) (*see* ''Recovery Plan'' discussion above), we believe that inclusion of these areas under a critical habitat regulation could hinder our future conservation strategy (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section above) and actually impede recovery of the silvery minnow.

Recovery requires protection and enhancement of existing populations and reestablishment of populations in suitable areas of historic range. The Recovery Plan identifies ''the necessity of reestablishing silvery minnow in portions of its historic range outside of the middle Rio Grande in New Mexico.'' The Recovery Plan identified potential areas for reestablishment of silvery minnow in certain river reaches of the Rio Grande and Pecos River. The Recovery Plan also recommended a thorough analysis of the reestablishment potential of specific river reaches within the historic range of the silvery minnow.

We have determined that one of the most important goals to be achieved toward the conservation of this species is the establishment of secure, self-reproducing populations in areas outside of the middle Rio Grande, but within the species' historic range (Service 1999). Thus, we have outlined our conservation strategy for the silvery minnow (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section above). Because the species occupies less than 5 percent of its historic range and the likelihood of extinction from a catastrophic event is greatly increased (Hoagstrom and Brooks 2000; Service 1999), we believe that additional populations should be established within certain unoccupied reaches (*i.e.*, areas outside of the current known distribution). Nevertheless, any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act.

The recent trend in the status of the silvery minnow has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. Moreover, none of the threats affecting the silvery minnow has been eliminated since the fish was listed (July 20, 1994; 59 FR 36988), and its status continues to decline (Dudley and Platania 2001, 2002b, 2002c, 2002d, 2002e). The known silvery minnow population within the middle Rio Grande has become fragmented and isolated and is vulnerable to those natural or manmade factors that might further reduce population size (Dudley and Platania 2001, 2002a, 2002b). Because there have been low spring peak flows in the Rio Grande in some recent years (*e.g.*, 2000) and a related decrease in silvery minnow spawning success, the population size of silvery minnow continued to decline through the winter of 2002 (Dudley and Platania 2001, 2002a, 2002b, 2002c, 2002d, 2002e). We conclude that the species' vulnerability to catastrophic events, such as prolonged periods of low or no flow, has increased since the species was listed as endangered in 1994 (July 20, 1994; 59 FR 36988).

It is widely recognized that major efforts to reintroduce the silvery minnow to large reaches of its historic habitat in the Rio Grande and Pecos River will not likely occur without either natural or induced changes in the river, including changes affecting the existing fish community, habitat restoration, and coordinated water management (*e.g.*, Service 1999). Nevertheless, we conclude that conservation of the silvery minnow requires habitat conditions that will facilitate population expansion or reintroduction. As an example, we are currently involved in developing several efforts to assist in the recovery of the silvery minnow and other imperiled species (*e.g.*, Federal and non-Federal efforts to create a middle Rio Grande Endangered Species Act Collaborative Program). Any future habitat restoration efforts conducted by us or other Federal agencies within the species' historic habitat will be analyzed through NEPA and will be conducted in accordance with the pertinent sections of the Act and Federal rulemaking procedures.

As discussed above in the comments section, non-native fish species may adversely affect the silvery minnow. However, non-native fish have the potential to be removed or reduced to acceptable levels using a variety of control or management techniques. For example, the New Mexico State Game Commission recently passed a regulation limiting the species that can be used as baitfish in the Pecos River (New Mexico Department of Game and Fish 2000). As part of the Federal rulemaking process, we sought further information regarding the role of unoccupied river reaches within the historic range of the silvery minnow, including those reaches with non-native fish species (*e.g.*, plains minnow) present or those reaches that have the potential for low or no flow events. We were particularly interested in assistance in describing the existing habitat (*e.g.*, flow) conditions for the river reach below San Acacia Diversion Dam on the middle Rio Grande. However, we did not receive additional information on these areas to refine this final designation.

It is important to note that the mere presence of non-native aquatic species does not eliminate an area from being considered for designation as critical habitat. For example, the relationship between the introduction of the plains minnow and extirpation of the silvery minnow is unclear (see discussion above). Although the Recovery Plan suggested that the plains minnow would be the primary limiting factor precluding successful reestablishment of the silvery minnow to the Pecos River (Service 1999), we have little data from which to draw firm conclusions for the extirpation of the silvery minnow from the Pecos River. We recognize that any efforts to reestablish the silvery minnow

to unoccupied river reaches must fully analyze and consider a variety of habitat management techniques, including the control or management of non-native fish. Consequently, we invited comments or information relating to the status of the plains minnow in the Pecos River and this area not being proposed as critical habitat. We were especially interested in observations of related species of *Hybognathus* and any behavioral or reproductive mechanisms that might provide for ecological separation in areas where two or more species of *Hybognathus* co-occur. We did not receive any additional information concerning this aspect of the designation.

Portions of the Pecos River include designated critical habitat for the Pecos bluntnose shiner (52 FR 5295). The Pecos bluntnose shiner critical habitat includes a 64 mi (103 km) reach of the Pecos River extending from a point 10 mi (16 km) south of Fort Sumner, NM, downstream to the De Baca and Chaves County line and a 37 mi (60 km) reach from near Hagerman, NM, to near Artesia, NM (52 FR 5295). There are current protections in place for the Pecos bluntnose shiner in the river reach from Sumner to Brantley Reservoirs on the Pecos River; consequently, we believe that the designation of critical habitat would provide little additional benefit for the silvery minnow above the current jeopardy and adverse modifications standards for the Pecos bluntnose shiner (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section above).

The Pecos bluntnose shiner inhabits main-channel habitats with sandy substrates, low-velocity flows, and depths from 17 to 41 cm (7 to 16 in) (Hatch *et al.* 1985). Adult Pecos bluntnose shiners use main-channel habitats, with larger individuals found mainly in more rapidly flowing water (greater than 40 cm/sec, 1.25 ft/sec), but preferences for particular depths were not found (Hoagstrom *et al.* 1995). Young of the year use the upstream reaches between Sumner and Brantley Reservoirs, which provide shallow, low-velocity habitat. These reaches also maintain such habitat at high (bankfull) discharge, providing refugia from swift, deep water. Pecos bluntnose shiner and related mainstream cyprinids (*e.g.*, silvery minnow) are adapted to exploit features of Great Plains rivers (Hoagstrom 2000). These fish species belong to the same guild of broadcast spawners with semibuoyant eggs and also spawn during high flow events in the Pecos River, with eggs and larvae being distributed downstream to colonize new areas (Bestgen *et al.* 1989). The habitat features used by the Pecos bluntnose shiner are largely affected by ongoing Sumner Dam operations (*e.g.*, block releases). Nevertheless, any flow regime operations in this reach that benefit the Pecos bluntnose shiner would also benefit the silvery minnow. We believe they could both occupy the same river reach in the future with little to no interspecific competition, in part because these species historically coexisted (Bestgen and Platania 1991) and microhabitat partitioning has been documented for related species of southwestern fish (Matthews and Hill 1980). Therefore, we believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat (*e.g.*, clean permanent water; a main river channel habitat with sandy substrate; and a low velocity flow (February 20, 1987; 52 FR 5295)) are compatible with our conservation strategy for repatriating the silvery minnow.

Lateral Extent of Critical Habitat

The critical habitat designation defines the lateral extent as those areas bounded by existing levees, or in areas without levees, the lateral extent of critical habitat is defined as 300 ft (91.4 m) of riparian zone adjacent to each side of the middle Rio Grande. Thus, the lateral extent of critical habitat does not include areas adjacent to the existing levees but within the 300-ft (91.4-m) lateral width outside the existing levees (*i.e.*, these areas are not designated as critical habitat, even though they may be within the 300-ft lateral width). This designation of critical habitat will not remove existing levees. We recognize that these areas can be important for the overall health of river ecosystems, but these areas have almost no potential for containing the primary constituent elements because they are separated from the river by the levees and are rarely inundated by water. Therefore, they are not included in the designation because we conclude they are not essential to the conservation of the silvery minnow. Nevertheless, these and other areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section7(a)(1) of the Act, the regulatory protections afforded by the jeopardy standard in section 7(a)(2) of the Act, and take prohibitions in section 9 of the Act.

For each river reach within the middle Rio Grande, the upstream and downstream boundaries are described below. Critical habitat includes the river channels within the identified reaches and areas within these reaches potentially inundated during high-flow events. Critical habitat includes the area of bankfull width plus 300 ft (91.4 m) on either side of the banks. The bankfull width is the width of the stream or river at bankfull stage (*i.e.*, the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996)). Bankfull stage, while a function of the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996). This 300-ft (91.4-m) width defines the lateral extent of those areas we believe are essential to the species' conservation. Although the silvery minnow cannot be found in these areas when they are dry, these areas likely provided backwater habitat and were sometimes flooded in the past (Middle Rio Grande Biological Interagency Team 1993); therefore, they may provide habitat during high-water periods. As discussed in this section, we determined that the areas within the 300-ft (91.4-m) lateral width are essential to the conservation of the silvery minnow.

We determined the 300-ft (91.4-m) lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Corps for the areas we are designating. We suspect this is related to the remoteness of various river reaches. We received comments in relation to other sources of information (*e.g.*, National Wetlands Inventory maps) to refine the lateral extent of critical habitat (see comments section above). After evaluating this information, we concluded that our designation accurately delineates the boundary of critical habitat. We selected the 300-ft (91.4-m) lateral extent, rather than some other delineation, for three reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.*, the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas for larval and juvenile silvery minnow, allow the river to meander within its

main channel in response to large flow events, and recreate the mosaic of habitats necessary for the conservation of the silvery minnow); (2) conservation of the adjacent riparian zone also helps provide essential nutrient recharge and protection from sediment and pollutants, which contributes to successful spawning and recruitment of silvery minnows; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (*e.g.*, aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (March 9, 2000; 65 FR 12897; Middle Rio Grande Biological Interagency Team 1993).

This critical habitat designation takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains (including riparian areas) are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (*i.e.*, wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson *et al.* 1981). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian areas help ensure water courses maintain the habitat components essential to aquatic species (*e.g., see* U.S.D.A. Forest Service 1979; Middle Rio Grande Biological Interagency Team 1993; Briggs 1996), including the silvery minnow. Habitat quality within the mainstem river channels in the historic range of the silvery minnow is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (*e.g.*, substrate, water quality, and water quantity) in the middle Rio Grande (Middle Rio Grande Biological Interagency Team 1993). Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important in maintaining the stream conditions necessary for long-term conservation of the silvery minnow.

Human activities that occur outside the river channel can have a demonstrable effect on physical and biological features of aquatic habitats. However, not all of the activities that occur within a floodplain will have an adverse impact on the silvery minnow or its habitat. Thus, in determining the lateral extent of critical habitat along riverine systems, we must consider the definition of critical habitat under the Act. That is, critical habitat must be determined to be essential to a species' conservation and, within areas currently occupied by the species, must be in need of special management considerations or protection.

We do not believe that the entire floodplain is essential to the conservation of the species, and we are not proposing to designate the entire floodplain as critical habitat. However, the river channel alone is not sufficient to ensure the conservation of the silvery minnow. For the reasons discussed above, we believe that the riparian zone adjacent to the river channel provides an important function for the protection and maintenance of the primary constituent elements and is essential to the conservation of the species.

The lateral extent (width) of riparian corridors fluctuates considerably on the Rio Grande. The appropriate width for riparian protection has been the subject of several studies (Castelle *et al.* 1994). Most Federal and State agencies generally consider a zone 23 to 46 m (75.4 to 150.9 ft) wide on each side of a stream to be adequate to help improve or maintain local water quality (Natural Resource Conservation Service 1998, 2000; Lynch *et al.* 1985), although lateral widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, these riparian areas are primarily intended to reduce detrimental impacts to the stream (*i.e.*, protect the stream) from sources outside the river channel such as agricultural runoff. Generally, we believe a lateral distance of 300 ft (91.4 m) on each side of the stream beyond the bankfull stage to be appropriate for the protection of riparian and wetland habitat and the natural processes involved in the maintenance and improvement of water quality (*e.g.*, see Middle Rio Grande Biological Interagency Team 1993). We believe this lateral width will help ensure the protection of one or more primary constituent elements (*e.g.*, water quality) of the critical habitat. Thus, within the area designated as critical habitat in the middle Rio Grande, we conclude that the 300-ft (91.4-m) lateral width is essential to the conservation of the species.

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 silvery minnow conservation. Some developed lands within the 300-ft (91.4-m) lateral extent are not considered critical habitat because they do not contain the primary constituent elements and they are not essential to the conservation of the silvery minnow. Lands located within the exterior boundaries of the critical habitat designation, but not considered critical habitat, include: Developed flood control facilities; existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; water diversion and irrigation canals outside of natural stream channels; the low flow conveyance channel; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments. These developed areas do not contain any of the primary constituent elements and do not provide habitat or biological features essential to the conservation of the silvery minnow. However, some activities in these areas, like activities in other areas not included within the designation (if Federally funded, authorized, or carried out), may affect the primary constituent elements of the critical habitat and, therefore, may be affected by the critical habitat designation, as discussed later in this rule.

Reach-by-Reach Analysis

We conducted a reach-by-reach analysis of the entire known historic range of the silvery minnow to evaluate and select river reaches that require special management or protection, or are essential to the conservation of the species. As identified in the Recovery Plan (*see* ''Recovery Plan'' section above), important factors we considered in determining whether areas were essential to the conservation of the species include presence of other members of the reproductive guild (*e.g.* pelagic spawners, species with semibuoyant eggs), habitat suitability (*e.g.*, appropriate substrate), water quality, and presence of non-natives (*e.g.*, competitors, predators, other species of *Hybognathus*). These important factors were evaluated in conjunction with the variable flow regime of each reach. Each of the river reaches, to some extent, has a varying flow regime. However, the fact that a river reach may at times experience a prolonged period of low or no flow as

a result of a varying flow regime does not preclude the area from being considered essential to the conservation of the species and, further, from being designated as critical habitat. Based on our reach-by-reach analysis, we have determined which reaches are essential for the conservation of the species.

We are designating the middle Rio Grande as critical habitat. This area contains all of the primary constituent elements during some or all of the year (see the ''Regulation Promulgation'' section of this rule for exact descriptions of boundaries of designated critical habitat). We conclude that this critical habitat can provide for the physiological, behavioral, and ecological requirements of the silvery minnow. The designated critical habitat is within the middle Rio Grande from immediately downstream of Cochiti Reservoir to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), including the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included. The designation also defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 300 ft (91.4 m) of riparian zone adjacent to each side of the bankfull stage of the middle Rio Grande. We did not include the Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta within the middle Rio Grande. The downstream boundary of the designated critical habitat is determined to be the utility line crossing (see the ''Regulation Promulgation'' section of this rule for exact descriptions of boundaries of designated critical habitat). Although we determined that other areas are essential to the conservation of the silvery minnow (*i.e.*, the middle Pecos River from immediately downstream of Sumner Dam to Brantley Dam, NM, and the lower Rio Grande from the upstream boundary of Big Bend National Park to Terrell/Val Verde County line, TX), these areas are not designated as critical habitat. A description of each river reach within the silvery minnow's historic range is provided below. We also provide our reasons for determining whether each reach is essential to the conservation of the species and whether we are designating critical habitat for each of the identified reaches. We conclude that we can secure the long-term survival and recovery of this species with the establishment of future experimental populations under section 10(j) of the Act, along with the critical habitat in the middle Rio Grande.

The historic range of the species in the Rio Grande is from Española, NM, to the Gulf of Mexico, and in the Pecos River (a major tributary of the Rio Grande) from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980; Bestgen and Platania 1991). We separated the historic range of the silvery minnow into 12 river reaches: (1) Upstream of Cochiti Reservoir to the confluence of the Rio Chama and Rio Grande, NM; (2) middle Rio Grande from Cochiti Reservoir downstream to the Elephant Butte Dam, including the Jemez River from the Jemez Canyon Dam to the confluence of the Rio Grande; (3) downstream of Elephant Butte Dam to the Caballo Dam, NM; (4) downstream of Caballo Dam, New Mexico, to the American Dam, TX; (5) downstream of American Reservoir, to the upstream boundary of Big Bend National Park, TX; (6) the upstream boundary of Big Bend National Park to the southern boundary of the wild and scenic river designation at Terrell/Val Verde County line, TX; (7) the Terrell/Val Verde County line, TX, to the Amistad Dam, TX; (8) downstream of Amistad Dam to the Falcon Dam, TX; (9) downstream of the Falcon Dam to the Gulf of Mexico, TX; (10) Pecos River from Santa Rosa Reservoir to Sumner Dam, Guadalupe County, NM; (11) Sumner Dam to the Brantley Dam, NM; (12) Brantley Dam, NM, to the Red Bluff Dam, TX; and (13) Red Bluff Dam to the confluence of the Rio Grande, TX. Each of these reaches is analyzed below.

1. Upstream of Cochiti Reservoir to the confluence of the Rio Chama and Rio Grande, Rio Arriba, Sante Fe, and Sandoval Counties, NM. Currently, this reach is dominated by cool water, which is not considered suitable for the silvery minnow (Platania and Altenbach 1998). The majority of this reach is bounded by canyons, with substrate dominated by gravel, cobble, and boulder (Service 1999). The flow regime is also highly variable seasonally because of irrigation and other agricultural needs, as well as recreational and municipal uses. This river reach is highly manipulated by releases from El Vado and Abiquiu Reservoirs (J. Smith, pers. comm. 2001). Furthermore, silvery minnow populations may have been historically low for some areas of this reach, supporting only small outlier populations (Bestgen and Platania 1991). Currently, this reach is dominated by cool or cold water species, which have almost completely replaced the native fish species (Service 1999). The stream length in this reach is inadequate (*e.g.*, less than 134 to 223 mi (216 to 358.8 km)) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). Further investigation may be needed in this reach to evaluate potential future recovery actions. For these reasons, we conclude that habitat for silvery minnow within this river reach is generally degraded and unsuitable, and is not essential to the conservation of the silvery minnow. Therefore, this river reach is not designated as critical habitat.

2. Middle Rio Grande from Cochiti Reservoir downstream to the Elephant Butte Dam, including the Jemez River from the Jemez Canyon Dam to the confluence of the Rio Grande, Sandoval, Bernalillo, Valencia, and Socorro Counties, NM. The middle Rio Grande is currently occupied, and the status of the silvery minnow within this segment is unstable (Bestgen and Platania 1991; Dudley and Platania 1999; Platania and Dudley 2001; 2002a, 2002b). This area currently contains the primary constituent elements (described above) during all or part of the year and is considered suitable habitat for the silvery minnow, as shown by the presence of the silvery minnow within this reach. The river reaches that are designated as critical habitat are degraded from lack of floodplain connectivity, non-native vegetation, stabilized banks (*e.g.*, jetty jacks), streambed aggradation, and decreasing channel width, increasing depths, and increasing velocities (BOR 2001a; Service 2001b). Thus, conservation of the silvery minnow requires stabilizing populations within the middle Rio Grande, including special management considerations or protections (*e.g.*, habitat management and/or restoration).

The middle Rio Grande is essential to the conservation of the silvery minnow (*see* discussion below), and therefore, except for the land of Santo Domingo, Santa Ana, Sandia, and Iselta Pueblos, we designate the following reaches as a critical habitat. This designated critical habitat does not include the ephemeral or perennial irrigation canals and ditches, including the LFCC (*i.e.*, downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the headwaters of Elephant Butte Reservoir) that are adjacent to a portion of the river reach within the middle Rio Grande because these areas do not offer suitable refugia for the silvery minnow. The river reaches in the middle Rio Grande critical habitat include (*see* ''Regulation Promulgation'' section of this rule for exact

descriptions of boundaries of designated critical habitat):

a. Jemez Canyon Reach—5 mi (8 km) of the Jemez River from the Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included. This reach of river is manipulated by releases from Jemez Canyon Dam. Releases from this reservoir are determined by downstream needs and flood events occurring in the Jemez River. Silvery minnows historically occupied this reach of the Jemez River and have recently been collected there (Sublette *et al.* 1990; Corps 2001). The water within this reach is continuous to the confluence with the Rio Grande and currently contains the primary constituent elements (described above) during all or a part of the year. Although this reach currently provides suitable habitat for the silvery minnow, we believe that it is important to ensure that special management actions are implemented within this river reach. We also conclude that this area is essential to the conservation of the silvery minnow, because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999). Moreover, if the species or habitat were severely impacted within this reach, the continued existence of silvery minnows in downstream reaches would be affected (*i.e.*, the extirpation of fish within this reach would create a very unstable population within the downstream reaches). Thus, we designate the upstream section of the Jemez River as critical habitat for the silvery minnow.

b. Cochiti Reservoir Dam to Angostura Diversion Dam (Cochiti Reach)—21 mi (34 km) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam, not including the lands of Santo Domingo Pueblo. This reach is somewhat braided and is dominated by clear water releases from Cochiti Reservoir (Richard 2001). Since Cochiti Reservoir was filled, the downstream substrate has changed from a coarse sand to a gravel/cobble/sand substrate (Hoagstrom and Brooks 2000; Baird 2001; Richard 2001). Silvery minnows were collected immediately downstream of Cochiti Dam in 1988 (Platania 1993). Although the Cochiti reach has not been monitored since the mid-1990s (Platania 1995; Hoagstrom and Brooks 2000), it is believed that silvery minnow may still be present within this reach, but reduced in abundance (*e.g.*, Dudley and Platania 2002a). For example, silvery minnows were documented near the Angostura Diversion Dam in 2001 (Platania and Dudley 2001, 2002a; Service 2001c). In this reach, water releases from Cochiti Reservoir have scoured sand from the stream channel and reduced the downstream temperatures (Bestgen and Platania 1991; Platania 1991; (July 20, 1994) 59 FR 36988; Service 1999; Hoagstrom 2000). These effects (*e.g.*, low water temperatures) may inhibit or prevent reproduction among Rio Grande Basin cyprinids (minnows) (Platania and Altenbach 1998), but it is unknown if water temperatures have affected silvery minnow reproduction within this reach. Although reservoirs can modify river flows and habitat (*e.g.*, the downstream river reaches have increased in depth and water velocity) (Hoagstrom 2000), we believe this river reach is essential to the conservation of the silvery minnow because we believe it is still occupied by the species and contributes to its survival in downstream reaches (because the eggs and larvae of the silvery minnow drift in the water column and may be transported downstream depending on river flows and habitat conditions). We reviewed aerial photographs from 1997 and other information, and have determined that the river through this reach is braided in areas and contains many side channels (*e.g.*, Richard 2001). We also spoke with the Corps and have concluded that there is a high potential to increase the amount of suitable habitat (*e.g.*, debris piles, low velocity backwaters, side channels) within the entire reach, but particularly in the proximity of the confluences of Galisteo Creek and the Rio Grande and the Sante Fe River and the Rio Grande (D. Kreiner, U.S. Army Corps of Engineers, pers. comm. 2001). Thus, we conclude special management is needed in this reach. We conclude that this area contains suitable habitat for the silvery minnow and contains the primary constituent elements (described above) during all or part of the year. Therefore, this reach is designated as critical habitat.

c. Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—38 mi (61 km) (of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam, not including the lands of Santa Ana and Sandia Pueblos. Silvery minnows and suitable habitat are still present throughout this reach of the river, although their abundance appears to be low (Dudley and Platania 2001, 2002a, 2002b; Service 2002). This reach is relatively wide at 183 m (600 ft) and the substrate is mostly coarse sand to gravel (Baird 2001). The river bank within this reach is dominated by bank stabilization (e.g., jetty jacks), which has led to the floodplain being predominantly disconnected from the river. Bank stabilization devices and other flood control operations (e.g., channelization) have led to flows that seldom exceed channel capacity, such that the river dynamics that likely provided backwater habitat for the silvery minnow no longer function naturally. These river processes historically shaped and reshaped the river, constantly redefining the physical habitat and complexity of the river. Historical large flow events allowed the river to meander, thereby creating and maintaining the mosaic of habitats necessary for the survival of the silvery minnow and other native fish (Middle Rio Grande Biological Interagency Team 1993). We conclude that the creation and maintenance of these habitats is essential to the conservation of the silvery minnow. We believe that special management is necessary in this and other downstream reaches within the middle Rio Grande to create and maintain the habitat complexity (e.g., backwater areas, braided channels) that was historically present but may not be currently present in these river reaches. This reach currently contains the primary constituent elements (described above) during all or a part of the year. Thus, we designate this reach as critical habitat.

d. Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—56 mi (90 km) of river downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam, not including the lands of Isleta Pueblo. The river bank within this reach is also dominated by bank stabilization (e.g., jetty jacks), and the floodplain is predominantly disconnected from the river. The substrate is mostly sand and silt and there are many permanent islands within the river channel (J. Smith, pers. comm. 2001). This reach provides continuous water flow in most years with infrequent periods of low or no flow (Service 2001b). Nevertheless, flows vary markedly in magnitude, from high spring to low summer flows. The variable flow regime is a result of irrigation demand, irrigation returns (e.g., augmented flow), precipitation, temperature, and sediment transport. This reach also contains numerous arroyos and small tributaries that provide water and sediment during rainstorm events, which may periodically augment river flows (Service 2001b; J. Smith, pers. comm. 2001). Silvery minnows and suitable habitat are still present throughout this reach of the river; however, abundance

appears to be low (Dudley and Platania 2001, 2002a, 2002b; Service 2002). Nevertheless, we conclude that this area is essential to the conservation of the silvery minnow because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999). Similarly, if the species or habitat were severely impacted within this reach, the continued existence of silvery minnows in downstream reaches would be affected (i.e., the extirpation of fish within this reach would create a very unstable population within the downstream reaches). This reach currently contains the primary constituent elements (described above) during all or part of the year. We believe that special management is necessary within this reach to create and maintain the habitat complexity (e.g., backwater areas, debris piles, meandering river) that was historically but may not be currently be present within this reach. Thus, we designate this reach as critical habitat.

e. San Acacia Diversion Dam to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, near Elephant Butte Reservoir (San Acacia Reach)—9 mi (14.5 km) of river immediately downstream of the San Acacia Diversion Dam to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722N. The channel width within this reach varies from approximately 15 m (50 ft) to approximately 198 m (650 ft). The substrate is mostly sand and silt. The flow regime within this reach was historically, and is currently highly variable. In fact, this stretch may not have provided continuous flow in some years prior to the 1900s (MRGCD 1999; Scurlock and Johnson 2001).

Currently, the river channel has been highly modified by water depletions from agricultural and municipal use, dams and water diversion structures, bank stabilization, and the infrastructure for water delivery (e.g., irrigation ditches). These modifications have led to the loss of sediment, channel drying, separation of the river from the floodplain, and changes in river dynamics and resulting channel morphology. Consequently, this reach requires special management considerations similar to those discussed above. This reach currently contains the primary constituent elements (described above) during all or a part of the year. Although the silvery minnow continues to be widespread within this reach with higher abundance than the Angostura or Isleta reaches (Dudley and Platania 2001, 2002a, 2002b), the variable flow regime and modifications to the river have increased the potential for short- and long-term impacts not only to the silvery minnow, but also to its habitat. Thus, we determine that this area is essential to the conservation of the species and in need of special management considerations or protections; we designate this reach as critical habitat.

3. Downstream of Elephant Butte Reservoir to the Caballo Dam, Sierra County, NM. This short 16-mi (26-km) reach is highly channelized with widely variable flow regimes. Construction of Elephant Butte and Caballo Reservoirs in 1916 and 1938, respectively, severely altered the flows and habitat within this reach (Bestgen and Platania 1991). The silvery minnow has not been documented within this reach since 1944 (Service 1999). This river reach is currently highly channelized to expedite water deliveries and very few native fish remain (Propst *et al.* 1987; International Boundary and Water Commission 2001). This reach is subject to prolonged periods of low or no flow and there is no spring runoff spike (Service 1999). Altered flow regimes will continue to affect habitat quality in this reach, which does not contain suitable habitat for the silvery minnow. The stream length in this reach is inadequate (e.g., less than 134 to 223 mi (216 to 358.8 km)) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). We conclude this area is not essential to the conservation of the species. Therefore, this river reach is not designated as critical habitat.

4. Downstream of Caballo Dam to American Reservoir Dam, Sierra and Dona Ana Counties, NM, and El Paso, County, TX. This approximately 110-mi (176-km) reach has a highly regulated flow regime from releases of water stored in Caballo Reservoir. This reach is also highly channelized with winter flows near zero in the upper portions, and does not contain suitable habitat for the silvery minnow (Service 1999; IBWC 2001a). Silvery minnows have not been reported from this reach since 1944 (Bestgen and Platania 1991, Service 1999). The reach is currently inhabited by many non-native fish species (IBWC 2001a). Due to lack of suitable habitat, and diminished and highly regulated flow (IBWC 2001a), this reach of river no longer contains suitable habitat for the silvery minnow and is not essential to the conservation of the species. Thus, this reach is not designated as critical habitat.

5. Downstream of American Reservoir to the upstream boundary of Big Bend National Park, El Paso, Hudspeth, and Presidio, Counties, TX. Portions of this reach, primarily upstream of Presido, TX, are continually dewatered, especially between Fort Quitman and Presidio (Hubbs *et al.* 1977; Department of Interior 1998). River flow is augmented downstream of Presido by waters flowing from the Rio Conchos. The near-continuous input of municipal waste has led to a deterioration of water quality, with corresponding changes to the ichthyofauna (fish species assemblage within a region) (Hubbs *et al.* 1977; Bestgen and Platania 1988; IBWC 1994; El-Hage and Moulton 1998a). Flows in this reach consist of a blend of raw river water, treated municipal waste from El Paso, TX, untreated municipal water from Juarez, Mexico, irrigation return flow, and the occasional floodwater (Texas Water Development Board 2001). Water temperature patterns can be elevated and oxygen levels decreased by the input of various pollutants (e.g., nitrogen, phosphorus) (Texas Water Development Board 2001; IBWC 2001b). Water quality is believed to improve farther downstream of the confluence of the Rio Conchos and Rio Grande. The development of agriculture and population growth in this area has resulted in a decrease of water quantity and quality, which has had a significant impact on the range and distribution of many fish species within this reach (IBWC 1994; El-Hage and Moulton 1998a). There are no current or museum records of silvery minnow from this reach (Service 1999). Because of upstream dewatering and the degraded water quality, we believe this reach of river would never provide suitable habitat for the silvery minnow. Thus, this river reach is not essential to the conservation of the silvery minnow and is not designated as critical habitat.

6. The upstream boundary of Big Bend National Park 2 mi (3.2 km) downstream of Lajitas), Brewster County, to the southern boundary of the wild and scenic river designation at Terrell/Val Verde County line, TX. This approximately 230–mi (368–km) reach of the lower Rio Grande was historically occupied but is currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). The continuing presence of members of the pelagic spawning guild (e.g., speckled chub and Rio Grande shiner) are evidence that the lower Rio Grande through Big Bend National Park area may support reestablishment of the

silvery minnow (Platania 1990; IBWC 1994). Moreover, water quality, compared to the reach upstream of the Park, is greatly improved in this reach by the many freshwater springs within Big Bend National Park (MacKay 1993; R. Skiles, pers. comm. 2001; IBWC 1994). This area is protected and managed by the National Park Service, and the river currently supports a relatively stable hydrologic regime (R. Skiles, pers. comm. 2001). The National Park Service's management authority over the wild and scenic river designation currently extends 0.25 mi (0.4 km) from the ordinary high water mark. Thus, the area designated as a wild and scenic river outside of Big Bend National Park is currently managed by the National Park Service under its authorities and is considered part of the National Park System.

As discussed above, we have determined that recovery of the silvery minnow requires reestablishing populations outside of the middle Rio Grande (*see* ''Recovery Plan'' section above) and should include areas within the lower Rio Grande. Because the silvery minnow has been extirpated from this reach, Federal agencies have determined that their actions will not adversely affect the silvery minnow and therefore have not consulted with us under section 7(a)(2) about their actions related to this reach. We believe it is important to ensure that the assistance of Federal agencies, the State of Texas resource agencies, and non-Federal entities in future recovery actions, such as the establishment of an experimental population, is not compromised. Although Big Bend National Park expressed support for a critical habitat designation for the silvery minnow within the National Park, it also indicated that if areas outside the National Park but within the wild and scenic river were included, their attempts at developing a river management plan could be compromised (F. Deckert, Big Bend National Park, pers. comm.).

We have determined that this reach is essential to the conservation of the silvery minnow. However, our conservation strategy for the silvery minnow is to establish populations within its historic range under section 10(j) of the Act, and all or portions of this river reach could be included in such an effort. We believe that this area will contribute to the recovery of the silvery minnow, but have not designated this river reach as critical habitat.

7. The Terrell/Val Verde County line, TX to the Amistad Dam, TX. This short reach is highly influenced by the Amistad Dam at its terminus. It is also believed that introduced fish played a role in the extirpation of silvery minnow in this reach (Bestgen and Platania 1991). Water quality conditions within this reach are generally degraded, and are also a concern for this reach, particularly during low-flow conditions (Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). For these reasons, we do not believe that this river reach is essential to the conservation of the silvery minnow; therefore, it is not designated as critical habitat.

8. Downstream of the Amistad Dam to the Falcon Dam, Val Verde, Kinney, Maverick, Web, Zapata, and Starr Counties, TX. This reach provides continuous base flows ranging between 500 and 3000 cfs (Service 1999), but the reach is highly urbanized and has many instream barriers (*e.g.*, earthen dams) at Maverick, Eagle Pass, and Indio that would prevent movements of silvery minnow. Water quality is also a potential concern for this reach, particularly during low-flow conditions (Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). This reach is heavily channelized with little to no stream braiding and inappropriate substrate (*e.g.*, cobble) in areas. There is no suitable habitat for the silvery minnow within this reach, and the species was last recorded here in the 1950s (Service 1999). The fish community within this reach is dominated by warm water non-native predators (Platania 1990; Service 1999). Because this reach does not have suitable habitat for the silvery minnow and water quality during variable flow conditions is a concern, this reach of river is not essential to the conservation of the silvery minnow and is not designated as critical habitat.

9. Downstream of Falcon Reservoir to the Gulf of Mexico, Starr, Hildago, and Cameron, Counties, TX. The silvery minnow historically occupied this reach of river (Service 1999). In fact, the type locality (the location from which the species was originally described) for the species is Brownsville, TX (Hubbs and Ortenburger 1929). However, the last collection of the silvery minnow occurred in 1961 just downstream of Falcon Reservoir (Bestgen and Platania 1991). The flow regime of this reach of the Rio Grande is highly influenced by releases from Falcon Reservoir. Most of the tributary inflow is controlled or influenced by small impoundments off the main river channel. The lower portion of this reach is often dewatered, with the river flow stopping before the confluence with the Gulf of Mexico (IBWC 2001b). The fish community in this reach of the Rio Grande has shifted significantly toward estuarine (a mixture of fresh and salt water) type species (IBWC 1994; Contreras-B. and Lozano-V.1994). There has also been a significant loss of the native fish fauna in the Mexican tributaries in the last several decades (Hubbs *et al.* 1977; Almada-Villela 1990; Platania 1990), apparently from poor water quality (*e.g.*, Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). Finally, invasive weeds (*e.g.*, hydrilla and hyacinth) have clogged many areas of this reach and have reduced the amount of dissolved oxygen in the water (IBWC 2001b). Because this reach does not have suitable habitat, there appears to be little benefit in trying to intensively manage the flow regime in this reach of river. For these reasons, this reach is not considered essential to the conservation of the silvery minnow and is not designated as critical habitat.

10. Pecos River from Santa Rosa Reservoir to Sumner Dam, Guadalupe County, NM. This reach is approximately 55 mi (89 km) and is typified by wide fluctuations in flow regimes from upstream releases from Santa Rosa Reservoir (Hoagstrom 2000). Within this reach there is one diversion at Puerto del Luna, NM. The silvery minnow has not been collected within this reach since 1939 (Bestgen and Platania 1991; Service 1999). The habitat in this reach is not suitable for the silvery minnow because much of the surrounding topography is composed of steep cliffs and canyons (Hoagstrom 2000). Canyon habitat does not provide suitable habitat (*e.g.*, shallow, braided, streams with sandy substrates) for the silvery minnow (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et al.* 2001). Because of the short length of this reach, fluctuations in the flow regime, and the absence of suitable habitat for the silvery minnow, this reach of river is not essential to the conservation of the silvery minnow and is not designated as critical habitat.

11. Middle Pecos Reach—approximately 214 mi (345 km) of river immediately downstream of Sumner Reservoir to the Brantley Reservoir Dam in De Baca, Chaves, and Eddy Counties, NM. The Pecos River was historically occupied but is currently unoccupied by the silvery minnow (Bestgen and Platania 1991). In fact, the silvery minnow was once one of the most common fish species present between Sumner and Avalon Reservoir (the area currently inundated by Brantley Reservoir) (Bestgen and Platania 1991). The Pecos River can support a relatively

stable hydrologic regime between Sumner and Brantley Reservoirs, and, until summer 2001, this stretch had maintained continuous flow for about the last 10 years (D. Coleman, pers. comm. 2001). Groundwater seepage areas and base flow supplementation from Sumner Dam bypasses can offer a degree of stability for the river flow, especially during low flow periods (Hatch *et al.* 1985; Service 2001). Still, segments of this river reach were dewatered for at least 5 days during summer 2001 (D. Coleman, pers. comm 2001). Although springs and irrigation return flows maintain water flow in the lower portions of this river reach during times when no water is being released from Sumner Dam, periods of low discharge or intermittency have the potential to impact much of the suitable habitat within portions of this reach (Service 2001).

After the construction of Sumner Dam, major channel incision (deepening) occurred during the 1949 to 1980 period, accompanied by salt cedar (*Tamarix ramosissima*) proliferation along the river banks (Hoagstrom 2000). High-velocity flows within the incised river channel can displace eggs from pelagic spawners such as the silvery minnow. This channel incision also reduced the areas of low-velocity habitat within this river reach (Hoagstrom 2000). Recently, lengthy reservoir releases such as those that occurred in 1988 (36 days) and in 1989 (56 days) have been shortened to about 10 days, which has benefitted species such as the Pecos bluntnose shiner (Service 2001). Nevertheless, historic block releases of water from Sumner Reservoir have modified river flows and habitat (*e.g.*, the downstream river reaches have increased in depth and water velocity) (Hoagstrom 2000).

The recovery of the silvery minnow requires reestablishing populations outside of the middle Rio Grande (Service 1999). We believe that reintroduction is required outside of the area presently occupied by the species (*i.e.*, the middle Rio Grande) to ensure the recovery of the silvery minnow (50 CFR 424.12(e)) (see ''Recovery Plan'' section above). We recognize that habitat within this river reach is degraded, but believe this reach within the middle Pecos River may provide one of the most promising areas for conducting recovery efforts because we believe it still contains habitat suitable for the silvery minnow (Hoagstrom 2000). The continuing presence of members of the pelagic spawning guild (*e.g.*, speckled chub, Rio Grande shiner, Pecos bluntnose shiner) is evidence that this reach of the Pecos River contains habitat suitable for the silvery minnow and may support reestablishment of the species (Hoagstrom 2000).

Federal agencies have not consulted with us on how their actions will affect the silvery minnow, because the species no longer occurs within the Pecos River (D. Coleman, pers. comm. 2001). Because habitat suitable for the silvery minnow is still present within this river reach, we find that this river reach is essential to the conservation of the species. Although we have determined that this reach is essential to the conservation of the silvery minnow, we have not designated this area as critical habitat (see ''Exclusions Under Section 4(b)(2) of the Act'' section above). Our conservation strategy is to develop, through Federal rulemaking procedures, one or more experimental populations within the historic range of the silvery minnow. We believe this river reach may provide a suitable area for an experimental population.

12. Downstream of Brantley Reservoir, Eddy County, NM to Red Bluff Reservoir, Loving and Reeves Counties, TX. This reach is short, with a highly variable flow regime that is dependent on agricultural demand. This reach is also highly segmented, with small closely placed impoundments (*e.g.*, permanent and temporary diversion dams) that pond water, impede fish movements, and would not allow for adequate stream length (*e.g.*, 134 to 223 mi (216 to 358.8 km)) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). Additionally, agricultural and oil field pollution and Permian salts (*i.e.*, brine) are added to the river in this reach, decreasing the water quality to levels that likely would not support the silvery minnow (Campbell 1959; Larson 1994). The silvery minnow was historically uncommon within this reach; only14 specimens from two collections are known (Bestgen and Platania 1991). Due to the short length of this reach, fluctuations in the flow regime, degraded water quality, and the absence of suitable habitat for the silvery minnow, this reach is not considered essential to the conservation of the silvery minnow and is not designated as critical habitat.

13. Downstream of Red Bluff Reservoir to the confluence with the Rio Grande, Loving, Reeves, Pecos, Ward, Crane, Crockett, and Terrell Counties, TX. Historically silvery minnows occurred in this reach, though their exact distribution and abundance is unclear (Campbell 1958; Trevino-Robinson 1959; James and De La Cruz 1989; Linam and Kleinsasser 1996; Garrett 1997; Service 1999). Bestgen and Platania (1991) suggest that silvery minnows may have been uncommon within this reach because of pond habitat and high water salinity. However, this area may not have been well surveyed when the silvery minnow was still extant in the Pecos River (D. Propst, New Mexico Game and Fish, pers. comm. 2001). Sampling the middle and lower parts of this river reach has been historically difficult because of dense vegetation, steep canyon banks, and lack of public access (Campbell 1959). The upper segment of this reach can be characterized as devoid of suitable habitat, and has a highly variable flow regime from release of water from Red Bluff Reservoir for agricultural use. Indeed, many freshwater springs that historically augmented the Pecos River throughout this reach have recently diminished or gone dry (Campbell 1959; Brune 1981 cited in Hoagstrom 2000; Barker *et al.* 1994; El-Hage and Moulton 1998b). The water quality in this upper portion is also poor and dominated by high salinity (generally exceeding 5 parts per thousand) (Hiss 1970; Hubbs 1990; Linam and Kleinsasser 1996; Miyamoto *et al.* 1995; El-Hage and Moulton 1998b). Additionally, algal blooms (*Prymnesium parvum*) have essentially eliminated all the fishes throughout from Malaga, NM, to Amistad Dam, TX (James and De la Cruz 1989; Hubbs 1990; Rhodes and Hubbs 1992). The river channel is also somewhat incised and dominated by non-native vegetation in parts (Koidin 2000; Harman 1999; IBWC 2001b). Agricultural needs diminish south of Girvin, TX, and water quality conditions (*e.g.*, salinity) generally begin to improve downstream from the confluence of Independence Creek to Amistad Dam (Hubbs 1990; Linam and Kleinsasser 1996). This improvement could result from the freshwater springs within the lower 100 mi (160 km) stretch of this reach. Nevertheless, gaging records from the lower segment indicate that there is virtually no flow during drought conditions (Texas Water Development Board 2001); further, water quality (*e.g.*, total dissolved solids) at Shumla Bend, just upstream of Amistad Reservoir, would be expected to have a deleterious effect on aquatic life (IBWC 1994).

We did not include this reach because the current or potential suitability for the silvery minnow is unknown; detailed habitat studies have not been conducted in this reach. Moreover, it is believed that this area contains a network of steep canyons, with rock and coarse gravel substrate (Campbell 1959;

Texas Parks and Wildlife 1999). Canyon habitat reduces river channel width, which decreases sinuosity and meandering, and creates deep channels that do not provide suitable habitat (*e.g.*, shallow, braided streams with sandy substrates) (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et. al* 2001). Additionally, the presence of algal blooms will continue to affect water quality in this reach. For these reasons, we do not believe that this reach is essential to the conservation of the silvery minnow. It is unknown whether this reach contains or has the potential to develop the primary constituent elements. Although portions of this river reach may contain fresh water (*i.e.*, salinity less than 1 part per thousand), we suspect that much of this river reach may never provide suitable habitat for the silvery minnow, and it is not designated as critical habitat. On June 6, 2002, we proposed designating 212 mi of critical habitat for the silvery minnow. This final rule designates 157 mi as critical habitat for the silvery minnow.

Land Ownership

Except for the river reaches on Pueblos lands covered by special management plans (*see* ''Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section), the designated critical habitat for the silvery minnow encompasses river reaches where the species has been collected in the recent past and where it is currently known to exist. Critical habitat for the silvery minnow includes both the active river channel and the area of bankfull width plus 300 feet on either side of the banks, except in areas narrowed by existing levees.

Ownership of the river channel and the lateral width along the bank is unclear in the designated critical habitat of the middle Rio Grande. However, most of the land in the middle Rio Grande valley that abuts critical habitat is within the administrative boundaries of the MRGCD. The MRGCD is a political subdivision of the State of New Mexico that provides for irrigation, flood control, and drainage of the middle Rio Grande valley in NM, from Cochiti Dam downstream 150 mi (285 km) to the northern boundary of the Bosque del Apache National Wildlife Refuge. Within these 150 mi are also the lands of the communities of Algodones, Bernalillo, Rio Rancho, Corrales, Albuquerque, Los Lunas, Belen, Socorro, and a number of smaller incorporated and unincorporated communities. Other landowners, sovereign entities, and managers include: the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta; the BOR; the Service; the U.S. Bureau of Land Management (BLM); New Mexico State Parks Division; New Mexico Department of Game and Fish; New Mexico State Lands Department; and the Corps. The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta include 29.5 river mi (47.5 km), and are not included in the final designation.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including ourselves, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, Indian Pueblos and Tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Activities on Federal lands that may affect the silvery minnow or its critical habitat will require section 7 consultation. Actions on private, State, or Indian Pueblo and Tribal lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect critical habitat. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated and if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director of the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in 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.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we will analyze the effects of the action in relation to designated critical habitat (Service and National Marine Fisheries Service 1998). Therefore, the analysis (*i.e.*, the determination whether an action destroys or adversely modifies critical habitat) conducted through consultation or conferencing should evaluate whether that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of critical habitat to satisfy essential

requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for the silvery minnow is appreciably reduced (50 CFR 402.02).

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect the silvery minnow and its designated critical habitat. We have reviewed and continue to review numerous activities proposed within the range of the silvery minnow that are currently the subject of formal or informal section 7 consultations. A wide range of Federal activities have the potential to destroy or adversely modify critical habitat of the silvery minnow. These activities may include land and water management actions of Federal agencies (*e.g.*, Corps, BOR, Service, and the Bureau of Indian Affairs) and related or similar actions of other federally regulated projects (*e.g.*, road and bridge construction activities by the Federal Highway Administration; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the Corps; construction, maintenance, and operation of diversion structures; management of the conveyance channel; levee and dike construction and maintenance by the BOR; and NPDES permits authorized by the EPA). These types of activities have already been examined under consultation with us upon listing the species as endangered and in our previous designation of critical habitat. We expect that the same types of activities will be reviewed in section 7 consultation now that critical habitat is again designated. However, there is some potential for an increase in the number of proposed actions we review under section 7 of the Act from actions proposed in areas that are contained within the 300-foot lateral width. We believe that we currently review most actions (*e.g.*, indirect effects) that could affect silvery minnow through section 7 that occur in this lateral width, but acknowledge that an explicit boundary could result in a slight increase in consultations.

Activities that we are likely to review under section 7 of the Act include, but are not limited to:

1. Significantly and detrimentally altering the river flow or the natural flow regime of any of the river reaches designated in the middle Rio Grande. Possible actions would include groundwater pumping, impoundment, and water diversion with a Federal nexus (*i.e.*, activities that are authorized, funded, or carried out by a Federal agency). We note that such flow reductions that result from actions affecting tributaries of the designated river reaches may also destroy or adversely modify critical habitat.

2. Significantly and detrimentally altering the characteristics of the 300-ft (91.4-m) lateral width (*e.g.*, parts of the floodplain) in the designated critical habitat of the middle Rio Grande. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development with a Federal nexus.

3. Significantly and detrimentally altering the channel morphology (*e.g.*, depth, velocity) of any of the river reaches within the designation. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances with a Federal nexus.

4. Significantly and detrimentally altering the water quality within the designation. Possible actions with a Federal nexus would include EPA's NPDES permitting or the release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

5. Introducing, spreading, or augmenting non-native aquatic species within the designation. Possible actions with a Federal nexus would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

Not all of the identified activities are necessarily of current concern within the middle Rio Grande. However, they do indicate the potential types of activities that will require consultation and, therefore, may be affected by the designation of critical habitat. We do not expect that the designation of critical habitat will result in a significant regulatory burden above that already in place because of the presence of the listed species. However, areas included within the 300-ft (91.4-m) lateral width of the designation that are not currently occupied by the species may result in an additional regulatory burden when there is a Federal nexus (Federal funding, authorization, or permit).

As discussed previously, Federal actions that are found likely to destroy or adversely modify critical habitat may often be modified, through development of reasonable and prudent alternatives, in ways that will remove the likelihood of destruction or adverse modification of critical habitat. Such project modifications may include such things as adjustment in timing of projects to avoid sensitive periods for the species and its habitat; replanting of riparian vegetation; minimization of work and vehicle use in the main river channel or the 300-ft (91.4-m) lateral width; restriction of riparian and upland vegetation clearing in the 300-ft (91.4-m) lateral width; fencing to exclude livestock and limit recreational use; use of alternative livestock management techniques; avoidance of pollution; minimization of ground disturbance in the 300-foot lateral width; use of alternative material sources; storage of equipment and staging of operations outside the 300-foot lateral width; use of sediment barriers; access restrictions; and use of best management practices to minimize erosion.

The silvery minnow does not need a large quantity of water to survive but it does need a sufficient amount of flowing water to reduce prolonged periods of low or no flow and minimize the formation of isolated pools. The identification of primary constituent elements for the silvery minnow is not intended to create a high-velocity, deep flowing river, with a bank-to-bank flow. The silvery minnow does not require such habitat characteristics. Instead, the silvery minnow requires habitat with sufficient flows through the irrigation season to avoid prolonged periods of low or no flow; additionally, a spike in flow in the late spring or early summer to trigger spawning, and a relatively constant winter flow are also required.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, New Mexico Ecological Services Field Office (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections). If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Division of Endangered Species (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis

of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this final rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). In order to make a final critical habitat designation, we furthered utilized the economic analysis and our analysis of other relevant impacts, and considered all comments and information submitted during the public hearing and comment period. No areas proposed as critical habitat were excluded or modified because of economic impacts. However, we have excluded areas from the final designation on the basis of a final determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat (*see* ''Exclusions Under Section 4(b)(2) of the Act'' section). In accordance with section 4(b)(2) of the Act, we cannot exclude areas from critical habitat when their exclusion will result in the extinction of the species. We have prepared an economic analysis that was available for public review and comment during the comment period for the proposed rule. You can request copies of the economic analysis and EIS from the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Executive Order 12866 defines ''significant regulatory action,'' in part, as a regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more. The final Economic Analysis for this rule estimates that the potential economic effects could range from $1.9 to $16.2 million annually. This includes potential economic effects related to consultations, project modifications, and providing target flows, including those effects that may be attributed co-extensively with the listing of the species. Thus, we do not believe that the adverse modification prohibition (from critical habitat designation) will have significant economic effects such that it will have an annual economic effect of $100 million or more. We recognize, however, that while the impacts may not be considered ''significant'' under Executive Order 12866, there will be some economic impact within the middle Rio Grande area. Additionally, the final Economic Analysis recognizes the benefits associated with conservation of an endangered species. The economic analysis provides information on the social welfare benefits associated with maintaining instream flows in the Middle Rio Grande (e.g., ecological improvements, recreational opportunities, and protection afforded to other species). These benefits are described in detail in the final Economic Analysis. On the basis of our evaluation of lands proposed as critical habitat, we believe that the designation of the lands in this final rule as critical habitat are essential to the conservation of the silvery minnow, and these lands are currently occupied by the species. Consequently, none of the proposed lands have been excluded from the designation on the basis of potential economic impacts pursuant to section 4(b)(2) of the Act.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with 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'' (May 9, 1994, 59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, 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. To this end, we support tribal measures that preclude the need for Federal conservation regulations. We provided technical assistance to Indian Pueblos and Tribes who asked for assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the Indian Pueblos and Tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes. Recognizing a government-to-government relationship with Indian Pueblos and Tribes and our Federal trust responsibility, we have and will continue to consult with the Indian Pueblos and Tribes that might be affected by the designation of critical habitat.

We consulted with the affected Indian Pueblos and Tribes during the comment period for the proposed rule to gain information on: (1) Possible effects if critical habitat were designated on Tribal lands; and (2) possible effects on tribal resources resulting from the proposed designation of critical habitat on non-tribal lands. At their request, we met with each potentially affected Pueblo or Tribe to ensure that government-to-government consultation on proposed critical habitat issues occurred in a timely manner.

Designation of Critical Habitat on Tribal Lands

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species ''on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection.'' We included lands of the Indian Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta in the proposed designation of critical habitat for the silvery minnow; however, Santo Domingo, Santa Ana, Sandia, and Isleta were not included for the final designation because they submitted sufficient management plans during the open comment period, and we concluded that these river reaches did not meet the definition of critical habitat because adequate special management is being provided for the silvery minnow on these lands. The plans and our analysis of other relevant issues are summarized above under the ''Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)'' section.

Effects on Tribal Trust Resources From Critical Habitat Designation on Non-Tribal Lands

We do not anticipate that the proposal of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. However, in complying with our tribal trust responsibilities, we communicated with all Indian Pueblos and Tribes potentially affected by the designation. At their request, we arranged meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation. We sent preproposal letters and the proposed rule and associated documents to all affected Indian Pueblos, including Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, Isleta, and San Juan,

and solicited additional information from them regarding biological, cultural, social, or economic data pertinent to the proposed rule, economic analysis, or EIS. We will continue to provide assistance to and cooperate with Indian Pueblos and Tribes that potentially could be affected by this critical habitat designation at their request.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule as the Office of Management and Budget (OMB) determined that this rule may raise novel legal or policy issues, but was not reviewed by OMB due to the court ordered deadline. We prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment, and we considered those comments during the preparation of this rule. 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. Because of the potential for impacts on other Federal agencies' activities, we reviewed this action for any inconsistencies with other Federal agency actions. We believe that this rule will not materially affect 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 do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any significant economic effects such that it will 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, but this rule was not reviewed by OMB due to the court ordered deadline. The final rule follows the requirements for designating 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; 5 U.S.C. 804(2)), 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. We are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

The economic analysis determined whether this critical habitat designation potentially affects a ''substantial number'' of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses that experience a ''significant effect.'' While SBREFA does not explicitly define either ''substantial number'' or ''significant effect,'' the Small Business Administration (SBA) and other Federal agencies have interpreted these terms to represent an impact on 20 percent or more of the small entities in any industry and an effect equal to 3 percent or more of a business' annual sales.

Based on the past consultation history for the silvery minnow, wastewater discharges from municipal treatment plants are the primary small business activities anticipated to be affected by the designation of critical habitat. To be conservative, (i.e., more likely to overstate impacts than understate them), the economic analysis assumes that a unique company 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).

The first step was to estimate the number of small businesses affected. As shown in Exhibit 1 below, the following calculations yield this estimate:

- 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.

EXHIBIT 1.—ESTIMATED ANNUAL NUMBER OF SMALL BUSINESSES AFFECTED BY CRITICAL HABITAT DESIGNATION: THE ''SUBSTANTIAL'' TEST

Industry name	Sanitary services ISC [1] 4959
Annual number of affected businesses in industry:	
By formal consultation	0.13
(Equal to number of annual consultations): [2]	
By informal consultation	0.75
Total number of all businesses in industry within study area	6
Number of small businesses in industry within study area	6
Percent of businesses that are small (Number of small businesses)/(Total Number of businesses)	100%
Annual number of small businesses affected (Number of affected businesses)*(Percent of small businesses)	0.88
Annual percentage of small businesses affected (Number of small businesses affected)/(Total number of small businesses); >20 percent is substantial	15%

[1] ISC = Interstate Stream Commission.

[2] Note that because these values represent the probability that small businesses will be affected during a 1-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.

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 silvery minnow. Nevertheless, an estimate of the number of small businesses that will experience effects at a significant level is provided below.

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 silvery minnow, 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, the economic 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 3 percent ''significance'' threshold value.
- Estimate the likelihood that small businesses in the study area will have 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.
- 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.

Calculations for costs associated with designating critical habitat for the silvery minnow are provided in Exhibit 2 below.

EXHIBIT 2.—ESTIMATED ANNUAL EFFECTS ON SMALL BUSINESSES: THE ''SIGNIFICANT EFFECT'' TEST

Industry	Sanitary Services ISC [1] 4959	
	Formal consultations with project modifications	Informal consultations
Annual Number of Small Businesses Affected (from final Economic Analysis)	0.13	0.75
Per-Business Cost	$34,100	$2,900
Level of Annual Sales Below which Effects Would Be Significant (Per-Business Cost/3%)	$1,136,667	$96,667
Probability that Per-Business Cost is Greater than 3% of Sales for Small Business [2]	48%	3%
Probable Annual Number of Small Businesses Experiencing Significant Effects (Number Small Businesses)* (Probability of Significant Effect)	0.06	0.02
Total Annual Number of Small Businesses Bearing Significant Costs in Industry	0.08	
Total Annual Percentage of Small Businesses Bearing Significant Costs in Industry	1.4%	

[1] ISC = Interstate Stream Commission.

[2] This probability is calculated based on national industry statistics obtained from the *Robert Morris Associated Annual Statement of Studies: 2001–2002,* which provides data on the distribution of annual sales in an industry within the following ranges: $0–1 million, $1–3 million, $3–5 million, $5–10 million, $10–25 million, and $25+ million. This analysis uses the ranges that fall within the SBA definition of small businesses (*i.e.*, for industries in which small businesses have sales of less than $5.0 million, it uses $0–1 million, $1–3 million, and $3–5 million) to estimate a distribution of sales for small businesses. It then calculates the probability that small businesses have sales below the threshold value, using the following components: (1) All small businesses (expressed as a percentage of all small businesses) in ranges whose upper limits fall below the threshold value experience the costs as significant; (2) for the range in which the threshold value falls, the percentage of companies in the bin that fall below the threshold value is calculated as [(threshold value—range minimum)/(bin maximum—range minimum)] × percent of small businesses captured in range. This percentage is added to the percentage of small businesses captured in each of the lower ranges to reach the total probability that small businesses have sales below the threshold value. Note that in instances in which the threshold value exceeds the definition of small businesses (*i.e.*, the threshold value is $10 million and the definition of small businesses is sales less than $5.0 million), all small businesses experience the effects as significant.

Because the costs associated with designating critical habitat for the silvery minnow are likely to be significant for less than one small businesses per year (approximately 1 percent of the small businesses in the sanitary services industry) in the affected counties, the economic 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 silvery minnow. This would be true even if all of the effects of section 7 consultation on these activities were attributed solely to the critical habitat designation.

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 silvery minnow; thus, we can describe the kinds of actions that have undergone consultations. Within the critical habitat designated in the middle Rio Grande, the BLM has the highest likelihood of any Federal agency to undergo section 7 consultation for actions relating to energy supply, distribution, or use. However, since 1994, the BLM has not conducted any consultations for resource management plans that relate to energy supply, distribution, or use. We do not anticipate the development of oil and gas leases within the area we are designating as critical habitat (J. Smith,

pers. comm. 2001). Nevertheless, if we were to consult on a proposed BLM energy-related action, the outcome of that consultation likely would not differ from the BLM's policy of not allowing oil and gas development within the 100-year floodplain. For these reasons, we do not anticipate that this rule will be a significant regulatory action under Executive Order 12866, and 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.*):

1. On the basis of information contained in the Economic Analysis, 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 or take the species under section 9.

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 (''Government Actions and Interference with Constitutionally Protected Private Property Rights,'' March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for the silvery minnow. The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

On the basis of the above assessment, we find that this final rule designating critical habitat for the silvery minnow 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 final rule with appropriate resource agencies in NM and TX (*i.e.,* during the EIS scoping period and proposed rule comment period). We will continue to coordinate 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. We have conducted two formal section 7 consultations with the Corps and BOR, and a non-Federal agency (MRGCD) over actions related to water operations on the middle Rio Grande (Service 2001b, 2002a). As a result, we do not believe that this designation of critical habitat will have significant Federalism effects. For example, in the recent formal section 7 consultations, the MRGCD's regulatory burden requirement was only affected to the extent that the MRGCD was acting as the United States' agent for the operation and maintenance of facilities. 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 amount of supplemental instream flow, provided by past consultations (*e.g.,* Service 2001b), will increase because an area is designated as critical habitat. This rule also will not change the appropriation of water rights within the area 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 the 300-ft (91.4-m) lateral width, 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 vast majority of such projects can be successfully implemented with, at most, minor changes that avoid significant economic impacts to project proponents.

The designation may have some benefit to these governments—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 does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long-range planning (where otherwise they would wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), 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 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 silvery minnow.

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 recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

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). However, when the range of the species includes States within the Tenth Circuit, such as that of the silvery minnow, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA

analysis for critical habitat designation. Additionally, on November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt,* 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 9, 1999, critical habitat designation and ordered us to issue within 120 days both an EIS and a new proposed rule designating critical habitat for the silvery minnow. We have prepared this designation and the EIS pursuant to that court order.

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); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we understand that we must conduct relations to recognized Federal Indian Pueblos and Tribes on a Government-to-Government basis. Therefore, we solicited information from the Indian Pueblos and Tribes and arranged meetings with those that requested during the comment period to discuss potential effects to them or their resources that may result from critical habitat designation.

References Cited

A complete list of all references cited in this final rule is available upon request from the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Field Office staff (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we 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(e) by revising critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.* * * *

Rio Grande Silvery Minnow (*Hybognathus amarus*)

(1) Designated critical habitat is depicted for Socorro, Valencia, Bernalillo, and Sandoval Counties, New Mexico, on the map and as described below.

(2) For each river reach, the upstream and downstream boundaries are described below. Critical habitat includes the stream channels within the identified river reaches and areas within these reaches included within the existing levees, or if no levees are present, then within a lateral distance of 300 ft (91.4 m) on each side of the river width at bankfull stage. Bankfull stage is the flow at which water begins to leave the channel and move into the floodplain. The bankfull stage is not defined by water, and can be determined by visual or physical indicators, including: The top of the highest depositional features (*e.g.*, point bars), staining of rocks, exposed root hairs, and other features.

(3) Within these areas the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following:

(i) A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to the following: Backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity—all of which are necessary for each of the particular silvery minnow life-history stages in appropriate seasons (*e.g.*, the silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low or no flow, and a relatively constant winter flow (November through February));

(ii) The presence of eddies created by debris piles, pools, or backwaters, or other refuge habitat (*e.g.*, connected oxbows or braided channels) within unimpounded stretches of flowing water of sufficient length (*i.e.*, river miles) that provide a variation of habitats with a wide range of depth and velocities;

(iii) Substrates of predominantly sand or silt; and

(iv) Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1 °C (35 °F) and less than 30 °C (85 °F) and reduce degraded conditions (*e.g.*, decreased dissolved oxygen, increased pH).

(4) The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta are not designated.

(5) Designated critical habitat is depicted on the following map for the middle Rio Grande, which includes the area from Cochiti Reservoir downstream to the utility line crossing the Rio Grande just east of the Bosque Well as demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), with the Universal Transverse Mercator (UTM) coordinates of UTM Zone 13: 311474 E, 3719722 N (as referenced with the 1927 North American Datum (NAD27)), Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico. The designation also includes the upper section of the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, Sandoval County. The river reaches in the middle Rio Grande include:

(i) Jemez Canyon Reach—1 mi (1.6 km) of the Jemez River immediately downstream of Jemez Canyon Dam to the upstream boundary Santa Ana Pueblo;

(ii) Cochiti Diversion Dam to Angostura Diversion Dam (Cochiti Reach)—21 mi (34 km) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam;

(iii) Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—38 mi (61 km) of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam;

(iv) Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—56 mi (90 km) of river immediately downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam; and

(v) San Acacia Diversion Dam to the Elephant Butte Dam (San Acacia Reach)—92 mi (147 km) of river immediately downstream of the San

Acacia Diversion Dam to the utility line crossing the Rio Grande just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980) with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N.

(vi) Map Follows:

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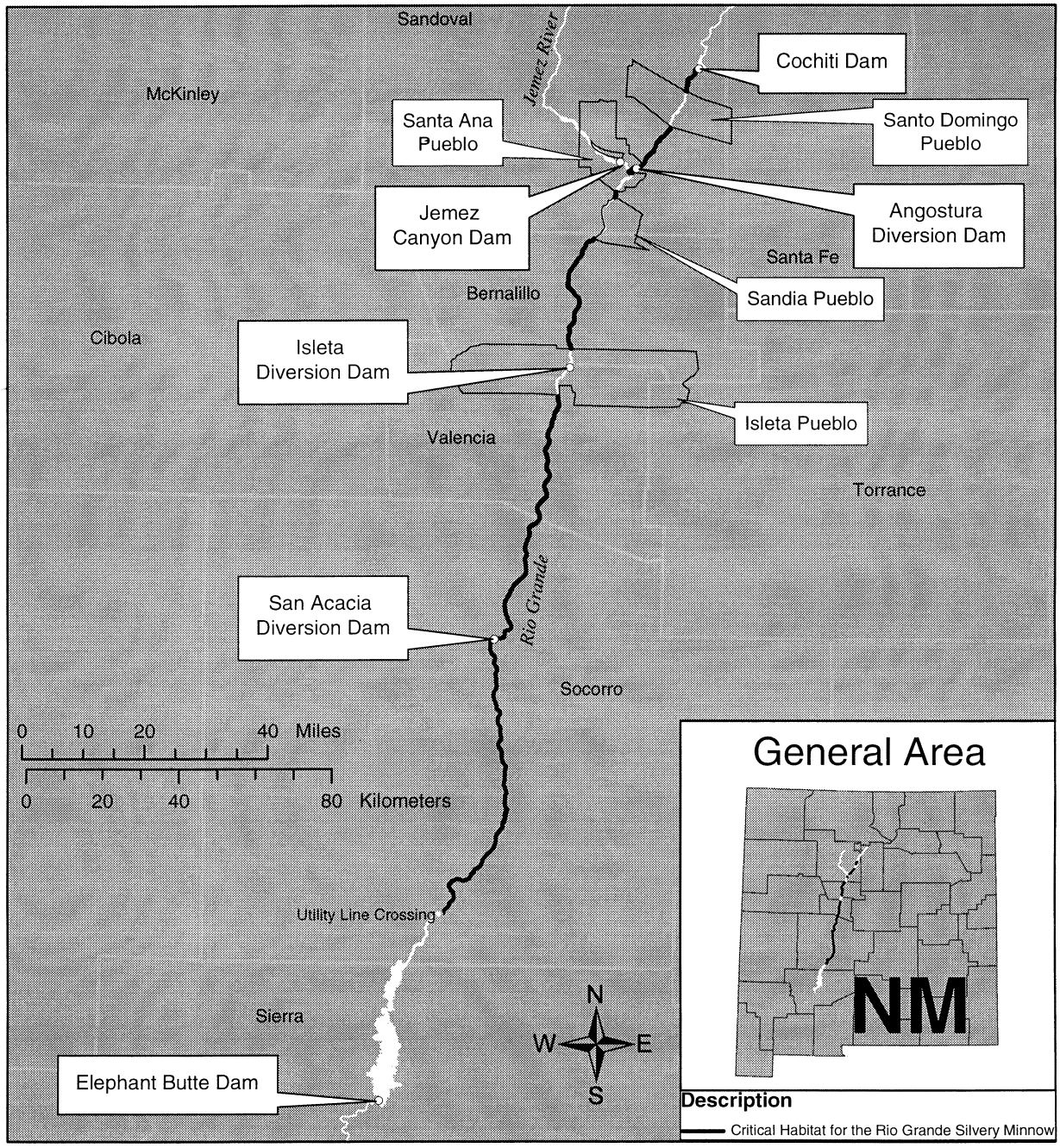
Critical Habitat for the Rio Grande Silvery Minnow *(Hybognathus amarus)*



The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta are not designated critical habitat (see 'Regulation Promulgation' section of this rule for exact descriptions of boundaries of designated critical habitat).

DISCLAIMER

This map is a graphical representation of Rio Grande Silvery Minnow critical habitat and is provided for illustrative purposes only. The map and [GIS (vector and/or raster)] files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resource, data and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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(6) This designation does not include the ephemeral or perennial irrigation canals and ditches outside of natural stream channels, including the low flow conveyance channel that is adjacent to a portion of the river reach within the middle Rio Grande (*i.e.*, downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the Elephant Butte Dam).

(7) Lands located within the exterior boundaries of the critical habitat designation (*i.e.*, within the existing levees, or if no levees are present, then within a lateral distance of 300 ft (91.4 m) on each side of the stream width at bankfull discharge) that are not considered critical habitat and are therefore excluded by definition, include: Developed flood control facilities; existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; water diversion and irrigation canals outside of natural stream channels; the low flow conveyance channel; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments.

* * * * *

Dated: January 31, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–3255 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
February 19, 2003

Part III

Securities and Exchange Commission

17 CFR Part 201
Rules of Practice; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–8190; 34–47355; 35–27650; 39–2405; IA–2109; IC–25933; File No. S7–04–03]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing for comment amendments to its Rules of Practice to formalize new policies designed to improve the timeliness of its administrative proceedings. The proposed changes include specifying in all orders instituting proceedings a maximum time period for completion by an administrative law judge of the initial decision in the proceeding, establishing policies disfavoring requests that would delay proceedings once instituted, and creating time limits for the negotiation and submission of offers of settlement to the Commission. If these proposed changes are adopted, the Commission intends to take additional steps to reduce delay in its internal deliberations on appeals from hearing officers' initial decisions and from final determinations of self-regulatory organizations and, accordingly, proposes to amend current guidelines for issuance of Commission opinions.

DATES: Comments should be received on or before March 21, 2003.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or by e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, comments may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–04–03; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should only submit information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Margaret H. McFarland, Deputy Secretary, or J. Lynn Taylor, Assistant Secretary, at (202) 942–7070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rules 161, 360, 450, and 900 of its Rules of Practice [17 CFR 201.161, 201.360, 201.450, and 201.900].

I. Discussion

The Commission adopted, after notice and comment, comprehensive revisions to its Rules of Practice that became effective on July 24, 1995. These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report. The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

Promoting the timely adjudication and disposition of administrative proceedings was one of the principal goals of this project. While many of the rule amendments were designed to improve efficiency and timeliness, the Commission as part of this project did not impose firm deadlines for completion of the proceedings. Instead it included, as Rule 900, a series of non-binding goals for the completion of each step in the administrative process. Rule 900 included a ten month guideline for completion of the hearing and issuance of the initial decision by the administrative law judge and it contained an eleven month target for completion of deliberations by the Commission when it reviews appeals of administrative law judges' initial decisions and appeals of determinations of the securities self-regulatory organizations. In the seven years since the adoption of these non-binding targets, the Commission and its administrative law judges have generally failed to meet these goals.

Based upon this experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved only through the adoption of mandatory deadlines and procedures designed to meet these deadlines. Because there is a wide variation in the subject matter, complexity and urgency of administrative proceedings, the Commission believes that a ''one-size-fits-all'' approach to timely disposition is not feasible. Instead the Commission is considering adoption of a procedure in which it would specify, in the order instituting proceedings, a deadline for completion of the hearings process and the issuance of an initial decision. In every non-settled administrative proceeding, the Commission's Order Instituting Proceedings would specify the maximum time for completion of the hearing and issuance of the initial decision. This deadline would be either 90, 180, or 270 days, in the Commission's discretion, after consideration of the type of proceeding, the complexity of the matter, and its urgency.

As provided in amended Rule 360, if during the proceeding the presiding hearing officer were to decide that the proceeding could not be concluded in the time specified, the hearing officer could request an extension of the stated deadline. To obtain an extension, the hearing officer would first consult with the Chief Administrative Law Judge. If the Chief ALJ concurs in the need for an extension, the Chief ALJ would file a motion with the Commission on behalf of the hearing officer explaining why circumstances require an extension and specifying the length of the extension. An extension could be granted by the Commission, in its discretion, on the basis of the motion filed by the Chief ALJ. Parties to the proceeding would be provided copies of the motion and could separately or jointly file in support of or in opposition to the request. Any such motion by the Chief ALJ would have to be filed no later than thirty days prior to the expiration of the time period specified in the Order Instituting Proceedings.

To complement this new procedure, the Commission is also proposing to amend Rule 161 to make explicit a policy of strongly disfavoring extensions, postponements or adjournments except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. This proposed amendment to Rule 161 would effect a significant change in administrative cease and desist proceedings. Section 21C(b) of the Securities Exchange Act of 1934 (and parallel provisions in the

other Federal securities laws) requires that the notice instituting proceedings ''shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.'' Under current practice, parties routinely request extensions of the 60-day deadline, and the hearing officers routinely grant such requests. The proposed amendment would exempt these requests from the policy of strongly disfavoring such requests, absent a strong showing of substantial prejudice. Comment is requested on the impact of the proposed change on the scheduling of cease and desist proceeding hearings, in particular whether respondents will have adequate time to prepare for a hearing 60 days after service of the notice for the proceeding.

If these or substantially similar rules are adopted, the Commission intends to provide guidance to its staff that they should not seek or support extensions or stays not consistent with this standard. Similarly, staff would be instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process. These proposed procedures are described in proposed Rule 161(d)(2).

Finally, the Commission recognizes that it too must shoulder responsibility for delays in its appellate review process. During the past year, the Commission has changed certain internal processes in an effort to reduce delay in its deliberations. Building upon these changes, if these rule proposals are adopted, Commission staff involved in the adjudicative process will be provided instructions designed to substantially reduce the time taken to complete its appellate review duties. Accordingly, the Commission is proposing an amendment to Rule 900 reducing the guideline for issuance of Commission opinions from eleven months to seven months from the date of an appeal.

As part of this initiative to expedite appellate review, the Commission is proposing to amend Rule 450 to provide that opening briefs must be filed within 30 days of the date of a briefing schedule order rather than the current 40 days.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* also does not apply. Nonetheless, the Commission has determined that it would be useful to publish these proposed rule changes for notice and comment, before adoption.

Following the expiration of the comment period, after consideration of all comments received, the Commission intends to take prompt action on this proposal.

III. Statutory Basis and Text of Proposed Amendment

These rule amendments are proposed pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Securities Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for part 201, Subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12.

2. Section 201.161 is amended by:

a. Removing paragraph (b)(1);

b. Redesignating paragraph (b)(2) as paragraph (d)(1); and

c. Adding paragraphs (c) and (d)(2).

The additions read as follows:

§ 201.161 Extensions of time, postponements and adjournments.

* * * * *

(c)(1) *Considerations in determining whether to extend time limits or grant postponements, adjournments, and extensions.* In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. In determining whether to grant any requests, the Commission or hearing officer shall consider, in addition to any other relevant factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request;

(iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and

(v) Any other such matters as justice may require.

(2) This policy of strongly disfavoring requests for postponement will not apply to any request by a respondent to postpone commencement of a cease and desist proceeding hearing beyond the statutory 60 day period.

(d)(1) *Time limit.* * * *

(2) *Stay pending Commission consideration of offers of settlement.* If the Commission staff and one or more respondents in the proceeding file a joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon the settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with § 201.240, and within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration. If the parties fail to meet either of these deadlines or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue.

3. Section 201.360 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(1); and

b. Adding paragraph (a)(2).

The addition reads as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* In the Order Instituting Proceedings, the Commission will specify a time period in which the hearing officer's initial decision must be filed with the Secretary. In the

Commission's discretion, after consideration of the nature, complexity, and urgency of the subject matter, and, with due regard for the public interest and the protection of investors, this time period will be either 90, 180 or 270 days from the date of the Order. In the event that the hearing officer presiding over the proceeding determines that it will not be possible to issue the initial decision within the specified period of time, the hearing officer should consult with the Chief Administrative Law Judge. Following such consultation, the Chief Administrative Law Judge may determine, in his or her discretion, to submit a motion to the Commission requesting an extension of the time period for filing the initial decision. This motion must be filed no later than 30 days prior to the expiration of the time specified in the Order for issuance of an initial decision. The motion will be served upon all parties in the proceeding, who may file with the Commission statements in support of or in opposition to the motion. If the Commission determines that additional time is necessary or appropriate in the public interest, the Commission shall issue an order extending the time period for filing the initial decision.

* * * * *

§ 201.450 [Amended]

4. Section 201.450 is amended by revising the phrase ''within 40 days'' to read ''within 30 days'' in the second sentence of paragraph (a).

§ 201.900 [Amended]

5. Section 201.900 is amended by:

a. Removing paragraph (a)(1)(i);

b. Redesignating paragraphs (a)(1)(ii) through (a)(1)(iv) as paragraphs (a)(1)(i) through (a)(1)(iii); and

c. In newly redesignated paragraph (a)(1)(iii), revise the phrase ''within 11 months'' to read ''within seven months''.

By the Commission.

Dated: February 12, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3915 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
February 19, 2003

Part IV

Department of Education

34 CFR Part 34

Administrative Wage Garnishment; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 34

Administrative Wage Garnishment

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Final regulations.

SUMMARY: These regulations implement for the Department of Education the provisions for administrative wage garnishment in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to garnish administratively, that is, without court order, the disposable pay of an individual who is not a Federal employee to collect a delinquent nontax debt owed to the United States. These regulations implement this authority for a debt owed to the United States under a program administered by the Department of Education.

DATES: These regulations are effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marian E. Currie, U.S. Department of Education, Union Center Plaza Room 41B4, 830 First Street NE, Washington DC 20202, Telephone: (202) 377–3212 or via Internet: *marian.currie@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On April 12, 2002, the Secretary published in the **Federal Register** a notice of proposed rulemaking (NPRM) (67 FR 18072) for implementation of the wage garnishment authority in the DCIA. This document contains the final regulations for the rules that were proposed in that NPRM. These final regulations contain a few changes from the NPRM.

Analysis of Comments and Changes

In response to the NPRM, we received comments from two parties. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Although a substantial number of small entities will be subject to these regulations and to the certification requirement in these regulations, as explained in the NPRM, the requirements will not have a significant economic impact on these entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 34

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Dated: February 12, 2003.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 34 to read as follows:

PART 34— ADMINISTRATIVE WAGE GARNISHMENT

Sec.

Authority: 31 U.S.C. 3720D, unless otherwise noted.

§ 34.1 Purpose of this part.

This part establishes procedures the Department of Education uses to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent debt owed to the United States.

(Authority: 31 U.S.C. 3720D)

§ 34.2 Scope of this part.

(a) This part applies to collection of any financial obligation owed to the United States that arises under a program we administer.

(b) This part applies notwithstanding any provision of State law.

(c) We may compromise or suspend collection by garnishment of a debt in accordance with applicable law.

(d) We may use other debt collection remedies separately or in conjunction with administrative wage garnishment to collect a debt.

(e) To collect by offset from the salary of a Federal employee, we use the procedures in 34 CFR part 31, not those in this part.

(Authority: 31 U.S.C. 3720D)

§ 34.3 Definitions.

As used in this part, the following definitions apply:

Administrative debt means a debt that does not arise from an individual's obligation to repay a loan or an overpayment of a grant received under a student financial assistance program authorized under Title IV of the Higher Education Act.

Business day means a day Monday through Friday, unless that day is a Federal holiday.

Certificate of service means a certificate signed by an authorized official of the U.S. Department of Education (the Department) that indicates the nature of the document to which it pertains, the date we mail the document, and to whom we are sending the document.

Day means calendar day. For purposes of computation, the last day of a period will be included unless that day is a Saturday, a Sunday, or a Federal legal holiday; in that case, the last day of the period is the next business day after the end of the period.

Debt or *claim* means any amount of money, funds, or property that an appropriate official of the Department has determined an individual owes to the United States under a program we administer.

Debtor means an individual who owes a delinquent nontax debt to the United States under a program we administer.

Disposable pay. This term—

(a)(1) Means that part of a debtor's compensation for personal services, whether or not denominated as wages, from an employer that remains after the deduction of health insurance premiums and any amounts required by law to be withheld.

(2) For purposes of this part, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld under a court order; and

(b) Includes, but is not limited to, salary, bonuses, commissions, or vacation pay.

Employer. This term—

(a) Means a person or entity that employs the services of another and that pays the latter's wages or salary;

(b) Includes, but is not limited to, State and local governments; and

(c) Does not include an agency of the Federal Government.

Financial hardship means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

We means the United States Department of Education.

Withholding order. (a) This term means any order for withholding or garnishment of pay issued by this Department, another Federal agency, a State or private non-profit guaranty agency, or a judicial or administrative body.

(b) For purposes of this part, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

You means the debtor.

(Authority: 31 U.S.C. 3720D)

§ 34.4 Notice of proposed garnishment.

(a) We may start proceedings to garnish your wages whenever we determine that you are delinquent in paying a debt owed to the United States under a program we administer.

(b) We start garnishment proceedings by sending you a written notice of the proposed garnishment.

(c) At least 30 days before we start garnishment proceedings, we mail the notice by first class mail to your last known address.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the notice.

(2) We may retain this certificate of service in electronic form.

(Authority: 31 U.S.C. 3720D)

§ 34.5 Contents of a notice of proposed garnishment.

In a notice of proposed garnishment, we inform you of—

(a) The nature and amount of the debt;

(b) Our intention to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and collection costs are paid in full; and

(c) An explanation of your rights, including those in § 34.6, and the time frame within which you may exercise your rights.

(Authority: 31 U.S.C. 3720D)

§ 34.6 Rights in connection with garnishment.

Before starting garnishment, we provide you the opportunity—

(a) To inspect and copy our records related to the debt;

(b) To enter into a written repayment agreement with us to repay the debt under terms we consider acceptable;

(c) For a hearing in accordance with § 34.8 concerning—

(1) The existence, amount, or current enforceability of the debt;

(2) The rate at which the garnishment order will require your employer to withhold pay; and

(3) Whether you have been continuously employed less than 12 months after you were involuntarily separated from employment.

(Authority: 31 U.S.C. 3720D)

§ 34.7 Consideration of objection to the rate or amount of withholding.

(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.

(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement reached within the preceding six months after a previous notice of proposed garnishment.

(c) We do not consider an objection to the rate or amount of withholding based on a claim that by virtue of 15 U.S.C. 1673, no amount of wages are available for withholding by the employer.

(Authority: 31 U.S.C. 3720D)

§ 34.8 Providing a hearing.

(a) We provide a hearing if you submit a written request for a hearing concerning the existence, amount, or enforceability of the debt or the rate of wage withholding.

(b) At our option the hearing may be an oral hearing under § 34.9 or a paper hearing under § 34.10.

(Authority: 31 U.S.C. 3720D)

§ 34.9 Conditions for an oral hearing.

(a) We provide an oral hearing if you—

(1) Request an oral hearing; and

(2) Show in the request a good reason to believe that we cannot resolve the issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony.

(b) If we determine that an oral hearing is appropriate, we notify you how to receive the oral hearing.

(c)(1) At your option, an oral hearing may be conducted either in-person or by telephone conference.

(2) We provide an in-person oral hearing with regard to administrative debts only in Washington D.C.

(3) We provide an in-person oral hearing with regard to debts based on student loan or grant obligations only at our regional service centers in Atlanta, Chicago, or San Francisco.

(4) You must bear all travel expenses you incur in connection with an in-person hearing.

(5) We bear the cost of any telephone calls we place in order to conduct an oral hearing by telephone.

(d)(1) To arrange the time and location of the oral hearing, we ordinarily attempt to contact you first by telephone call to the number you provided to us.

(2) If we are unable to contact you by telephone, we leave a message directing you to contact us within 5 business days to arrange the time and place of the hearing.

(3) If we can neither contact you directly nor leave a message with you by telephone—

(i) We notify you in writing to contact us to arrange the time and place of the hearing; or

(ii) We select a time and place for the hearing, and notify you in writing of the time and place set for the hearing.

(e) We consider you to have withdrawn the request for an oral hearing if—

(1) Within 15 days of the date of a written notice to contact us, we receive no response to that notice; or

(2) Within five business days of the date of a telephone message to contact us, we receive no response to that message.

(Authority: 31 U.S.C. 3720D)

§ 34.10 Conditions for a paper hearing.

We provide a paper hearing—

(a) If you request a paper hearing;

(b) If you requested an oral hearing, but we determine under § 34.9(e) that you have withdrawn that request;

(c) If you fail to appear for a scheduled oral hearing, as provided in § 34.15; or

(d) If we deny a request for an oral hearing because we conclude that, by a review of the written record, we can resolve the issues raised by your objections.

(Authority: 31 U.S.C. 3720D)

§ 34.11 Timely request for a hearing.

(a) A hearing request is timely if—

(1) You mail the request to the office designated in the garnishment notice and the request is postmarked not later than the 30th day following the date of the notice; or

(2) The designated office receives the request not later than the 30th day following the date of the garnishment notice.

(b) If we receive a timely written request from you for a hearing, we will not issue a garnishment order before we—

(1) Provide the requested hearing; and

(2) Issue a written decision on the objections you raised.

(c) If your written request for a hearing is not timely—

(1) We provide you a hearing; and

(2) We do not delay issuance of a garnishment order unless—

(i) We determine from credible representations in the request that the delay in filing the request for hearing was caused by factors over which you had no control; or

(ii) We have other good reason to delay issuing a garnishment order.

(d) If we do not complete a hearing within 60 days of an untimely request, we suspend any garnishment order until we have issued a decision.

(Authority: 31 U.S.C. 3720D)

§ 34.12 Request for reconsideration.

(a) If you have received a decision on an objection to garnishment you may file a request for reconsideration of that decision.

(b) We do not suspend garnishment merely because you have filed a request for reconsideration.

(c) We consider your request for reconsideration if we determine that—

(1) You base your request on grounds of financial hardship, and your financial circumstances, as shown by evidence submitted with the request, have materially changed since we issued the decision so that we should reduce the amount to be garnished under the order; or

(2)(i) You submitted with the request evidence that you did not previously submit; and

(ii) This evidence demonstrates that we should reconsider your objection to the existence, amount, or enforceability of the debt.

(d)(1) If we agree to reconsider the decision, we notify you.

(2)(i) We may reconsider based on the request and supporting evidence you have presented with the request; or

(ii) We may offer you an opportunity for a hearing to present evidence.

(Authority: 31 U.S.C. 3720D)

§ 34.13 Conduct of a hearing.

(a)(1) A hearing official conducts any hearing under this part.

(2) The hearing official may be any qualified employee of the Department whom the Department designates to conduct the hearing.

(b)(1) The hearing official conducts any hearing as an informal proceeding.

(2) A witness in an oral hearing must testify under oath or affirmation.

(3) The hearing official maintains a summary record of any hearing.

(c) Before the hearing official considers evidence we obtain that was not included in the debt records available for inspection when we sent notice of proposed garnishment, we notify you that additional evidence has become available, may be considered by the hearing official, and is available for inspection or copying.

(d) The hearing official considers any objection you raise and evidence you submit—

(1) In or with the request for a hearing;

(2) During an oral hearing;

(3) By the date that we consider, under § 34.9(e), that a request for an oral hearing has been withdrawn; or

(4) Within a period we set, ordinarily not to exceed seven business days, after—

(i) We provide you access to our records regarding the debt, if you requested access to records within 20 days after the date of the notice under § 34.4;

(ii) We notify you that we have obtained and intend to consider additional evidence;

(iii) You request an extension of time in order to submit specific relevant evidence that you identify to us in the request; or

(iv) We notify you that we deny your request for an oral hearing.

(Authority: 31 U.S.C. 3720D)

§ 34.14 Burden of proof.

(a)(1) We have the burden of proving the existence and amount of a debt.

(2) We meet this burden by including in the record and making available to the debtor on request records that show that—

(i) The debt exists in the amount stated in the garnishment notice; and

(ii) The debt is currently delinquent.

(b) If you dispute the existence or amount of the debt, you must prove by a preponderance of the credible evidence that—

(1) No debt exists;

(2) The amount we claim to be owed on the debt is incorrect, or

(3) You are not delinquent with respect to the debt.

(c)(1) If you object that the proposed garnishment rate would cause financial hardship, you bear the burden of proving by a preponderance of the credible evidence that withholding the

amount of wages proposed in the notice would leave you unable to meet the basic living expenses of you and your dependents.

(2) The standards for proving financial hardship are those in § 34.24.

(d)(1) If you object on the ground that applicable law bars us from collecting the debt by garnishment at this time, you bear the burden of proving the facts that would establish that claim.

(2) Examples of applicable law that may prevent collection by garnishment include the automatic stay in bankruptcy (11 U.S.C. 362(a)), and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been reemployed for less than a continuous period of 12 months (31 U.S.C. 3720D(b)(6)).

(e) The fact that applicable law may limit the amount that an employer may withhold from your pay to less than the amount or rate we state in the garnishment order does not bar us from issuing the order.

(Authority: 31 U.S.C. 3720D)

§ 34.15 Consequences of failure to appear for an oral hearing.

(a) If you do not appear for an in-person hearing you requested, or you do not answer a telephone call convening a telephone hearing, at the time set for the hearing, we consider you to have withdrawn your request for an oral hearing.

(b) If you do not appear for an oral hearing but you demonstrate that there was good cause for not appearing, we may reschedule the oral hearing.

(c) If you do not appear for an oral hearing you requested and we do not reschedule the hearing, we provide a paper hearing to review your objections, based on the evidence in your file and any evidence you have already provided.

(Authority: 31 U.S.C. 3720D)

§ 34.16 Issuance of the hearing decision.

(a) *Date of decision.* The hearing official issues a written opinion stating his or her decision, as soon as practicable, but not later than 60 days after the date on which we received the request for hearing.

(b) If we do not provide you with a hearing and render a decision within 60 days after we receive your request for a hearing—

(1) We do not issue a garnishment order until the hearing is held and a decision rendered; or

(2) If we have already issued a garnishment order to your employer, we suspend the garnishment order beginning on the 61st day after we receive the hearing request until we provide a hearing and issue a decision.

(Authority: 31 U.S.C. 3720D)

§ 34.17 Content of decision.

(a) The written decision is based on the evidence contained in the hearing record. The decision includes—

(1) A description of the evidence considered by the hearing official;

(2) The hearing official's findings, analysis, and conclusions regarding objections raised to the existence or amount of the debt;

(3) The rate of wage withholding under the order, if you objected that withholding the amount proposed in the garnishment notice would cause an extreme financial hardship; and

(4) An explanation of your rights under this part for reconsideration of the decision.

(b) The hearing official's decision is the final action of the Secretary for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(Authority: 31 U.S.C. 3720D)

§ 34.18 Issuance of the wage garnishment order.

(a)(1) If you fail to make a timely request for a hearing, we issue a garnishment order to your employer within 30 days after the deadline for timely requesting a hearing.

(2) If you make a timely request for a hearing, we issue a withholding order within 30 days after the hearing official issues a decision to proceed with garnishment.

(b)(1) The garnishment order we issue to your employer is signed by an official of the Department designated by the Secretary.

(2) The designated official's signature may be a computer-generated facsimile.

(c)(1) The garnishment order contains only the information we consider necessary for your employer to comply with the order and for us to ensure proper credit for payments received from your employer.

(2) The order includes your name, address, and social security number, as well as instructions for withholding and information as to where your employer must send the payments.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the order.

(2) We may create and maintain the certificate of service as an electronic record.

(Authority: 31 U.S.C. 3720D)

§ 34.19 Amounts to be withheld under a garnishment order.

(a)(1) After an employer receives a garnishment order we issue, the employer must deduct from all disposable pay of the debtor during each pay period the amount directed in the garnishment order unless this section or § 34.20 requires a smaller amount to be withheld.

(2) The amount specified in the garnishment order does not apply if other law, including this section, requires the employer to withhold a smaller amount.

(b) The employer must comply with our garnishment order by withholding the lesser of—

(1) The amount directed in the garnishment order; or—

(2) The amount specified in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment); that is, the amount by which a debtor's disposable pay exceeds an amount equal to 30 times the minimum wage. (See 29 CFR 870.10.)

(Authority: 31 U.S.C. 3720D)

§ 34.20 Amount to be withheld under multiple garnishment orders.

If a debtor's pay is subject to several garnishment orders, the employer must comply with our garnishment order as follows:

(a) Unless other Federal law requires a different priority, the employer must pay us the amount calculated under § 34.19(b) before the employer complies with any later garnishment orders, except a family support withholding order.

(b) If an employer is withholding from a debtor's pay based on a garnishment order served on the employer before our order, or if a withholding order for family support is served on an employer at any time, the employer must comply with our garnishment order by withholding an amount that is the smaller of—

(1) The amount calculated under § 34.19(b); or

(2) An amount equal to 25 percent of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order.

(c)(1) If a debtor owes more than one debt arising from a program we administer, we may issue multiple garnishment orders.

(2) The total amount withheld from the debtor's pay for orders we issue under paragraph (c)(1) of this section does not exceed the amounts specified in the orders, the amount specified in § 34.19(b)(2), or 15 percent of the debtor's disposable pay, whichever is smallest.

(d) An employer may withhold and pay an amount greater than that amount in paragraphs (b) and (c) of this section if the debtor gives the employer written consent.

(Authority: 31 U.S.C. 3720D)

§ 34.21 Employer certification.

(a) Along with a garnishment order, we send to an employer a certification in a form prescribed by the Secretary of the Treasury.

(b) The employer must complete and return the certification to us within the time stated in the instructions for the form.

(c) The employer must include in the certification information about the debtor's employment status, payment frequency, and disposable pay available for withholding.

(Authority: 31 U.S.C. 3720D)

§ 34.22 Employer responsibilities.

(a)(1) Our garnishment order indicates a reasonable period of time within which an employer must start withholding under the order.

(2) The employer must promptly pay to the Department all amounts the employer withholds according to the order.

(b) The employer may follow its normal pay and disbursement cycles in complying with the garnishment order.

(c) The employer must withhold the appropriate amount from the debtor's wages for each pay period until the employer receives our notification to discontinue wage garnishment.

(d) The employer must disregard any assignment or allotment by an employee that would interfere with or prohibit the employer from complying with our garnishment order, unless that assignment or allotment was made for a family support judgment or order.

(Authority: 31 U.S.C. 3720D)

§ 34.23 Exclusions from garnishment.

(a) We do not garnish your wages if we have credible evidence that you—

(1) Were involuntarily separated from employment; and

(2) Have not yet been reemployed continuously for at least 12 months.

(b) You have the burden of informing us of the circumstances surrounding an involuntary separation from employment.

(Authority: 31 U.S.C. 3720D)

§ 34.24 Claim of financial hardship by debtor subject to garnishment.

(a) You may object to a proposed garnishment on the ground that withholding the amount or at the rate stated in the notice of garnishment would cause financial hardship to you and your dependents. (See § 34.7)

(b) You may, at any time, object that the amount or the rate of withholding which our order specifies your employer must withhold causes financial hardship.

(c)(1) We consider an objection to an outstanding garnishment order and provide you an opportunity for a hearing on your objection only after the order has been outstanding for at least six months.

(2) We may provide a hearing in extraordinary circumstances earlier than six months if you show in your request for review that your financial circumstances have substantially changed after the notice of proposed garnishment because of an event such as injury, divorce, or catastrophic illness.

(d)(1) You bear the burden of proving a claim of financial hardship by a preponderance of the credible evidence.

(2) You must prove by credible documentation—

(i) The amount of the costs incurred by you, your spouse, and any dependents, for basic living expenses; and

(ii) The income available from any source to meet those expenses.

(e)(1) We consider your claim of financial hardship by comparing—

(i) The amounts that you prove are being incurred for basic living expenses; against

(ii) The amounts spent for basic living expenses by families of the same size and similar income to yours.

(2) We regard the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the ''National Standards'') as establishing the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, your family.

(3) We accept as reasonable the amount that you prove you incur for a type of basic living expense to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards.

(4) If you claim for any basic living expense an amount that exceeds the amount in the National Standards, you must prove that the amount you claim is reasonable and necessary.

(Authority: 31 U.S.C. 3720D)

§ 34.25 Determination of financial hardship.

(a)(1) If we conclude that garnishment at the amount or rate proposed in a notice would cause you financial hardship, we reduce the amount of the proposed garnishment to an amount that we determine will allow you to meet proven basic living expenses.

(2) If a garnishment order is already in effect, we notify your employer of any change in the amount the employer must withhold or the rate of withholding under the order.

(b) If we determine that financial hardship would result from garnishment based on a finding by a hearing official or under a repayment agreement we reached with you, this determination is effective for a period not longer than six months after the date of the finding or agreement.

(c)(1) After the effective period referred to in paragraph (b) of this section, we may require you to submit current information regarding your family income and living expenses.

(2) If we conclude from a review of that evidence that we should increase the rate of withholding or payment, we—

(i) Notify you; and

(ii) Provide you with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in § 34.24.

(Authority: 31 U.S.C. 3720D)

§ 34.26 Ending garnishment.

(a)(1) A garnishment order we issue is effective until we rescind the order.

(2) If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must—

(i) Notify us; and

(ii) Comply with the order when sufficient disposable pay is available.

(b) After we have fully recovered the amounts owed by the debtor, including interest, penalties, and collection costs, we send the debtor's employer notification to stop wage withholding.

(Authority: 31 U.S.C. 3720D)

§ 34.27 Actions by employer prohibited by law.

An employer may not discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a garnishment order under this part.

(Authority: 31 U.S.C. 3720D)

§ 34.28 Refunds of amounts collected in error.

(a) If a hearing official determines under §§ 34.16 and 34.17 that a person does not owe the debt described in our notice or that an administrative wage garnishment under this part was barred by law at the time of the collection

action, we promptly refund any amount collected by means of this garnishment.

(b) Unless required by Federal law or contract, we do not pay interest on a refund.

(Authority: 31 U.S.C. 3720D)

§ 34.29 Enforcement action against employer for noncompliance with garnishment order.

(a) If an employer fails to comply with § 34.22 to withhold an appropriate amount from wages owed and payable to an employee, we may sue the employer for that amount.

(b)(1) We do not file suit under paragraph (a) of this section before we terminate action to enforce the debt as a personal liability of the debtor.

(2) However, the provision of paragraph (b)(1) of this section may not apply if earlier filing of a suit is necessary to avoid expiration of any applicable statute of limitations.

(c)(1) For purposes of this section, termination of an action to enforce a debt occurs when we terminate collection action in accordance with the FCCS, other applicable standards, or paragraph (c)(2) of this section.

(2) We regard termination of the collection action to have occurred if we have not received for one year any payments to satisfy the debt, in whole or in part, from the particular debtor whose wages were subject to garnishment.

(Authority: 31 U.S.C. 3720D)

§ 34.30 Application of payments and accrual of interest.

We apply payments received through a garnishment in the following order—

(a) To costs incurred to collect the debt;

(b) To interest accrued on the debt at the rate established by—

(1) The terms of the obligation under which it arises; or

(2) Applicable law; and

(c) To outstanding principal of the debt.

(Authority: 31 U.S.C. 3720D)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss issues according to subject, under the sections of the regulations to which they pertain.

Scope of Garnishment Authority; Collection of Student Loans (§§ 34.1 and 34.2)

Comment: One commenter contended that the Department lacks legal authority to use the garnishment power in the DCIA to collect student loans, because the commenter views section 488A of the Higher Education Act, 20 U.S.C. 1095a, as restricting the Department's garnishment authority to ten percent of disposable pay.

Discussion: The commenter bases this contention not on the terms of the DCIA, but on a rule of statutory construction that where two statutes authorize an action, the more specific of the two sets the limits to that authority. Section 488A of the HEA authorizes the Secretary of Education and guaranty agencies to garnish up to ten percent of debtor pay to collect student loans, while the DCIA authorizes Federal agencies to garnish up to fifteen percent of debtor pay. The commenter views the HEA as the more specific of the two statutes, and contends that the HEA limits the Department's garnishment power to the ten percent rate it authorizes. We disagree that the HEA is the more specific of the two statutes; both statutes apply to a distinctive category of entities. The HEA extended garnishment authority to the Department and to some 36 separate State and non-profit entities operating as guaranty agencies, and empowers the latter group to collect both on their own behalf and on behalf of the Federal government.[1] The DCIA applies only to Federal agencies, and applies exclusively to collection of debts owed to the Federal Government.

Even if the HEA were the more specific of the two authorities, the rule that the more specific of two potentially applicable statutes controls is merely one of several tools used to discern the intent of Congress. Another way to determine the intent of Congress when two potentially-applicable statutes adopt inconsistent terms is to view the more recent of the two as embodying the current intent of Congress. The 1996 DCIA is the more recent of the two statutes. Thus, Congress' intent to allow garnishment at 15 percent supersedes the HEA's more limited authority.

Looking to the more recent of two statutes to discern Congress' intent is particularly apt because the DCIA garnishment provision is both more recently enacted and part of a comprehensive scheme inconsistent with the limits of the earlier HEA authority. The DCIA supersedes the more limited authority in HEA section 488A because the DCIA garnishment authority is an addition to a comprehensive statutory scheme (31 U.S.C. 3701–3720E) for enforcement of Federal debts, including student loan debts. That scheme includes, for example, authority under 31 U.S.C. 3720A to collect Federal debt by tax refund offset, and, under 31 U.S.C. 3711(g), to report delinquent Federal debt to credit bureau. Thus, because Congress intended this statutory scheme as in effect before the 1996 DCIA amendments to apply to student loans, there is no reason to infer that Congress did not intend the garnishment provision added by the DCIA to this scheme in 1996 to apply to student loans as well.

Changes to the roles of specific Federal agencies made by the DCIA show that Congress intended that the tools available under this statutory scheme, including garnishment, be used to collect student loans. For the first time, the DCIA required Federal agencies to transfer collection responsibility for their delinquent debt to Treasury, or to other Federal agencies which were designated ''debt collection centers.'' The DCIA authorizes Treasury, as well as these designated ''debt collection centers,'' to use all the collection tools provided in the DCIA, including its garnishment provision, to collect debts which they ''cross-service.'' Education has been designated a debt collection center for student loans, thus, it is illogical to infer any congressional intent to bar Education from using the same DCIA garnishment authority to collect Federal student loan debts that Treasury and other agencies are meant to use to collect Federal debts.

Moreover, if Education had not been designated a debt collection center, the DCIA would have required Education to transfer its student loan debts to Treasury (or another agency designated as a collection center) for cross-servicing. Treasury plainly has full authority to use DCIA garnishment to collect any debts transferred to it for servicing, including student loans from Education. Thus, because Treasury or other Federal agencies would have power to collect those very student loans at the 15 percent rate, it is illogical to infer any congressional intent to restrict garnishment to the lesser HEA level when those same loans are serviced by Education itself.

The text of the DCIA itself shows that the absence of any language excluding student loans from garnishment under 31 U.S.C. 3720D was no oversight. The DCIA expanded the scope of Federal offsets by amending 31 U.S.C. 3716 to authorize offset by Treasury against such Federal payments as Social Security benefits, 31 U.S.C. 3716(b)(3), but expressly excluded title IV HEA student assistance payments from offset. 31 U.S.C. 3716(b)(1)(C). That express exclusion of student aid from the DCIA offset provision, contrasted against the absence of any reference to student loans in the DCIA garnishment provision—a provision copied almost verbatim from HEA section 488A—shows that Congress spoke clearly when it meant to exclude student aid from the reach of the DCIA tools, and intended no exclusion of student loans from the DCIA garnishment provision.

In addition to the language of the statute itself, the legislative context of the garnishment provision shows that Congress intended the Department to use this DCIA authority to collect student loans. The subcommittee in which the provision originated understood from testimony before it that the provision would increase Education's authority to 15 percent to garnish

[1] Guarantors are authorized to collect ''the amount owed'' by the defaulter, 20 U.S.C. 1095a(a), which includes that portion of the loan debt not covered by Federal reinsurance, as well as that portion of the recovery that the guarantor is authorized to retain. 20 U.S.C. 1078(c)(1), 1078(c)(6).

debtor wages to collect student loans.[2] Subsequent oversight action by that subcommittee[3] and by the General Accounting Office[4] at the request of the subcommittee demonstrate the subcommittee's expectation, and Education's intention, that Education would implement the DCIA 15 percent wage garnishment authority to collect student loans.

For these reasons, the Department considers unfounded the view that the HEA garnishment authority precludes use of the DCIA garnishment authority to collect student loans.

Changes: None.

Comment: One commenter objected that the explanation for the Department's implementation of DCIA garnishment authority in these regulations left confusion about whether current FFELP regulations, which address garnishment under HEA section 488A by student loan guarantors, will continue to apply to those guarantors, and invited speculation about whether student loan guarantors would continue to garnish to collect debts they held, and if so, whether the HEA, rather than the DCIA, authorized them to do so.

Discussion: The statements made by the Department regarding its intention to use DCIA garnishment authority make no suggestion that the role and authority of student loan guarantors has changed. The HEA expressly authorizes student loan guarantors to collect by garnishment, and nothing in the DCIA expressly or implicitly addresses the authority of guarantors to garnish. Regulations adopted under the Federal Family Education Loan Program (FFELP) at 34 CFR 682.410(b)(9) to implement that authority for guarantors expressly apply to action by FFELP loan guarantors to conduct garnishment under HEA section 488A. Those regulations do not state or imply that they apply to the Department, either when the Department conducted garnishment under HEA section 488A or under any other authority. Because the FFELP regulations in most instances closely track the language of HEA section 488A, the Department, by following the provisions of the statute itself, generally conformed to those regulations. Because the DCIA garnishment provision mirrors HEA section 488A, the Department's reasons for interpreting and implementing several DCIA provisions apply with equal force to identical terms of HEA section 488A, which the Department has authority to interpret. That reasoning therefore helps clarify the intent of identical language found in both statutes. Discussion of the HEA in the explanation for this rule did not suggest that the Department considered student loan guarantors to be authorized to collect under the DCIA authority.

Changes: None.

Computation of Time and System Changes (§ 34.3)

Comment: A commenter objects that adopting definitions of ''day'' and ''business day'' may require modification of current systems for mailings. As an example, the commenter stated that the garnishment order cannot be issued until 30 days after the date of the notice, and the proposed rule provides that if the last day of a period is a Saturday, Sunday, or Federal holiday, the period runs to the next business day. Thus, the rule would be violated if a contractor were to mail a garnishment order exactly 30 days after the date of the notice, if that 30th day fell on a Saturday or Sunday.

Discussion: These rules adopt verbatim the definitions and approach adopted by Treasury in its rule, which mirror rules almost invariably applied in litigation. The only act we take under this rule within a specified number of days after an event or deadline is the issuance of the garnishment order; § 34.4 states that we provide notice of the proposed garnishment ''at least'' 30 days before we begin garnishment, and § 34.18(a)(1) provides that we issue a garnishment order ''within 30 days after the deadline for timely requesting a hearing'' or ''within 30 days after a decision.'' The Department is responsible for ensuring that its garnishment activities, and the actions of contractors as needed to support those activities, conform to this rule. We therefore see no basis for the complaint that the rule would require modification of systems used to create and mail the notices and orders Education now uses in its garnishment process.

Changes: None.

Rights in Connection With Garnishment (§ 34.6)

Comment: A commenter objected that the regulations do not articulate specific defenses that may be available to the debtor as grounds for objection to the proposed garnishment, and urged that the rule should mandate use of a form request for hearing of the kind now used by the Department for garnishment action to collect student loans.

Discussion: The Department has used, and will continue to use for collection of student loan debts, a form Request for Hearing that lists potentially available grounds for objection. Because this regulation applies to garnishment to collect any debts held by the Department, the Department did not consider it necessary to adopt any specific provisions applicable only to some debts. The Department has no intention to change this procedure for student loans. However, neither the statute, Treasury regulations, nor due process requires use of a notice that lists potentially available defenses. There is no need to include in these regulations provisions that would imply that such a duty exists.

Changes: None.

Comment: A commenter urged that the regulations should specifically require the Department to give notice that a debtor may object to garnishment on the ground that the debtor was recently reemployed after involuntary separation.

Discussion: The Department agrees that debtors may not be aware that they may object on the grounds that the debtor has been recently been reemployed after involuntary separation from employment. The notice and the request for hearing now used by the Department for HEA garnishment explain this option. Because this objection applies regardless of the nature of the debt to be collected, the Department agrees that the regulations should commit to providing express notice of this option.

Changes: The regulations are modified in § 34.6 to provide that the pre-garnishment notice includes an explanation of the availability of objection on the grounds of recent reemployment after involuntary separation.

Comment: A commenter urged that the regulations should specifically require notice to the debtor that limits on withholding imposed by 15 U.S.C. 1671 *et seq.* may preclude actual withholding of pay.

Discussion: Neither the Department, nor any other garnishing creditor, can reliably determine whether, and for what period, 15 U.S.C. 1673 may bar an employer from honoring a particular garnishment order. That statute imposes the duty on the employer to honor its limits, because only the employer actually knows both the amount of the debtor's disposable pay and the number, amount, relative priority, and duration of all withholding orders that may affect the debtor. The court or administrative body that issues a garnishment order meets its duty under 15 U.S.C. 1673(c) by stating in the garnishment order that the employer must pay no more than the amount permitted by that statute. Standard Form 329B, the garnishment order prescribed for Federal agencies by Treasury, thus directs the employer to pay the lesser of the amount permitted under 15 U.S.C. 1673 or the amount determined by the agency (either 15 percent of disposable pay or a lesser amount).

Therefore, these regulations, consistent with Treasury regulations, do not recognize as a valid defense to a garnishment action a contention by the debtor that the proposed withholding order, if honored by the employer, would result in withholding amounts greater than those permitted by 15 U.S.C. 1673. Because this statute provides no defense to the debtor in a proceeding under this part, it does not affect the debtor's ability to respond in a meaningful manner in the proposed garnishment. We note that neither 15 U.S.C. 1671 *et seq.*, the garnishment statutes themselves (HEA section 488A or 31

[2] Hearing on H.R. 2234, the Debt Collection Improvement Act of 1995, before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 104th Cong., 1st Sess. on H.R. 2234, Sept. 8, 1995 at 70, 159, 253. Moreover, the Congressional Budget Office estimated substantial increased recoveries on defaulted loans from these DCIA proposals. See 142 Cong. Rec. S1825 (Memorandum from John Righter, CBO, to Patrick Windham, Sen. Committee on Commerce, Science, and Transportation, regarding Preliminary scoring of the ''Debt Collection Improvement Act of 1996,'' Chapter 2 of a proposed amendment to H.R. 3019). As explained by cognizant staff, CBO based its estimates on the understanding that Education would use fully these DCIA tools, including garnishment, to collect defaulted student loans.

[3] Hearing on Federal Debt Collection Practices before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 105th Cong., 1st Sess., Nov. 12, 1997, at 90, 91.

[4] General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO–02–313).

U.S.C. 3720D), nor Treasury regulations require the creditor who intends to garnish to include in the notice or complaint initiating collection action an explanation of the effect of 15 U.S.C. 1673. There appears to be little value in including an explanation of this statute in the notice, which is intended to explain the debtor's rights in the garnishment proceeding.

Changes: None.

Comment: A commenter stated that the regulations lacked language to mirror the assurance in the preamble that the Department provides hearings even if the request for a hearing is not made timely, and that the regulations should include this assurance.

Discussion: Section 34.8 requires the debtor to make any request for a hearing in writing, regardless of the type of hearing sought. Section 34.11(c)(1) expressly states that we provide a hearing even if that written request for a hearing is untimely. That provision contains the assurance that the commenter describes, and no additional language is needed to ensure that right.

Changes: None.

Comment: A commenter stated that regulations should require that the Department make available for inspection by the debtor prior to the hearing any evidence on which the Department intends to rely to establish the existence and amount of the debt.

Discussion: The proposed rule, in §§ 34.5 and 34.6(a), stated that the Department would explain in the pre-garnishment notice that the debtor may inspect and copy records regarding the debt, and in § 34.14(a)(2) further provided that the Department would, on request, make available to the debtor, as part of the hearing process, the evidence which we believe establishes the existence and amount of the debt. These provisions ensure that the debtor has an opportunity to examine the evidence on which the Department's claim rests, in a timely manner, that permits the debtor effectively to respond with evidence and argument before a decision is issued. No change is needed.

Changes: None.

Conditions for an Oral Hearing (§ 34.9)

Comment: A commenter objected to the requirement that the objecting debtor who seeks an oral hearing must state reasons why the objection cannot be satisfactorily reviewed based on the records, including any material provided by the debtor. The commenter objected that this requirement places an unfair burden on borrowers, many of whom may be low-income or unsophisticated.

Discussion: By requiring the debtor to show that an oral hearing is actually needed to resolve the disputed facts, the regulations adopt the same approach used in judicial proceedings, the paradigm of due process. Courts routinely dispose of defenses—including those raised by pro se or unsophisticated defendants—through summary judgment rulings, and that disposition meets constitutional due process standards. The Department has limited resources available to conduct oral hearings; published statistics show that the Department received approximately 9000 requests for hearings in its HEA garnishment actions in FY 2000. General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO–02–313) p. 16. Limitations on resources do not warrant curtailing the rights of debtors, but do militate in favor of the Department, like Federal courts exercising summary judgment authority, avoiding unnecessary hearings.

Consistent with Treasury regulations applicable to offset proceedings, 31 CFR 901.3(e), and to DCIA garnishment actions, 31 CFR 285.11(e), the Department in these regulations simply requires the debtor who seeks an oral hearing to show a good reason why we cannot resolve the disputed issues by reviewing the debt records. This is a common-sense standard that we have generously applied for years in Federal offset proceedings. The Department sees no readily articulated and sensible lesser standard, and no reason to commit in these regulations to provide an oral hearing on request regardless of the nature of the objection or the kind of evidence available.

Proposed § 34.10(a) stated that a paper hearing would be held upon request, but inadvertently omitted the word ''or'' before stating that paper hearings would be provided if we conclude that we can resolve the issues raised by an objection without an oral hearing.

Changes: Section 34.10(a) of the proposed rule is revised to state that we provide a paper hearing upon request by the debtor or if an oral hearing was requested but we determine that we can resolve the issues raised by the objection through a review of the written record regarding the debt.

Comment: A commenter urged that, for in-person or telephone hearings, the regulations be revised to state that the Department must send a copy of the hearing file to the debtor prior to the hearing.

Discussion: The Department has used, and will continue to use, a pre-garnishment notice that encourages the debtor to request copies of the records that pertain to the debt to be collected by garnishment, and to do so before the hearing, and indeed before the submission of the actual objection to the proposed garnishment. The proposed rule in § 34.5(c)(1) provides that the Department makes these records available on request. If the debtor does not choose to request and review these records, we see no need to incur the expense of sending the records to the debtor.

Changes: None.

Conduct of Hearings (§ 34.13)

Comment: One commenter disagreed with the statement in the preamble that contractors cannot rule on debtor objections. The commenter considered the statement that this activity was an inherently governmental function to imply that student loan guarantors could not use independent hearing officials, including administrative law judges and other parties, whom they retain by contract.

Discussion: The Department intended no inference that student loan guarantors could not use contracts to retain independent hearing officials. HEA section 488A requires student loan guarantors to appoint administrative law judges or to retain independent hearing officials, not under the supervision or control of the guarantor, to adjudicate debtor objections to the proposed garnishment; that retainer agreement will obviously be embodied in a contract with the hearing official. As Treasury stated in promulgating controlling regulations, Federal agencies ''may not contract out 'inherently governmental functions,' . . . [but] contractors can[ ] assist agencies'' by mailing notices, orders authorized by the agency, receiving documents from debtors and employers, and arranging repayment agreements approved by the agency. 63 FR 25137. Unlike these supporting functions, adjudication of debtor disputes to the compulsory taking of a portion of their wages by garnishment is an inherently governmental function. The Department therefore cannot use contractors to decide debtor objections. The Department recognizes that the HEA requires guarantors to use individuals, including administrative law judges, who are independent of the guarantor to perform this adjudication function. We fully agree that guarantors can arrange for these services by contracts.

Changes: None.

Comment: One commenter agreed with the statement that only qualified employees of the Department may conduct hearings, but objected to the statement that the Department may use contracted services to analyze debtor objections and propose appropriate findings to those objections. The commenter requested that the Department clarify that any findings proposed by contractors are not final, and that Department hearing officials must exercise independent judgment and provide independent rationales for decisions. The commenter further urged that the regulations bar use of employees of collection agencies or other agencies collecting debts on behalf of the Department to analyze objections. The commenter urged that contractors receive specific training on borrower defenses and other critical hearing procedures.

Discussion: The Department agrees with the commenter that Department contractors cannot conduct hearings or rule on objections to garnishment, because those are inherently governmental functions. As discussed earlier, HEA section 488A expressly requires guarantors to use independent hearing officials not under the control of the guarantor to judge debtor objections to garnishment. In contrast, both HEA section 488A and 31 U.S.C. 3720D direct the Department itself to provide a hearing and decide debtor objections. The Department cannot, therefore, delegate this duty to a contractor. This does not, however, preclude use of contractors to analyze debtor objections and propose resolutions on those objections.

Department officials must therefore consider the objections raised by each debtor, and must issue a decision on those objections. Unless and until a Department official makes findings and issues a decision, there is no ruling on a debtor's objections.

The Department agrees that contractors used to prepare recommendations should be trained to properly analyze debtor objections. However, because contractor analyses of those objections are clearly no more than recommendations to Department staff and have no binding effect whatever on the debtor, we see no need to include language in the regulations to characterize contractor analyses.

Debtors have the right, under these regulations, to avoid garnishment by entering a voluntary repayment agreement. The Department uses its collection contractors to negotiate repayment terms with those debtors sent notice of garnishment who wish to repay voluntarily. Collection contractors have a financial interest in recovery, whether by garnishment or by voluntary payment, and the Department does not use them to prepare recommended analysis for a hearing on any objection, including hardship objections. These regulations ensure a hearing by a designated Department official for any debtor who does not agree to repay voluntarily and has requested a hearing.

Changes: None.

Comment: A commenter opined that the regulations should adopt guidelines and training procedures for any Department staff designated to conduct hearings of debtor objections. The commenter urged that the regulations should require the Department to provide debtors a list of hearing officials available for review of their objections so that they may object to those they consider unqualified or biased.

Discussion: Any decision issued by the Department on debtor objections to garnishment is subject to judicial review under Administrative Procedure Act (APA). The Department has a strong interest in seeing that Department staff who conduct hearings do so in conformance with applicable substantive and procedural law. Therefore, the Department sees little value in adding generalized language to this part that would purport to govern its own internal training procedures.

The commenter points to no administrative or judicial tribunal that allows debtors to select the individual to hear their cases, and shows no good reason to adopt that course in this part. The commenter urged that this would permit a debtor to reject a particular individual who the debtor considers biased against the debtor. A debtor who objects to a hearing official as biased, can object as part of the hearing process to that individual serving as hearing official.[5] Hearings under this part are not subject to 5 U.S.C. 556, which requires the agency to consider and include in the administrative record its ruling on any objection to a proposed hearing official. However, the Department must meet that test, because it must consider and rule on any objection raised by the debtor, including an objection that the hearing official is biased. That determination, and any claim that a decision was the result of bias by the hearing official, may be tested on judicial review.

No Department hearing official benefits financially from the outcome of a hearing, and Federal ethics rules prohibit a hearing official from participating in a matter in which the individual has a financial interest. 5 CFR 2635.402(a). The Department therefore sees no need to add provisions to these regulations offering debtors a choice of hearing officials as a remedy for speculation that some Department official may harbor bias against a particular debtor.

Changes: None.

Content of Decision; Basis of Decision on Evidence Considered at Hearing (§ 34.17)

Comment: A commenter stated that regulations should require that hearing decisions be based only on evidence presented at the hearing and should clearly state the grounds for denial of an objection.

Discussion. Section 34.17 of the proposed rule provided that the decision would include the hearing official's conclusions and reasoning for each objection presented. We agree that the decision must rest on evidence presented in the hearing, but that hearing process is informal and may extend beyond the actual oral hearing. The regulations do not bar debtors from presenting in oral hearings objections not raised in the request for hearing, and do not require debtors who seek oral hearings to disclose all the evidence on which they will rely to support an objection. Because new objections and evidence first presented by the debtor during an oral hearing may require the Department to obtain further evidence in order to evaluate, the hearing official may leave the record open both for the Department and for the debtor. We may need to obtain additional evidence to respond to objections and evidence submitted by a debtor in either an oral or paper hearing.

To ensure that evidence we may obtain after the notice is sent is fairly considered in the hearing process, the debtor must have an opportunity to examine and respond to that evidence before the hearing official makes his or her decision. Therefore, if we intend to consider evidence that was not included in our records of the debt that were available for inspection prior to the hearing, the hearing official will consider that evidence only after we notify the debtor, make that evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument by the debtor.

The proposed regulations did not address the situation in which the debtor learns after filing the request for hearing that specific relevant evidence is available, and wishes to submit that evidence and have it considered in the proceeding. We believe that the debtor should have the opportunity to do so, if that evidence can be promptly acquired and produced. To ensure that this opportunity does not unduly delay completion of the hearing and issuance of the decision, it is reasonable to expect the debtor to make a specific request that the record be held open for consideration of such evidence, and to describe in that request what the evidence is, and why it is relevant.

The proposed regulations did not address situations in which a debtor requests access to records, and then seeks to submit evidence and objection based on a review of our records of the debt, or seeks—but is denied—an oral hearing at which he or she would offer evidence and objections. Department regulations for the Treasury Offset Program assure a debtor who seeks access to Department debt records with reasonable diligence—within 20 days of the date of the notice of proposed offset—an extended deadline for presenting evidence and argument opposing the offset. 34 CFR 30.33(d). A similar assurance is appropriate in these proceedings. Finally, the regulations can clarify that a debtor who intended to present evidence and objection at an oral hearing should have an opportunity to submit both in written form if that request for an oral hearing is denied.

The time provided for submission of evidence and objections not included in the request for hearing may vary depending on the situation. We believe that this period should ordinarily be at least seven business days, but could in particular circumstances be shorter, or, as resources may permit, longer. In any event, the particular deadline applicable in each situation should be communicated to the debtor.

Changes: Section 34.17 is modified to provide that the decision rests on evidence in the hearing record, and includes a description of the evidence considered in making that decision. Section 34.13 is modified to add a new paragraph (d) to state the instances in which the hearing official will accept evidence and argument not included in the request for hearing or presented during an oral hearing. Section 34.13(d)(4)(i) provides that if the debtor requests access to records within 20 days of the date of the notice, the debtor may submit evidence and objection for a limited time after we provide the requested records. Section 34.13(d)(4)(ii) and (c) provide that if we obtain and intend to have considered in the hearing process evidence that was not included in the records that were available for inspection by the debtor when notice was sent, we first notify the debtor regarding the new evidence, make this evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument. Section 34.13(d)(4)(iii) provides for a brief extension of time, upon request, for a debtor to submit specifically-identified evidence not previously presented, and to raise an objection based on that evidence. Section 34.13(d)(4)(iv) provides an opportunity to submit evidence and argument after a request for an oral hearing is denied.

Comment: A commenter urged that the regulations require that information about reconsideration and appeal rights be included in the decision, and that this information be displayed in the decision in large bold letters.

Discussion: The regulations now state that the garnishment hearing decision is final agency action for purposes of the judicial review under the APA. We have no administrative appeal procedures for garnishment decisions, and therefore no administrative appeal rights to explain in the

[5] Grounds for disqualification in proceedings under this part would include those applicable to Federal court proceedings; as pertinent here, Federal law requires disqualification of a judge in a Federal court proceeding who has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts. 28 U.S.C. 455(b)(1).

decision. We currently state in a garnishment decision that the debtor may contest the ruling by filing suit in Federal district court and we expect to continue to do so. These regulations do create reconsideration rights, and we agree that the decision offers a useful vehicle for presenting those rights to the debtor.

Changes: Section 34.17(a) is modified to provide that the decision includes an explanation of reconsideration rights available to the debtor.

Comment: A commenter believed that we should state that the position taken in the proposed rule regarding the effect of a failure to issue a decision within 60 days of an untimely request for a hearing applies as well to garnishment action by guarantors under the HEA.

Discussion: We stated in the preamble that the statutory requirement that a hearing decision be issued within 60 days of the debtor's request does no more than require the garnishing party to suspend any outstanding garnishment order if a hearing decision is not issued within 60 days of the debtor's request, but does not bar resumption of garnishment, or, if an order has not been issued, issuance of the order, after an adverse hearing decision is issued. As explained there, this conclusion follows from well-established case law addressing the effect of statutory deadlines on agency action. *United States* v. *James Daniel Good Real Property,* 510 U.S. 43, 63 (1993); *United States* v. *Montalvo-Murillo,* 495 U.S. 711 (1990); *Brock* v. *Pierce County,* 476 U.S. 253 (1986). Pursuant to the principle articulated in these rulings, failure by a guarantor to meet the HEA 60-day decision requirement, like a failure to meet the same duty under the DCIA addressed in these rules, does no more than suspend the garnishor's right to issue or continue in effect an existing garnishment order.

Changes: None

Financial Hardship; Reconsideration (§§ 34.24, 34.25)

Comment: A commenter stated that provisions regarding the right to claim financial hardship were inconsistent and should be clarified to allow the debtor to raise hardship at any time.

Discussion: The regulations provide that the debtor may object to garnishment on financial hardship grounds at any time, but that the Department in general commits to provide a hearing on a hardship objection no earlier than six months after we issue a garnishment order. The Department recognizes that in some instances, financial circumstances may change substantially within a relatively short time, so that a debtor not faced with hardship at the time of the notice or hearing may suffer financial setbacks before six months of garnishment have been completed. The regulations therefore provide that the Department will consider a hardship objection raised within that six-month period if in the judgment of the Department, the debtor shows in the request for review that his or her financial circumstances have substantially worsened after the notice of proposed garnishment on account of an event such as disability, divorce, or catastrophic illness.

Section 34.7 of the proposed regulations stated that we provided no hearing regarding objection to the rate or amount of withholding on a new garnishment action if, within the past 12 months, we had begun garnishment proceedings and determined in those proceedings an appropriate withholding amount, either by decision or by terms of voluntary agreement. This section applies to those circumstances in which we start garnishment to collect a different debt than that which we have already issued a garnishment order, or we start garnishment action to enforce a debt after the debtor breached an agreement to repay that debt after we had given notice of intent to collect that debt by garnishment. In both voluntary repayment agreements and hardship determinations, the Department typically states that the determination is effective for a period of six months, after which the debtor must demonstrate that he or she cannot pay more than the installment amount agreed to or the withholding rate determined to be appropriate. The 12-month period in proposed § 34.7(b) would have been inconsistent with this practice and with the general commitment in proposed § 34.24(c)(1) to consider a hardship objection within six months after the garnishment took effect.

Changes. Section 34.7(b) is revised first to state that a hearing is available to contest the amount or rate of a proposed garnishment only if the rate or amount there proposed exceeds the rate or amount we had agreed to within the preceding six months in an agreement resolving a prior garnishment proposal. Second, the same provision is revised to remove the restriction of hardship objection where a hearing decision within the preceding 12 months had set the withholding rate or amount.

Comment: A commenter objected that the grounds for hardship should not be compared to the grounds for undue hardship discharge of student loans in bankruptcy. The commenter disagrees that the case law interpreting the undue hardship requirement provides useful guidance, because a hardship determination under this rule is binding for six months, while a bankruptcy hardship determination in bankruptcy is permanent and takes into account the expected long-term financial difficulties of the debtor.

Discussion: The commenter suggests that the degree of financial hardship that merits a financial hardship under this rule differs from, and is less than, the kind of financial hardship needed to support a claim of undue hardship in bankruptcy. The observation is accurate, because these regulations measure hardship using the national standards, which compare the debtor's expenses to the average amounts incurred by families of similar size and income, while bankruptcy hardship analysis compares the debtor's expenses to those needed to maintain what case law refers to as a ''minimal standard of living.'' *Brunner* v. *N.Y. Higher Educ. Serv. Corp.,* 831 F.2d 395, 396 (2nd Cir. 1987). The amounts spent for living expenses by peers of the debtor will in many instances significantly exceed those justifiable for a minimal standard of living.[6]

Under these regulations, the debtor bears the burden of proving the necessity of any amounts claimed in excess of the average amounts spent by his or her peers. The debtor may contend that above-average expenses are needed for housing costs, retirement savings, tuition for private schools, charitable contributions, vehicles, utilities, and telephone charges which the debtor now incurs. Bankruptcy courts routinely address these claims in evaluating undue hardship claims; that case law can provide guidance in considering whether a debtor carries his or her burden under these regulations of proving that above-average expenses are necessary.

Changes: None.

Comment: A commenter urged that the Department include with the notice of proposed garnishment a separate form for debtors to use to claim financial hardship, which would explain the grounds for a hardship claim and how to obtain a hearing on the objection.

Discussion: The notice currently used by the Department, and that which the Department intends to use for garnishment under these regulations, explains the debtor's right to contest the proposed garnishment on both substantive and hardship grounds. The Department may modify the format of the notice as experience demonstrates that particular changes are useful.

The Department currently sends financial statement forms to those debtors who state on their request for hearing that they intend to object on hardship grounds. The overwhelming majority of objections to proposed garnishments that the Department now receives are based on financial hardship. The Department agrees that a self-explanatory form has proven very useful to encourage debtors to present their financial circumstances in a way that makes analysis of the objection by the Department easier, but sees no reason to commit at this point in regulations to a particular form, or to a particular method of providing that form to debtors.

Changes: None.

Comment: A commenter asked that we state that positions taken in the proposed rule regarding the burden of proof of hardship and the need to present that claim by completing a financial statement disclosing the income and assets available to meet the needs of the debtor and his or her family, apply to garnishment proceedings by guaranty agencies under HEA section 488A.

Discussion. Because the debtor alone has evidence needed to prove financial hardship, we believe that financial hardship is like an affirmative defense to a claim, such as repayment. As a matter of common sense and common law, the person who claims an affirmative defense bears the burden of proving that defense by a preponderance of the credible evidence. We provide a financial statement form for debtors who claim hardship to complete, and we intend to

[6] The *Brunner* test includes two other steps not relevant to hardship claims in garnishment proceedings.

continue to do so. The rule itself does not bar consideration of evidence presented in other forms.

Fair consideration of hardship claims depends on full and accurate disclosure of the income and assets available to meet the needs of the debtor and his or her family. Hearing officials should reject as unsupported those hardship claims by debtors who fail to disclose completely and—for written records hearings—in a form that bears some indicia of trustworthiness, such as a statement or affirmation that the disclosure is made under penalty of perjury.

Independent hearing officials conducting hearings under HEA section 488A must rule in accordance with applicable law, including Department program regulations.

FFELP regulations do not contain any provision that expressly allocates the burden of proof of financial hardship. Section 34.21(d) does not bind either debtors whose loans are collected by guarantors, or hearing officials used by the guarantors, but rests on principles that courts generally apply to allocating the burden of proof between litigants. Those principles, as well as common sense, should persuade FFELP hearing officials to place on the debtor the burden of proof and persuasion of a hardship claim.

As noted above, § 34.21 does not require the debtor to use a particular financial statement form to prove hardship in garnishment proceedings under these regulations; a guarantor may adopt a rule that requires debtors to use a particular form to prove hardship in its garnishment proceedings.

Changes: None.

Comment: A commenter urged that we state that the National Standards adopted by the Internal Revenue Service (IRS) also apply to evaluation of hardship claims raised in garnishment proceedings under the HEA.

Discussion: As discussed in response to other comments, these rules apply only to debtors subject to Department garnishment action under the DCIA, and these regulations do not bind debtors in garnishment actions under the HEA by either the Department or guarantors. However, we strongly believe that the Standards provide unique and well-founded, empirically-based benchmarks of amounts needed for basic living expenses. These regulations stipulate that amounts spent up to these benchmarks are reasonable and necessary, and create an explicit rebuttable presumption that amounts claimed in excess of these benchmarks are not necessary.

Under both the HEA and the DCIA, as discussed in response to other comments, the debtor bears the burden of proof and burden of persuasion that particular expense amounts are necessary. In absence of a FFELP regulation that expressly adopts the Standards, a hearing official could conceivably accept an expense claim as necessary based on the official's own judgment, even though the claimed amount exceeded the Standards and the debtor presented no evidence to support the need for that amount. We strongly believe that such a judgment would not be well-founded. The Department believes that hearing officials in HEA garnishment proceedings should accept the Standards as persuasive evidence of the amounts reasonable and necessary, and should require any debtor who claims larger amounts are needed to support that contention by persuasive evidence. If debtors in HEA garnishment proceedings are properly held to their burden of proof, there should be little practical difference between the presumption created in these regulations and the use of the Standards as reliable empiric evidence of reasonableness.

Changes: None.

Amount Withheld Under Garnishment Order (§ 34.19)

Comment: A commenter objected to the proposal that the Department might issue multiple garnishment orders under this rule regarding a debtor who owes several debts to the Department. The commenter believes that neither the DCIA nor the HEA allows multiple garnishment orders, and believes that Congress intended to limit garnishment to 10 percent of disposable pay.

Discussion: Treasury rules interpret the DCIA to allow a Federal agency that holds several claims against a debtor to issue more than one garnishment order to recover those claims. 31 CFR 285.11(i)(3)(iii). However, the comment is well taken that the total amount that may be withheld pursuant to orders issued by a single agency cannot exceed 15 percent of the debtor's disposable pay. 31 CFR 285.11(i)(2), (3)(iii).

Changes: The regulations are modified in § 34.20(b) to state that the aggregate amount that may be withheld by an employer pursuant to one or more orders we issue may not exceed 15 percent of the debtor's disposable pay.

Comment: A commenter urged that § 34.19 be changed to state that the amount required to be withheld by the employer be 15 percent of disposable pay, rather than the amount directed in the garnishment order. The commenter believed this change to be needed to make the employer and debtor both aware of their potential liability if they do not enter into voluntary repayment of the debt. The commenter also believed that the change to the proposed language would help the employer validate that the amount demanded in the order is accurate.

Discussion: Section 34.19 describes the amount that the employer must withhold pursuant to the garnishment order. That order is sent to the employer, not the debtor, and therefore has no effect on the debtor's ability to repay voluntarily. The notice, on the other hand, is sent to the debtor and warns of the potential garnishment of 15 percent of disposable pay; the notice is intended to motivate the debtor to repay voluntarily. If we determine that withholding at that rate would cause hardship, but that withholding a smaller amount would not do so, we must order the employer to withhold that lesser amount. HEA section 488A similarly requires guarantors, and the Department when garnishing under that HEA authority, to order withholding of a lesser amount if the debtor proves that withholding ten percent would cause hardship. In any case, the order must always state clearly the amount to be withheld, whether as a percentage of disposable pay or as a specific amount. The employer has no standing to scrutinize or object to a garnishment order, and has no need to be assured that the amount claimed is accurate. That duty lies with the government or the guarantor; the employer is entitled to rely on the garnishing creditor's representation that the debt is owed, and no change is needed to facilitate a review that the employer need not conduct.

Changes: None.

Comment: A commenter urged that we state that the position taken in § 34.24(c)(1) of the proposed rule, that we will consider or reconsider an objection on hardship grounds only after an order has been outstanding for six months, applies to garnishment action by student loan guarantors under the HEA.

Discussion: These regulations allow the debtor to raise or renew a hardship claim after an order has been outstanding for six months, but also allow consideration of a hardship claim earlier if the debtor demonstrates substantially worsened financial circumstances. 34 CFR 34.24(c)(2). This standard provides a reasonable balance between the debtor's interest in having potentially changed circumstances promptly evaluated and the government's need for finality for its determinations. This regulation is a procedural rule binding only in garnishment proceedings under this part. In the absence of a comparable FFELP regulation, however, whether and when a guarantor provides for reconsideration of a hardship claim remains a case-by-case determination.

Changes: None.

[FR Doc. 03–3947 Filed 2–18–03; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 16/P.L. 108–6

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. (Feb. 13, 2003; 117 Stat. 10)

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