



# Federal Register

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## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Parts 2416, 2424, 2429, 2471, 2472, and Appendix A to 5 CFR Chapter XIV

#### New Addresses and Phone Numbers

**AGENCY:** Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority, and Federal Service Impasses Panel.

**ACTION:** Amendment of rules and regulations.

**SUMMARY:** The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel are relocating their headquarters offices. Accordingly, it is necessary to amend 5 CFR Chapter XIV to reflect the change in the addresses, telephone numbers, and fax numbers for these offices.

**EFFECTIVE DATE:** March 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Thomas, Director, Administrative Services Division, (202) 482-6650.

**SUPPLEMENTARY INFORMATION:** Paragraphs (a), (b), (c), and (e) of Appendix A to 5 CFR Chapter XIV set forth the addresses, telephone numbers, and fax numbers of the headquarters offices of the Authority, the General Counsel, the Chief Administrative Law Judge of the Authority, and the Federal Service Impasses Panel, respectively. 5 CFR 2416.170(c) provides for the filing of matters relating to enforcement of nondiscrimination on the basis of handicap; 5 CFR 2424.10 provides the address and telephone number of the Authority's Collaboration and Alternative Dispute Resolution Program; 5 CFR 2429.24(a) specifies the place and method of filing documents with the Authority; and 5 CFR 2471.2, 2471.4, 2472.3, and 2472.5 concern communications with the Federal

Service Impasses Panel. Because of the relocation of those offices, and the change in certain telephone numbers, it is necessary to revise these provisions of the agency's regulations.

#### Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Labor Relations Authority has determined that these regulations, as amended, will not have a significant economic impact on a substantial number of small entities, because they apply to federal employees, federal agencies, and labor organizations representing federal employees.

#### Unfunded Mandates Reform Act of 1995

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

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

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

#### Paperwork Reduction Act of 1995

These regulations contain no information collection or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*)

#### CHAPTER XIV—FEDERAL LABOR RELATIONS AUTHORITY

For the reasons set out in the preamble and under the authority of 5 U.S.C. 7134, these provisions are amended as follows:

## PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

1. The authority citation for Part 2416 continues to read as follows:

**Authority:** 29 U.S.C. 794.

2. Section 2416.170(c) is revised to read as follows:

#### § 2416.170 Compliance procedures.

\* \* \* \* \*

(c) The Director, Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Equal Employment Opportunity, Federal Labor Relations Authority, 1400 K Street, NW., Washington, DC 20424-0001.

\* \* \* \* \*

## PART 2424—NEGOTIABILITY PROCEEDINGS

3. The authority citation for Part 2424 continues to read as follows:

**Authority:** 5 U.S.C. 7134.

4. Section 2424.10 is revised to read as follows:

#### § 2424.10 Collaboration and Alternative Dispute Resolution Program.

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR). Upon request, and as agreed upon by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call or write the CADR Office at (202) 482-6503, 1400 K Street, NW., Washington, DC 20424-0001. A brief summary of CADR activities is available on the Internet at [www.flra.gov](http://www.flra.gov).

## PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

5. The authority citation for Part 2429 continues to read as follows:

**Authority:** 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

6. Section 2429.24(a) is revised to read as follows:

**§ 2429.24 Place and method of filing; acknowledgment.**

(a) All documents filed or required to be filed with the Authority pursuant to this subchapter shall be filed with the Director, Case Control Office, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001 (telephone: (202) 482-6540) between 9 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

\* \* \* \* \*

**PART 2471—PROCEDURES OF THE PANEL**

7. The authority citation for Part 2471 continues to read as follows:

**Authority:** 5 U.S.C. 7119, 7134.

8. Sections 2471.2 and 2471.4 are revised to read as follows:

**§ 2471.2 Request form.**

A form is available for use by the parties in filing a request for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. Telephone (202) 482-6670. Use of the form is not required provided that the request includes all of the information set forth in § 2471.3.

**§ 2471.4 Where to file.**

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. Telephone (202) 482-6670. Fax (202) 482-6674.

**PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES**

9. The authority citation for Part 2472 continues to read as follows:

**Authority:** 5 U.S.C. 6131.

10. Sections 2472.3 and 2472.5 are revised to read as follows:

**§ 2472.3 Request for Panel Consideration**

Either party, or the parties jointly, may request the Panel to resolve an

impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as hereinafter provided. A form is available for use by the parties in filing a request with the Panel. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. Telephone (202) 482-6670. Fax (202) 482-6674. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

**§ 2472.5 Where to file.**

Requests to the Panel provided for in these rules, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street, NW., Washington, DC 20424-0001. Telephone (202) 482-6670. Fax (202) 482-6674.

**Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions**

11. Appendix A to 5 CFR Ch. XIV is amended by revising paragraphs (a), (b), (c) and (e) to read as follows:

(a) The Office address, telephone number, and fax number of the Authority are: Suite 200, 1400 K Street, NW., Washington, DC 20424-0001; telephone: (202) 482-6540; fax: (202) 482-6657.

(b) The Office address, telephone number, and fax number of the General Counsel are: Suite 200, 1400 K Street, NW., Washington, DC 20424; telephone: (202) 482-6600; fax: (202) 482-6608.

(c) The Office address, telephone number, and fax number of the Chief Administrative Law Judge are: Suite 300, 1400 K Street, NW., Washington, DC 20424; telephone: (202) 482-6630; fax: (202) 482-6629.

\* \* \* \* \*

(e) The Office address, telephone number, and fax number of the Federal Service Impasses Panel are: Suite 200, 1400 K Street, NW., Washington, DC 20424; telephone: (202) 482-6670; fax: (202) 482-6674.

\* \* \* \* \*

(5 U.S.C. 7134)

Dated: March 4, 2003.

**Yvonne Thomas,**

*Director, Administrative Services Division,  
Federal Labor Relations Authority.*

[FR Doc. 03-5429 Filed 3-6-03; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 217**

**RIN 1115-AB93**

**Attorney General's Evaluations of the Designations of Belgium, Italy, Portugal, and Uruguay as Participants Under the Visa Waiver Program**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Visa Waiver Program (VWP) permits nationals from designated countries to apply for admission to the United States for ninety (90) days or less as visitors for business or pleasure without first obtaining a nonimmigrant visa. This interim rule summarizes the evaluations of the Attorney General related to the participation of Belgium, Italy, Portugal, and Uruguay in the VWP. The Department of Justice, in consultation with the Department of State, has determined that: (1) Belgium will be allowed to continue participating in the VWP on a provisional basis for one year, with another evaluation to be conducted at that time to determine whether Belgium's continued participation in the VWP is in the law enforcement and security interests of the United States. In addition, after May 15, 2003, citizens of Belgium who wish to travel to the United States under the VWP must present a machine-readable passport issued by the Government of Belgium.

(2) Italy will continue to be designated as a VWP country without change.

(3) Portugal will continue to be designated as a VWP country, with the Department of State taking appropriate action.

(4) Uruguay will be terminated from the VWP because Uruguay's participation in the VWP is inconsistent with U.S. interest in enforcing the immigration laws of the United States because there are high intercept and overstay rates for Uruguayans. Nationals of Uruguay who intend to travel to the United States after April 15, 2003, for legitimate business or pleasure must acquire a nonimmigrant visa at a U.S. consulate or embassy prior to their arrival in the United States.

**DATES:** *Effective date:* This interim rule is effective April 15, 2003.

*Comment date:* Written comments must be submitted on or before May 6, 2003.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference "RIN 1115-AB93" on your correspondence. Comments may be submitted electronically to the Immigration and Naturalization Service (Service) at *insregs@usdoj.gov*. Comments submitted electronically should include "RIN 1115-AB93" in the subject heading. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, telephone number: (202) 514-3019.

**SUPPLEMENTARY INFORMATION:**

**What Is the Visa Waiver Program ("VWP")?**

The VWP permits nationals from designated countries to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa from a U.S. consular officer abroad, provided that all statutory and regulatory requirements are met. 8 U.S.C. 1187(a). If arriving by air or sea, a VWP traveler must arrive on a carrier that signed an agreement ("signatory carrier") guaranteeing to transport inadmissible or deportable VWP travelers out of the United States at no expense to the United States. 8 U.S.C. 1187(e).

**Why Is the Attorney General Issuing This Interim Rule?**

The VWP began in 1988 as a pilot program and remained such until October 30, 2000, when the Visa Waiver Permanent Program Act, Pub. L. No. 106-396, 114 Stat. 1637, made the program permanent, with some modifications. The Visa Waiver Permanent Program Act added a new requirement that the Attorney General conduct periodic evaluations of each country participating in the VWP. 8 U.S.C. 1187(c)(5)(A)(i). The evaluations must address the effect of the country's continued designation on the law enforcement and security interests of the United States. 8 U.S.C. 1187(c)(5)(A)(i)(I). The statute also requires the Attorney General, in consultation with the Secretary of State, to determine whether an evaluated

country's designation should be continued or terminated. 8 U.S.C. 1187(c)(5)(A)(i)(II). Additionally, the statute provides that "[n]otwithstanding any other provision of this section, the Attorney General, in consultation with the Secretary of State, may for any reason (including national security) . . . rescind any . . . designation previously granted under this section." 8 U.S.C. 1187(d).

Evaluations of Belgium, Italy, Portugal, and Uruguay were conducted following the attacks of September 11, 2001. Officials from the Immigration and Naturalization Service ("INS") and Department of State participated in the evaluation process, which included visiting each individual country and meeting with representatives of each country's government. Reports summarizing the evaluations were drafted, incorporating comments from law enforcement and security agencies of the United States.

**What Is the Attorney General's Determination Regarding Belgium and Why?**

Belgium will be allowed to continue participating in the VWP on a provisional basis for one year, with another evaluation to be conducted at that time to determine whether Belgium's continued participation in the VWP is in the law enforcement and security interests of the United States. In addition, after May 15, 2003, citizens of Belgium that wish to travel to the United States under the VWP must present a machine-readable passport issued by the Government of Belgium.

During the course of the evaluation of Belgium, it became apparent that there is cause for concern as to the integrity of nonmachine-readable Belgian passports and to the inadequate reporting of lost or stolen passports by the Belgian government. In March 2001, the Government of Belgium began issuing machine-readable passports that include security features. However, there remain thousands of valid nonmachine-readable Belgian passports in circulation.

In addition, the evaluation team collected data regarding the number of stolen or lost Belgian passports, including blank passports that contain no photograph or identifying information. There is a concern that, in the past, there has not been comprehensive reporting of lost or stolen passports, and that such reporting has not been timely.

For these reasons, pursuant to 8 U.S.C. 1187(d), after May 15, 2003, Belgian citizens seeking to enter the United States must present a machine-

readable passport in order to be admitted under the VWP. Nationals of Belgium who possess a nonmachine-readable passport who intend to travel to the United States after May 15, 2003, for legitimate business or pleasure must acquire a nonimmigrant visa at a U.S. consulate or embassy prior to their arrival in the United States. As stated, under 8 U.S.C. 1187(d), the Attorney General "may refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation. \* \* \*" After May 15, 2003, the Attorney General will refrain from waiving the visa requirement for any citizen of Belgium who does not present a machine-readable passport at the time of the application for admission. In addition, after one year, Belgium will again be evaluated for continued participation in the VWP. The Department of State will take appropriate action to inform the Government of Belgium as to the expectations of the Government of the United States during the provisional one-year period.

**What Is the Attorney General's Determination Regarding Italy and Why?**

Italy will continue to be designated as a VWP country without change. Overall, the efforts of the Government of Italy to advance the law enforcement, security, and extradition interests of the United States were found to be satisfactory. Abuse of the VWP by Italian nationals appears to be minor.

**What Is the Attorney General's Determination Regarding Portugal and Why?**

Portugal will continue to be designated as a VWP country. It should be noted, however, that the evaluation raised concerns about the timeliness of reporting of lost or stolen passports by the Government of Portugal. The Department of State will take appropriate action to address those concerns with the Government of Portugal.

**What Is the Attorney General's Determination Regarding Uruguay and Why?**

Effective April 15, 2003, Uruguay will be terminated from the VWP because Uruguay's participation in the VWP is inconsistent with the U.S. interest in enforcing the immigration laws of the United States.

Uruguay's program designation appears to facilitate high-risk travel to the United States. Between 1998 and 2001, Uruguayan nonimmigrant travel to the United States increased

approximately 15%, while the number of U.S. port-of-entry intercepts increased approximately 320%. In 2002, Uruguayan nationals were two to three times more likely than all nonimmigrants on average to have been denied admission at the border.

In Fiscal Year ("FY") 2001, there were 16,878,477 visits to the United States from citizens of the 29 VWP countries. Of that total, 72,915 visits were from Uruguayan citizens. In FY 2001, 151 Uruguayans were denied admission to the United States. In FY 2001, the INS confirmed that 1,194 Uruguayans had overstayed before departing the U.S.

The termination of Uruguay in the VWP is based on the significant increase in the number of inadmissible Uruguayans seeking admission to the United States since Argentina was terminated from the VWP on February 21, 2002. For the past three years Uruguay has experienced a recession that has caused its citizens to seek to use the VWP to live and work illegally in the United States. Uruguayan air arrivals had an apparent overstay rate of 37%, more than twice the rate of the average apparent overstay rate for all air arrival nonimmigrants (14.9%).

In May 2001, the United States Government notified the Government of Uruguay of its concerns regarding Uruguayan abuse of the VWP. Notwithstanding the efforts of the Government of Uruguay, the number of Uruguayan nationals intercepted more than doubled from 151 in FY 2001 to 356 in FY 2002.

Accordingly, the Attorney General is terminating Uruguay's participation in the VWP under sections 217(c)(5)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(5)(A)(i)(II)). This section authorizes the Attorney General, in consultation with the Secretary of State, to terminate a country's VWP designation after the periodic evaluation. The abuse of the VWP by Uruguayan nationals seeking to remain permanently in the United States is inconsistent with the enforcement of U.S. immigration laws. The Attorney General also is rescinding the designation of Uruguay under section 217(d) of the Immigration and Nationality Act (8 U.S.C. 1187(d)), which permits the Attorney General, in consultation with the Secretary of State, to rescind any designation "for any reason."

#### **What Is the Legal Status of a Uruguayan National Who Was Admitted to the United States Under the VWP Before April 15, 2003, and Who Has Time Remaining on His or Her Period of Admission?**

As long as the alien lawfully gained admission under the VWP before the effective date of this termination of designation rule, and continues to be in compliance with the terms of his or her admission, he or she may remain in the United States for the period of time authorized on the date of admission.

The Department notes, however, that an alien admitted as a visitor for business or pleasure under the VWP is not eligible for change or extension of nonimmigrant status under the existing regulations.

#### **Good Cause Exception**

This interim rule is effective April 15, 2003, although the Service invites post-promulgation comments and will address any such comments in a final rule. The visa waiver program statute provides that "[a] termination of the designation of a country under [8 U.S.C. 1187(c)(5)(A)(i)] shall take effect on the date determined by the Attorney General, in consultation with the Secretary of State." 8 U.S.C. 1187(c)(5)(A)(ii). Additionally, a rescission of a designation under 8 U.S.C. 1187(d) may be made "at any time." 8 U.S.C. 1187(d). If the provisions of 5 U.S.C. 553 are otherwise applicable, however, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553 for the following reasons.

Reestablishing the normal nonimmigrant visa requirements for Uruguayan nationals will have the effect of stemming the flow of unauthorized immigration to the United States by such nationals. This action must be taken as soon as possible. The effective date of the termination, April 15, 2003, will allow travelers who have travel plans in the near future to proceed with those plans and will allow the Department of State sufficient time to prepare for the additional workload resulting from the termination. Because further delaying the effective date of this interim rule is contrary to the public interest, there is good cause under 5 U.S.C. 553 to make this rule effective on April 15, 2003 without notice and comment.

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this

regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although individuals doing business with small entities will no longer be allowed to enter the United States without having a visa, they will be able to seek admission to the United States by obtaining a nonimmigrant visa at a United States consulate or embassy prior to arrival in the United States. This action is necessary to further the law enforcement and national security interests of the United States.

#### **Executive Order 12866**

This rule is considered by the Department of Justice, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

#### **Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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

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

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

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

based companies in domestic and export markets.

#### Executive Order 12988

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

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163, all departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting and recordkeeping requirements under the Paperwork Reduction Act.

#### List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

#### PART 217—VISA WAIVER PROGRAM

1. The heading for part 217 is revised as set forth above.

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. The authority citation for part 217 continues to read as follows:

##### § 217.2 [Amended]

3. Section 217.2(a) is amended under the definition "Designated country" by removing "and Uruguay" from the list of countries, by adding "and" before "the United Kingdom" and adding a period after, and by adding after "citizens of British Commonwealth countries.", "After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program".

Dated: February 28, 2003.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 03-5244 Filed 3-6-03; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

[Docket No. EE-RM/TP-02-001]

RIN 1904-AB12

#### Energy Conservation Program for Consumer Products: Test Procedure for Refrigerators and Refrigerator-Freezers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Energy (Department or DOE) today promulgates a revision to the test procedure for measuring the energy consumption of refrigerators and refrigerator-freezers. The revision changes the calculation of the test time period for long-time automatic defrost to give credit for a control capable of timing defrost to occur other than during a compressor "on" cycle, thereby taking advantage of the natural warming of the evaporator during an "off" cycle, and saving additional energy. The revision has no effect on the testing of refrigerators and refrigerator-freezers that do not have a long-time automatic defrost system. This change in the test procedure will encourage the use of energy enhancing technology. This amendment to the test procedure will not cause any refrigerator or refrigerator-freezer that currently complies with the minimum energy conservation standards to become noncompliant with the standard.

**DATES:** This direct final rule is effective May 6, 2003, unless adverse or critical comments are received by April 7, 2003. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. E-mail address: [Brenda.Edwards-Jones@ee.doe.gov](mailto:Brenda.Edwards-Jones@ee.doe.gov). You should identify all such documents both on the envelope and on the documents as Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators and Refrigerator-Freezers, Docket No. EE-RM/TP-02-001.

Copies of public comments received may be read in the Freedom of Information Reading Room (Room No. 1E-190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611, E-mail:

[Michael.Raymond@ee.doe.gov](mailto:Michael.Raymond@ee.doe.gov); or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586-9507, E-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Introduction
  - A. Authority
  - B. Background
- II. Discussion
- III. Final Action
- IV. Procedural Requirements
  - A. Review Under the National Environmental Policy Act of 1969
  - B. Review Under Executive Order 12866, "Regulatory Planning and Review"
  - C. Review Under the Regulatory Flexibility Act
  - D. "Takings" Assessment Review
  - E. Review Under Executive Order 13132, "Federalism"
  - F. Review Under the Paperwork Reduction Act
  - G. Review Under Executive Order 12988, "Civil Justice Reform"
  - H. Review Under the Unfunded Mandates Reform Act of 1995
  - I. Review Under the Treasury and General Government Appropriations Act, 1999
  - J. Review Under Executive Order 13211
  - K. Review Under the Small Business Regulatory Enforcement Fairness Act
  - L. Approval by the Office of the Secretary

#### I. Introduction

##### A. Authority

Part B of title III of the Energy Policy and Conservation Act, as amended (EPCA or Act), establishes the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program ("covered products") include residential refrigerators and refrigerator-freezers, the subject of today's direct final rule.

Under the Act, the Program consists of three parts: testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), must amend or establish test procedures as appropriate for each of the covered products. (42 U.S.C. 6293). The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)).

If a test procedure is amended, EPCA section 323(e)(1) requires DOE to determine, in the rulemaking, to what extent, if any, the new test procedure would change the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)). If DOE determines that the amended test procedure would

change the measured energy efficiency or measured energy use of a covered product, DOE must amend the applicable energy conservation standard during the rulemaking that establishes the new test procedure. In determining the amended energy conservation standard, DOE is required to measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average energy efficiency or energy use of these representative samples, tested using the amended test procedure, shall constitute the amended energy conservation or energy use standard for the applicable covered products. (42 U.S.C. 6293(e)(2)).

Beginning 180 days after an amended or new test procedure for a covered product is prescribed or established under section 323(b) of EPCA, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new DOE procedure and such representation fully discloses the results of such testing. (42 U.S.C. 6293(c)(2)).

#### B. Background

On November 21, 2000, Electrolux filed an application for interim waiver and a petition for waiver regarding the calculation of the long-time automatic defrost test time period in refrigerators and refrigerator-freezers having a variable defrost control function. The Department granted the interim waiver on July 30, 2001, and published its decision in the **Federal Register** on August 3, 2001. (66 FR 40689). In the same **Federal Register** notice, the Department published Electrolux's petition for waiver, and solicited comments, data, and information respecting the petition. On March 29, 2002, DOE published a notice in the **Federal Register** extending the interim waiver for 180 days, or until July 25, 2002, because it determined that it would seek to amend the refrigerator and refrigerator-freezer test procedure and the planned amendment would eliminate any need for continuation of the waiver. (67 FR 15192). Furthermore, amendment of the test procedure would allow all manufacturers to use the amended test procedure if they have a product with a long-time automatic defrost function.

Electrolux's petition requested that the calculation of the test time period for long-time automatic defrost models be modified for its variable defrost control models. This modification

would allow for the existence of a control that is capable of timing defrost to occur other than during a compressor "on" cycle, thereby taking advantage of the natural warming of the evaporator during an "off" cycle, and saving energy as a result. Technology has advanced sufficiently that it is feasible to design and build a system that no longer has to initiate defrost during a compressor run period, as did the old mechanical defrost timers. Electrolux asked to have the time before the heaters turn "on" be included in the defrost period. The evaporator is warming up during this time, with no use of electrical energy. The current test procedure does not properly account for the energy savings produced by Electrolux's timing of the defrost heater activation.

The Department received three written comments concerning the petition for waiver. All the comments supported granting the waiver, with one modification.

Maytag supported Electrolux's proposal provided that it is applicable on an industry-wide basis to all manufacturers. The Department's waiver process allows for granting of waivers for a "particular basic model," so the waiver requested and granted applies only to the Electrolux basic models that include variable defrost control. Without a test procedure change, any manufacturer desiring to use this modification to the test procedure could do so only by petitioning the Department for its own waiver.

Fisher & Paykel, a major manufacturer of refrigerators in New Zealand, generally approved of Electrolux's petition, but argued for a somewhat different modification. It proposed that the third sentence of section 4.1.2.1 of the test procedure (which is the only sentence Electrolux sought to modify) read as follows:

"The second part would start at the last compressor off that is part of steady state operation (or at a point still within stable operation if there are no temperature swings) before a defrost is initiated. It would terminate at the [second] [third] turn "on" of the compressor or after four hours, whichever comes first. If there are compressor swings without compressor cycling, the start point shall be at the last temperature peak in stable operation and the end point shall be at the [second] [third] temperature peak after the defrost."

Finally, the Association of Home Appliance Manufacturers (AHAM), representing the manufacturers who produce over 90% of the household refrigerators and refrigerator-freezers in the U.S., agreed in principle with Electrolux's petition, but requested a

change in the wording. AHAM suggested that the four hour limitation of the test commence when the defrost heater is initiated, rather than at the beginning of the second part of the two-part test period. It stated that this change would alleviate concerns about "the possibility of being able to modify the performance of a refrigerator to such an extent that it would not recover from defrost in the four hour time period allotted within the proposed waiver."

AHAM recommended that Electrolux's proposed language be changed so that revised section 4.1.2.1 of the test procedure would read as follows:

"Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost is initiated when the compressor "on" cycle is terminated prior to start of the defrost heater and terminates at the second turn "on" of the compressor or four hours from the initiation of the defrost heater, whichever comes first."

AHAM stated that it discussed this change with its members, and was not aware of any member who disagreed with its position. It specifically listed the following members as having participated in and concurred in its proposal: GE Appliances, Electrolux Home Products, Fisher & Paykel, Maytag, Sub-Zero, and Whirlpool. In summary, AHAM asserted that all commenters on Electrolux's Petition were in agreement with AHAM's proposal.

## II. Discussion

The Department consulted with the National Institute of Standards & Technology (NIST), which agreed that the current test procedure for refrigerators and refrigerator-freezers is not clear with regard to the initiation of the defrost cycle test time period in Electrolux's new product. (The current test procedure states: "The second period would start when a defrost period is initiated during a compressor "on" cycle \* \* \*") Electrolux's new product initiates the defrost period when the compressor is "off".) NIST informed the Department that the change proposed in the Electrolux Petition would clarify the defrost cycle initiation and more accurately measure the energy consumption of Electrolux's new product. NIST endorsed the revised language proposed by AHAM. As stated above, all commenters on the test procedure change apparently support AHAM's proposal. This proposed change has widespread support and will

result in a test procedure that more accurately measures energy consumption. The application of the existing test procedure to the new product is unclear, and this amendment will clarify its application to the new product. For all these reasons, the Department has determined that it should promulgate this direct final rule and make a change to the refrigerator and refrigerator-freezer test procedure.

The revised calculation of the test time period results in a small (generally about one percent) decrease in the tested energy consumption of models that incorporate the advanced defrost timing feature, a feature that delays the initiation of the defrost heater, thereby using natural warming to defrost. Section 323(e) of EPCA requires the Department, in a rulemaking, to determine to what extent, if any, the proposed test procedure would change the existing measured energy efficiency or measured energy use of any covered product under the existing test procedure. This statutory provision is designed to prevent the alteration of an existing Federal energy conservation standard that otherwise could result from a change in a test procedure. It also seeks to ensure that products in compliance with the applicable energy conservation standards under the existing test procedure will not be put out of compliance because the test procedure has been amended. When the Department considers section 323(e) of EPCA in the context of this direct final rule, the Department concludes that no change to the energy conservation standard is required. The reasons are as follows: (1) This test procedure amendment affects only products with a variable defrost control function, none of which minimally comply with the existing standard. There are, therefore, no minimally-compliant products under section 323(e) that would show any change in energy use under the amended test procedure. (2) This test procedure amendment, which was developed to give credit to an energy saving technology, will result in lowering the measured energy use. Lowering measured energy use will, of course, not raise energy use over the standard, which prescribes a ceiling on maximum energy use. Instead, lowering energy use merely removes measured energy use further from that ceiling. Therefore, this amendment does not make any compliant products non-compliant with the applicable energy conservation standard.

### III. Final Action

DOE is publishing this direct final rule without prior proposal because

DOE views this amendment as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse or critical comments are filed, DOE has prepared a Notice of Proposed Rulemaking (NPR) proposing the same amendment. This NPR is contained in a separate document in this **Federal Register** publication. The direct final action will be effective May 6, 2003, unless significant adverse or critical comments are received by April 7, 2003. If DOE receives significant adverse or critical comments, the revisions will be withdrawn before the effective date. In the case of withdrawal of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a separate final rule based on the proposed rule that is also issued today. DOE will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no significant adverse comments are received, the public is advised that this rule will be effective May 6, 2003.

### IV. Procedural Requirements

#### A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department promulgates a small change to the test procedure for measuring the energy consumption of household refrigerators and refrigerator-freezers. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations in Appendix A to subpart D, 10 CFR part 1021. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

#### B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's rule is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

#### C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Today's rule prescribes test procedures that will be used to test compliance with energy conservation standards. The rule affects refrigerator and refrigerator-freezer test procedures and would not have a significant economic impact, but rather would provide common testing methods. Therefore DOE certifies that today's rule would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted.

#### D. "Takings" Assessment Review

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

#### E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial direct effects, then this Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

#### F. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB

clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*G. Review Under Executive Order 12988, "Civil Justice Reform"*

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 sections 3(a) and 3(b) of Executive Order 12988, it 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 sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to

which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action today does not include a Federal mandate that may result in estimated costs of \$100 million or more to State, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

*I. Review Under the 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 proposed rule or policy that may affect family well-being. Today's 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.

*J. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on

energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule will not have a significant adverse effect on the supply, distribution, or the use of energy, and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Review Under the Small Business Regulatory Enforcement Fairness Act*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

*L. Approval of the Office of the Secretary*

The Secretary of Energy has approved publication of today's direct final rule.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on February 28, 2003.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, the Department amends part 430 of chapter II of title 10, Code of Federal Regulations, to read as follows:

**PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 4.1.2.1 of Appendix A1 to subpart B of part 430 is revised to read as follows:

**Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers**

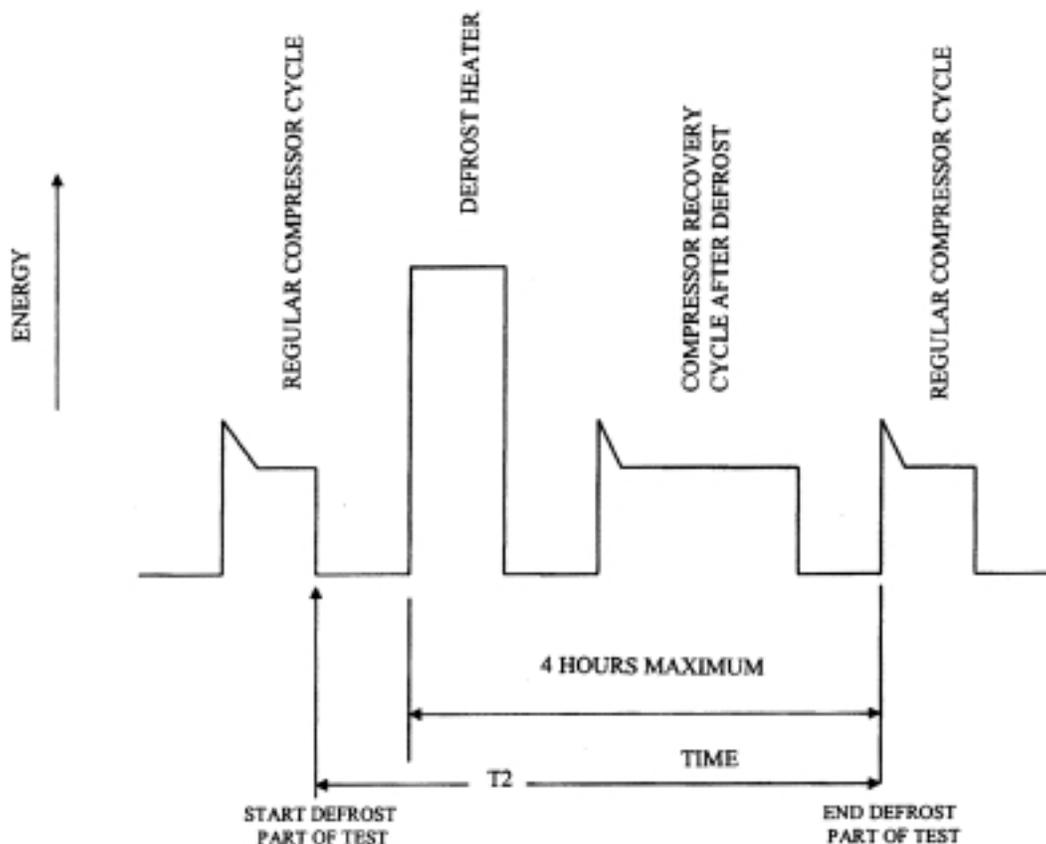
4. \* \* \*

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost is initiated when the compressor "on" cycle is terminated prior to start of the defrost heater and

terminates at the second turn "on" of the compressor or four hours from the initiation of the defrost heater,

whichever comes first. See diagram in Figure 1 to this section.  
 BILLING CODE 6450-01-P

**Figure 1**  
**Long Time Automatic Defrost Diagram**



[FR Doc. 03-5404 Filed 3-6-03; 8:45 am]  
 BILLING CODE 6450-01-C

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

[Docket No. 30358; Amdt. No. 3048]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

**DATES:** This rule is effective March 7, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

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

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

*For Examination—*

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

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

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

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:**

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

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

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

**The Rule**

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S.

Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

**Conclusion**

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

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

Air Traffic Control, Airports, incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 28, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

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

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

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

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME,

LDA, LDA/DME, SDF, SDF/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

.....Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
02/12/03	PA	Somerset	Somerset County	3/1212	GPS Rwy 24, Orig. This corrects FDC 3/1214 in TL03–06.
02/13/03	NC	Lumberton	Lumberton Muni	3/1221	GPS Rwy 5, Orig.
02/13/03	NC	Lumberton	Lumberton Muni	3/1222	ILS Rwy 5, Orig-B.
02/13/03	NC	Lumberton	Lumberton Muni	3/1223	NDB Rwy 5, Amdt 1B.
02/19/03	MS	Tupelo	Tupelo Regional	3/1395	ILS Rwy 36, Amdt 7A.
02/19/03	NY	Albany	Albany Intl	3/1414	VOR Rwy 28, Orig-B.
02/19/03	NY	Albany	Albany Intl	3/1415	ILS Rwy 1, Amdt 9C.
02/20/03	OR	Portland	Portland Intl	3/1432	ILS Rwy 10R (Cat I,II,III), Amdt 31B.
02/20/03	CA	Palm Springs	Bermuda Dunes	3/1466	VOR–A, Orig–A.
02/20/03	CA	Sacramento	Sacramento Intl	3/1473	ILS Rwy 16R (Cats I/II/III), Amdt 14.
02/20/03	MS	Olive Branch	Olive Branch	3/1477	RNAV (GPS) Rwy 18, Orig.
02/25/03	ND	Rugby	Rugby Muni	3/1634	GPS Rwy 30, Orig. A
02/25/03	MN	Minneapolis	Flying Cloud	3/1636	VOR Rwy 10R, Amdt 8A.
02/25/03	MN	Carlsbad	Cavern City Air Terminal	3/1621	ILS Rwy 3, Amdt 4A.
02/25/03	VI	Charlotte Amalie	Cyril E. King	3/1622	ILS Rwy 10, Amdt 1.
02/25/03	FL	Fort Lauderdale	Fort Lauderdale Executive	3/1605	ILS Rwy 8, Amdt 4B.

[FR Doc. 03–5290 Filed 3–6–03; 8:45 am]  
BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

[Docket No. 30357; Amdt. No. 3047]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

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

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

**DATES:** This rule is effective March 7, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

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

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

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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

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

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

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

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

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

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

the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

### Conclusion

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

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 28, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

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

### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

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

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

\* \* \* *Effective March 20, 2003*

Harrison, AR, Boone County, VOR–A, Amdt 13  
 Harrison, AR, Boone County, NDB Rwy 18, Amdt 6  
 Harrison, AR, Boone County, NDB–B, Amdt 3  
 Harrison, AR, Boone County, ILS Rwy 36, Orig  
 Harrison, AR, Boone County, ILS/DME Rwy 36, Orig–A, Cancelled  
 Harrison, AR, Boone County, RNAV (GPS) Rwy 18, Orig  
 Harrison, AR, Boone County, GPS Rwy 18, Orig–A, Cancelled  
 Harrison, AR, Boone County, RNAV (GPS) Rwy 36, Orig  
 Wichita, KS, Wichita Mid-Continent, VOR Rwy 14, Amdt 1B  
 Wichita, KS, Wichita Mid-Continent, NDB Rwy 1R, Amdt 15B  
 Wichita, KS, Wichita Mid-Continent, VOR/DME RNAV Rwy 1L, Amdt 1C  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Z Rwy 1L, Orig  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Y Rwy 1L, Orig  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Rwy 1R, Orig  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Rwy 14, Orig  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Z Rwy 19L, Orig  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Y Rwy 19L, Orig

Wichita, KS, Wichita Mid-Continent, GPS Rwy 19L, Orig–A, Cancelled  
 Wichita, KS, Wichita Mid-Continent, VOR/DME RNAV Rwy 19R, Amdt 1B  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Rwy 19R, Orig  
 Wichita, KS, Wichita Mid-Continent, RNAV (GPS) Rwy 32, Orig  
 Wichita, KS, Wichita Mid-Continent, GPS Rwy 32, Orig–A, Cancelled  
 Boston, MA, General Edward Lawrence Logan Intl, ILS Rwy 22L, Amdt 7  
 Minneapolis, MN, Flying Cloud, RNAV (GPS) Rwy 28L, Orig  
 Minneapolis, MN, Flying Cloud, RNAV (GPS) Rwy 28R, Orig  
 Hammonton, NJ, Hammonton Muni, RNAV (GPS) Rwy 3, Orig  
 Hammonton, NJ, Hammonton Muni, GPS Rwy 3, Orig, Cancelled  
 Buffalo, NY, Buffalo Niagara Intl, VOR or GPS–A, Amdt 17A, Cancelled  
 Buffalo, NY, Buffalo Niagara Intl, VOR/DME RNAV or GPS Rwy 23, Orig–A, Cancelled  
 Buffalo, NY, Buffalo Niagara Intl, VOR/DME RNAV or GPS Rwy 32, Amdt 5A, Cancelled  
 Buffalo, NY, Buffalo Niagara Intl, NDB Rwy 5, Amdt 10C  
 Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) Rwy 5, Orig  
 Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) Rwy 23, Orig  
 Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) Rwy 32, Orig  
 Minot, ND, Minot Intl, RNAV (GPS) Rwy 31, Orig  
 Bellefontaine, OH, Bellefontaine Regional, VOR/DME Rwy 7, Orig  
 Bellefontaine, OH, Bellefontaine Regional, VOR/DME Rwy 25, Orig  
 Bellefontaine, OH, Bellefontaine Regional, RNAV (GPS) Rwy 7, Orig  
 Bellefontaine, OH, Bellefontaine Regional, RNAV (GPS) Rwy 25, Orig  
 Cleveland, OH, Cleveland-Hopkins Intl, ILS Rwy 24L, Amdt 18  
 Medford, OK, Medford Muni, RNAV (GPS) Rwy 17, Orig  
 Medford, OK, Medford Muni, RNAV (GPS) Rwy 35, Orig  
 Johnstown, PA, John Murtha Johnstown-Cambria County, VOR Rwy 15, Amdt 9  
 Johnstown, PA, John Murtha Johnstown-Cambria County, VOR Rwy 23, Amdt 7  
 Johnstown, PA, John Murtha Johnstown-Cambria County, VOR/DME Rwy 15, Amdt 5  
 Johnstown, PA, John Murtha Johnstown-Cambria County, VOR/DME Rwy 23, Amdt 1  
 Johnstown, PA, John Murtha Johnstown-Cambria County, ILS Rwy 33, Amdt 5  
 Johnstown, PA, John Murtha Johnstown-Cambria County, RNAV (GPS) Rwy 5, Orig  
 Johnstown, PA, John Murtha Johnstown-Cambria County, RNAV (GPS) Rwy 15, Orig  
 Johnstown, PA, John Murtha Johnstown-Cambria County, RNAV (GPS) Rwy 23, Orig  
 Johnstown, PA, John Murtha Johnstown-Cambria County, RNAV (GPS) Rwy 33, Orig  
 West Chester, PA, Brandywine, VOR–A, Amdt 3  
 West Chester, PA, Brandywine, RNAV (GPS) Rwy 9, Orig

West Chester, PA, Brandywine, RNAV (GPS) Rwy 27, Orig  
 West Chester, PA, Brandywine, VOR/DME RNAV or GPS Rwy 27, Amdt 2, Cancelled  
 West Chester, PA, Brandywine, GPS Rwy 9, Orig, Cancelled  
 Burlington, VT, Burlington Intl, VOR Rwy 1, Amdt 11D  
 Burlington, VT, Burlington Intl, NDB Rwy 15, Amdt 19E  
 Burlington, VT, Burlington Intl, ILS Rwy 15, Amdt 22  
 Burlington, VT, Burlington Intl, RNAV (GPS) Rwy 1, Orig  
 Burlington, VT, Burlington Intl, RNAV (GPS) Y Rwy 15, Orig  
 Burlington, VT, Burlington Intl, RNAV (GPS) Z Rwy 15, Orig  
 Burlington, VT, Burlington Intl, RNAV (GPS) Rwy 33, Orig  
 Burlington, VT, Burlington Intl, GPS Rwy 33, Orig-A, Cancelled

\* \* \* Effective April 17, 2003

Crisfield, MD, Crisfield Muni, VOR/DME-A, Orig

\* \* \* Effective May 15, 2003

Monroe, GA, Monroe-Walton County, NDB-A, Orig  
 Monroe, GA, Monroe-Walton County, NDB or GPS Rwy 3, Amdt 3, Cancelled  
 Monroe, GA, Monroe-Walton County, RNAV (GPS) Rwy 3, Orig  
 Somerville, NJ, Somerset, RNAV (GPS) Rwy 12, Orig  
 Somerville, NJ, Somerset, RNAV (GPS) Rwy 30, Orig  
 Somerville, NJ, Somerset, GPS Rwy 12, Amdt 2, Cancelled

The FAA published the following procedures in Docket No. 30350; Amdt No. 3041 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 17, Page 3811; dated Monday, January 27, 2003) under section 97.33 effective March 20, 2003 which are hereby rescinded:

Glens Falls, NY, Floyd Bennett Memorial, VOR/DME or GPS Rwy 19, Amdt 6B (Cancelled)  
 Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) Rwy 1, Orig  
 Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) Rwy 12, Orig  
 Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) Rwy 19, Orig  
 Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) Rwy 30, Orig

[FR Doc. 03-5289 Filed 3-6-03; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 18

##### RIN 1219-AA98 (Phase 10)

#### Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** As a result of a significant adverse comment, MSHA is withdrawing the direct final rule (68 FR 2879) on Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines that was published on January 22, 2003. In the document, MSHA stated that in the event it receives a significant adverse comment, MSHA can address the comments received and publish a final rule. Accordingly, all public comments that have been received in this rulemaking are accepted under the proposed rule (68 FR 2941) and will be subsequently addressed in a new final rule. MSHA will not institute a second comment period. Comments filed during this rulemaking can be viewed at MSHA's Internet site at <http://www.msha.gov/currentcomments.htm>.

**DATES:** As of March 7, 2003, this direct final rule (68 FR 2879) published on January 22, 2003, is withdrawn.

#### FOR FURTHER INFORMATION CONTACT:

Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693-9440; facsimile: (202) 693-9441; e-mail: [nichols-marvin@msha.gov](mailto:nichols-marvin@msha.gov).

Dated: March 3, 2003.

**John R. Caylor,**

*Deputy Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 03-5403 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-43-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

#### Notice of Expiration of Conditional Exception to Bank Secrecy Act Regulations Relating to Orders for Transmittal of Funds by Financial Institutions

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Expiration of conditional exception; request for comments.

**SUMMARY:** FinCEN is giving notice of the expiration of a conditional exception to a Bank Secrecy Act requirement on May 31, 2003. The exception permits financial institutions to substitute coded information for the true name and address of a customer in a funds transmittal order.

**DATES:** Effective June 1, 2003. Written comments must be received on or before April 21, 2003.

**ADDRESSES:** Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, "ATTN: Conditional Exception Expiration." Comments also may be submitted by paper mail to FinCEN, PO Box 39, Vienna, VA 22183-0039, "ATTN: Conditional Exception Expiration." Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

#### FOR FURTHER INFORMATION CONTACT:

David Vogt, Executive Associate Director, Office of Regulatory Programs, FinCEN, (202) 354-6400, or Judith R. Starr, Chief Counsel, FinCEN, (703) 905-3590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 1998, FinCEN granted a conditional exception ("the CIF Exception") to the strict operation of 31 CFR 103.33(g) (the "Travel Rule"). See FinCEN Issuance 98-1, 63 FR 3640 (January 26, 1998). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more. The CIF Exception addressed computer programming problems in the banking and securities industries by relaxing the Travel Rule's requirement that a customer's true name and address be included in a funds transmittal order, so long as alternate steps, described in FinCEN Issuance 98-1 and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, the CIF Exception to the Travel Rule was to expire on May 31, 1999; however, in light of programming burdens associated with year 2000 compliance issues, FinCEN extended the CIF Exception so that it would expire on May 31, 2001. See FinCEN Issuance 99-1, 64 FR 41041 (July 29,

1999). On May 30, 2001, after first soliciting input from the law enforcement community for its views on any law enforcement burdens caused by the CIF Exception, FinCEN again extended the CIF Exception. The CIF Exception is now scheduled to expire on May 31, 2003. See FinCEN Issuance 2001-1, 66 FR 32746 (June 18, 2001). FinCEN intends to permit the CIF Exception to expire, and is soliciting comments before it does so.

## II. The CIF Exception

FinCEN promulgated the Travel Rule in 1995. The Travel Rule requires financial institutions to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more, which must "travel" with the order throughout the funds transmittal sequence. Among these requirements is that each transmitter's financial institution and intermediary financial institution include in a transmittal order the transmitter's true name and street address. See 31 CFR 103.33(g)(1)(i)-(ii) and (g)(2)(i)-(ii). Subsequently, financial institutions represented to FinCEN that their ability to comply with the Travel Rule at all depended on their ability to use their automated customer information files, known as CIFs. Although an originating institution always knew the originating customer's true name and address, the CIFs were often programmed with coded or nominee names and addresses (or post office boxes). The reprogramming tasks involved in changing the CIFs were represented to be a significant barrier to compliance with the Travel Rule. In light of these burdens, and in the interest of obtaining prompt compliance, FinCEN promulgated the conditional exception.

The conditional exception provides that a financial institution may satisfy the requirements of 31 CFR 103.33(g) that a customer's true name and address be included in a transmittal order, only upon satisfaction of the following conditions:

(1) The CIFs are not specifically altered for the particular transmittal of funds in question;

(2) The CIFs are generally programmed and used by the institution for customer communications, not simply for transmittal of funds transactions, and as so programmed generate other than true name and street address information;

(3) The institution itself knows and can associate the CIF information used in the funds transmittal order with the true name and street address of the transmitter of the order;

(4) The transmittal order includes a question mark symbol immediately following any designation of the transmitter other than by a true name on the order;

(5) Any currency transaction report or suspicious activity report by the institution with respect to the funds transmittal contains the true name and address information for the transmitter and plainly associates the report with the particular funds transmittal in question.

The conditional exception further provides that it has no application to any funds transmittals for whose processing an institution does not automatically rely on preprogrammed and prespecified CIF name and address information. FinCEN's release promulgating the CIF Exception further warned financial institutions that any customer request for a nominee name in a CIF should be carefully evaluated as a potentially suspicious transaction. See 63 FR 3642.

## III. Expiration of the CIF Exception

In the aftermath of the terrorist attacks of September 11 and the passage of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 ("USA Patriot Act"), Congress has emphasized the need to increase transparency across the financial sector. See Pub. L. 107-56, section 302(a)(2) (finding that defects in financial transparency are critical to the financing of global terrorism). FinCEN has implemented this congressional policy in its numerous Patriot Act rulemakings and believes that it should be reflected in existing BSA rules such as the Travel Rule as well. The financial community has had a number of years to address the technological issues posed by the Travel Rule, and the major programming issues posed by year 2000 compliance are now well behind it. Therefore, FinCEN deems it appropriate, after two extensions, to permit the CIF Exception to expire. This conclusion is buttressed by information FinCEN has received regarding the potential for abuse of the CIF Exception; for example, by private banking departments that cater to high net worth individuals' demands for increased confidentiality by using CIFs.

## IV. Request for Comments

FinCEN invites comments on (1) the existence of any remaining technological barriers to full compliance with the Travel Rule; (2) whether financial institutions will be able to comply fully with the Travel Rule upon the expiration of the CIF Exception or whether additional time will be

required to attain compliance; (3) the existence of any adverse effect on law enforcement investigations arising from the CIF Exception; and (4) the potential for or actual abuse of the CIF Exception.

Dated: March 3, 2003.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 03-5432 Filed 3-6-03; 8:45 am]

BILLING CODE 4810-02-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 245-0375a; FRL-7446-1]

### Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District, Imperial County Air Pollution Control District, and Monterey Bay Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Antelope Valley Air Pollution Control District (AVAPCD), Imperial County Air Pollution Control District (ICAPCD), and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern definitions, circumvention, emergency episode and volatile organic compound (VOC) emissions from organic solvents. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on May 6, 2003, without further notice, unless EPA receives adverse comments by April 7, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S.

Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.  
 California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.  
 Antelope Valley Air Pollution Control District 43301 Division Street, Ste. 206, Lancaster, CA 93535-4649.  
 Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243-2801.  
 Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940-6536.  
 A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>.

[www.arb.ca.gov/drdb/drdbtxt.htm](http://www.arb.ca.gov/drdb/drdbtxt.htm). Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, EPA Region IX, (415) 947-4120.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule #	Rule title	Adopted	Submitted
AVAPCD .....	701	Air Pollution Emergency Contingency Actions .....	07/18/00	12/11/00
ICAPCD .....	101	Definitions .....	08/13/02	10/16/02
MBUAPCD .....	415	Circumvention .....	08/21/02	10/16/02
MBUAPCD .....	433	Organic Solvent Cleaning .....	02/17/01	05/08/01

On February 8, 2001 (AVAPCD), June 20, 2001 (MBUAPCD Rule 433), December 3, 2002 (ICAPCD and MBUAPCD Rule 415), these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

AVAPCD adopted a version of Rule 701 on January 2, 1998, which EPA approved into the SIP on March 18, 1998. ICAPCD adopted a version of Rule 101 on December 11, 2001, which EPA approved into the SIP on July 8, 2002. MBUAPCD adopted a version of Rule 415 on September 1, 1974 (amended on December 13, 1984) and Rule 433 on March 26, 1986, which EPA approved into the SIP on July 13, 1987 and April 2, 1999, respectively.

*C. What Is the Purpose of the Submitted Rule Revisions?*

AVAPCD Rule 701 has been revised to add several new definitions; replace the obsolete reference to rescinded Rule 2202; and update and rename the pollutant Standard Index to Air Quality Index.

ICAPCD Rule 101 has been revised to add a new definition of a "rainy period" as a clarification to Rule 420, Livestock Feed Yards.

MBUAPCD Rule 415 is revised to update the rule to District format. An exemption has been added for

equipment installed to minimize offsite concentrations of Toxic Air Contaminants.

MBUAPCD Rule 433 is revised to distinguish applicable test methods used for water-based solvents and non-water-based solvents. Bay Area Air Quality Management District Method 31 is used to determine the quantity of exempt compounds, water and VOCs in water-based solvents subject to the rule. The rule contains applicable monitoring, recordkeeping, reporting and requirements, and specifies test methods to determine compliance. The TSD has more information about these rules.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

- 1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
- 2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and

Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. Control of Volatile Organic Emissions from Solvent Metal Cleaning. EPA-450/2-77-022, November 1977.

5. Determination of Volatile Organic Compounds in Paint Strippers, Solvent Cleaners and Low Solids Coatings. BAAQMD Method 31.

6. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology For Organic Solvent Cleaning and Degreasing Operations. California Air Resources Board Guidance Document, July 18, 1991.

*B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

*C. EPA Recommendations to Further Improve the Rules*

The TSD for MBUAPCD Rule 433 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time that the local agency modifies the rule.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the

submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 7, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the

comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 6, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that

are not the subject of an adverse comment.

**III. Background Information**

*Why Were These Rules Submitted?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978 .....	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988 .....	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991 .....	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

**IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175

(65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 12, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(A)(4), (285)(i)(D), (302)(i)(A)(2), and (302)(i)(B)(2) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(284) \* \* \*

(i) \* \* \*

(A) \* \* \*

(4) Rule 433, adopted on January 17, 2001.

\* \* \* \* \*

(285) \* \* \*

(i) \* \* \*

(D) Antelope Valley Air Pollution Control District.

(1) Rule 701, adopted on July 18, 2000.

\* \* \* \* \*

(302) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Rule 101, adopted on August 13, 2002.

(B) \* \* \*

(2) Rule 415, adopted on August 21, 2002.

\* \* \* \* \*

[FR Doc. 03-5326 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 70

[IA 167-1167a; FRL-7458-8]

#### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing it is approving an amendment to the Iowa State Implementation Plan (SIP) and Operating Permits Programs. The State of Iowa has requested that EPA approve revisions to its definitions rule, construction and operating permit rules, and monitoring and measurement rule. Approval of these revisions will ensure consistency between the State and Federally-approved rules, and ensure Federal enforceability of the State's rule revisions.

**DATES:** This direct final rule will be effective May 6, 2003, unless EPA receives adverse comments by April 7, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is the part 70 Operating Permits Program?

What is being addressed in this document?

Have the requirements for approval of a SIP revision and part 70 program revision been met?

What action is EPA taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally-approved SIP.

Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgations of Implementation Plans." The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

#### What Does Federal Approval of a State Regulation Mean To me?

Enforcement of the State regulation before and after it is incorporated into

the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

### What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all States to develop operating permits programs that meet certain Federal criteria. In implementing this program, the States are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM<sub>10</sub>; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the State and local agencies' operating permits program are also subject to public notice, comment, and our approval.

### What Is Being Addressed in This Document?

The State of Iowa has requested that EPA approve as an amendment to the Iowa SIP and part 70 Operating Permits Program recently adopted revisions to its definitions rule, construction and operating permit rules, and monitoring and measurement rule. The specific rule revisions are discussed below.

Subrule 20.3(2) has been rescinded. This rule made reference to an application form to be used when applying for a variance from the open burning rules. This form is no longer

used by the department. The procedures for requesting a variance are specified in rule 21.2.

Rule 22.1, which pertains to permits required for new and existing sources, has been revised to add subparagraph 22.1(1) "c" (4). This provision clarifies the notification requirements for sources which begin construction prior to obtaining a construction permit as provided for in the rule. Subparagraph (4) requires a start construction notification within 30 days after starting construction, regardless of the permit issuance status.

Subrule 22.1(2), introductory paragraph, pertaining to exemptions, was revised to clarify that units subject to new source performance standards (NSPS), National Emission Standard for Hazardous Air Pollutants (NESHAP), and prevention of significant deterioration (PSD), for example, are not eligible for an exemption from the permitting construction rules. Subparagraph 22.1(2) "i" was revised to clarify the exemption as it relates to hazardous air pollutants. Finally, subparagraph 22.1(2) "t" was added as a new exemption category. This subparagraph exempts containers, storage tanks, or vessels, containing fluid having a maximum true vapor pressure of less than 0.75 pounds per square inch absolute (psia).

Paragraph 22.3(3) "b" was revised to clarify the permit requirement of a source to notify the department of intended startup. This revision establishes a more specific time at which notification needs to be sent, as well as what information needs to be provided. The change also makes the department's deadline consistent with the deadlines in new source performance standards.

Rule 22.100—Definitions for title V operating permits, has been revised with respect to regulated air pollutant to clarify that only the PM<sub>10</sub> fraction of particulate matter is considered when determining if a source is a major source. It also clarifies that title V fees are not required for particulate matter (excluding PM<sub>10</sub>).

Subrule 22.101(1), pertaining to sources subject to title V permits, was revised to correct an inconsistency between this rule and a reference to rule 22.102. This revision clarifies that all source categories listed in 22.102 are exempt from obtaining a title V permit.

Subrule 22.201(2), pertaining to voluntary operating permits, has been revised to clarify exemptions related to parts 60 and 63 sources.

Subrule 22.300(3), paragraphs "b" and "c," have been revised to clarify when sources would no longer be

eligible for coverage by the operating permit by rule for small sources if those sources are subject to NSPS or NESHAP.

Subrule 300(7), paragraph "c," has been revised to correct a reference to the record keeping required for emission units and emission control equipment. For clarification and consistency purposes, a revision was made which changes all of the references to "emission control units" to the term "emission control equipment."

Rule 25.1—Testing and sampling of new and existing equipment, was updated to adopt more recent Federal procedures in 40 CFR parts 60 and 75.

Further discussion and background information is contained in the technical support document prepared for this action, which is available from the EPA contact listed above.

### Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The State submittals met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revisions meet the substantive SIP requirements of the CAA, including section 110. Finally, the submittals met the substantive requirements of title V of the 1990 CAA Amendments and 40 CFR part 70.

### What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Final Action: EPA is approving as an amendment to the Iowa SIP revisions to rules 20.3, 22.1, 22.3, 22.201, 22.300, and 25.1 pursuant to section 110. EPA is also approving rules 22.100, 22.101, 22.201, and 22.300 as a program revision to the State's part 70 Operating Permits Program pursuant to part 70.

### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves

State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of

the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 20, 2003.

**James B. Gulliford,**  
*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart Q—Iowa**

2. In § 52.820 the table in paragraph (c) is amended:

a. Under Chapter 20 by revising the entry for "567-20.3".

b. Under Chapter 22 by revising the entries for "567-22.1", "567-22.3", "567-22.201", and "567-22.300."

c. Under Chapter 25 by revising the entry for "567-25.1."

The revisions read as follows:

**§ 52.820 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA—APPROVED IOWA REGULATIONS**

Iowa citation	Title	State effective date	EPA approval date	Comments
<b>Iowa Department of Natural Resources, Environmental Protection Commission (567)</b>				
<b>Chapter 20—Scope of Title—Definitions—Forms—Rule of Practice</b>				
567-20.3	Air Quality Forms Generally	4/24/02	3/7/03 and FR page citation	

EPA—APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
* * * * *				
<b>Chapter 22—Controlling Pollution</b>				
567–22.1	Permits Required for New or Existing Stationary Sources.	7/17/02	3/7/03 and FR page citation	Subrules 22.1(2), 22.1(2) “g,” 22.1(2) “i” have a state effective date of 5/23/01.
* * * * *				
567–22.3	Issuing Permits	4/24/02	3/7/03 and FR page citation	Subrule 22.3(6) is not SIP approved.
* * * * *				
567–22.201	Eligibility for Voluntary Operating Permits	4/24/02	3/7/03 and FR page citation	
* * * * *				
567–22.300	Operating Permit by Rule for Small Sources	4/24/02	3/7/03 and FR page citation	Subrule 22.300(7) “c” has a state effective date of 10/14/98.
* * * * *				
<b>Chapter 25—Measurement of Emissions</b>				
567–25.1	Testing and Sampling of New and Existing Equipment.	4/24/02	3/7/03 and FR page citation	
* * * * *				

\* \* \* \* \*

**PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding under “Iowa” paragraph (e) to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

Iowa

\* \* \* \* \*

(e) The Iowa Department of Natural Resources submitted for program approval rules “567–22.100,” “567–22.101,” “567–22.201,” and “567–22.300” on April 25, 2002. The state effective date of these rules is April 24, 2002. These revisions to the Iowa program are approved effective May 6, 2003.

\* \* \* \* \*

[FR Doc. 03–5310 Filed 3–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP–2002–0345; FRL–7289–6]

**Pyriproxyfen; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of pyriproxyfen in or on Brassica, head and stem, subgroup 5A, Brassica, leafy greens, subgroup 5B, vegetable, cucurbit group 9, olives and olive oil. Valent U.S.A. Corporation 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 March 7, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0345, must be received on or before May 6, 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 VI. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6411; e-mail address: tavano.joseph@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

- Industry (NAICS 111), Crop production.
- Industry (NAICS 112), Animal production.
- Industry (NAICS 311), Food manufacturing
- Industry (NAICS 32532), Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0345. 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](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr180_00.html), a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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 May 29, 2002 (67 FR 37426-37432) (FRL-7178-3), 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 2F6385 by Valent U.S.A. Corporation, 1333 North California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025. That notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.510 be amended by establishing a tolerance for residues of the insecticide, pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, in or on Brassica leafy vegetables (Crop Group 5); vegetable, cucurbit (Crop Group 9); olive and olive, oil at 2.5, 0.1, 1.0, and 3.0 parts per million (ppm) respectively.

Based on the residue data submitted, EPA has determined that the following changes to the requested tolerances listed in this document are necessary. A lower tolerance of 2.0 ppm is required for olive, oil. Brassica vegetables are divided into two subgroups. A tolerance of 0.70 is required for Brassica, head and stem, subgroup 5A. A tolerance of 2.0 ppm is required for Brassica, leafy greens, subgroup 5B.

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. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

## 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 a tolerance for residues of pyriproxyfen on Brassica, head and stem, subgroup 5A; Brassica, leafy greens, subgroup 5B; Vegetable, cucurbit (Group 9); olive and olive, oil at 0.70, 2.0, 0.10, 1.0, and 2.0 ppm, respectively. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### A. Toxicological Profile

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

TABLE 1.—TOXICITY PROFILE OF PYRIPROXYFEN TECHNICAL

Guideline No./Study Type	MRID No. (year)/ Classification /Doses	Results
870.3100 90-Day oral toxicity rodents— mouse	43210504 (1990) Acceptable/ guideline 0; 200; 1,000; 5,000; or 10,000 ppm M: 0, 28.2, 149.4, 838.1, or 2,034.5 milligram/kilogram/day (mg/kg/day) F: 0, 37.9, 196.5, 963.9, or 2,345.3 mg/kg/day	NOAEL = 149.4 mg/kg/day in males (M), 196.5 mg/kg/day in females (F) LOAEL = 838.1 mg/kg/day (M), 963.9 mg/kg/day (F) based on pathological changes in the kidney, increased absolute and relative (to body) liver weight, decreased red blood cell parameters (both sexes), and decreased body weight gain (M)
870.3100 90-Day oral toxicity rodents—rat	41321716 (1989) Acceptable/ guideline 0; 400; 2,000; 5,000; or 10,000 ppm M: 0, 23.49, 117.79, 309.05, or 641.81 mg/kg/day F: 0, 27.68, 141.28, 356.30, or 783.96 mg/kg/day	NOAEL = 23.49 mg/kg/day (M), 27.68 mg/kg/day (F) LOAEL = 117.79 mg/kg/day (M), 141.28 based on increased total cholesterol and phospholipids (M), decreased red blood cell, hematocrit, and hemoglobin counts, increased relative (to body) liver weight (M), and negative trend in red blood cell volume (F)
870.3150 90-Day oral toxicity non-rodents—dog	42178307 (1988) Acceptable/ guideline 0, 100, 300, or 1,000 mg/kg/day	NOAEL = 100 mg/kg/day (M) and (F) LOAEL = 300 mg/kg/day (M) and (F) based on increased absolute and relative (to body) liver weight (both sexes), and hepatocyte enlargement (F)
870.3200 21-Day dermal toxicity— rat	43994102 (1993) Acceptable/ guideline 0, 100, 300, or 1,000 mg/kg/day	NOAEL = 1,000 mg/kg/day (M) and (F) LOAEL = not established
870.3265 28-Day inhalation toxicity—rat	42178308 (1988) Supplementary 0, 269, 482, or 1,000 mg/meter cubed (m <sup>3</sup> ) 0, 0.269, 0.482, or 1.000 mg/liter (L)	NOAEL = 0.482 mg/L (M) and (F) LOAEL = 1.000 mg/L based on salivation (both sexes), sporadic decreased body weight (M), and increased lactate dehydrogenase (M)
870.3700a Prenatal developmental— rats (non-guideline)	44985002 (1988) Acceptable/ nonguideline 0, 100, 300, 500, or 1,000 mg/kg/day	Parental NOAEL = 100 mg/kg/day Parental LOAEL = 300 mg/kg/day based on clinical signs, decreased body weight gains, increased water consumption (both sexes) and increased food consumption, changes in organ weights, and gross pathological changes (M) Developmental NOAEL = 1,000 mg/kg/day highest dose tested (HDT)
870.3700a Prenatal developmental— rats (non-guideline)	44985001 (1988) Acceptable/ nonguideline 0, 30, 100, 300, or 500 mg/kg/day	Maternal NOAEL = 100 mg/kg/day Maternal LOAEL = 300 mg/kg/day based on clinical signs, decreased body weight gains, and decreased food consumption Developmental NOAEL = 100 mg/kg/day Developmental LOAEL = 300 mg/kg/day based on decreased body weight and increased incidence of dilation of the renal pelvis.
870.3700b Prenatal developmental—rabbit	41321720, 42178311, 43215401, 43215402, 43215403 (1989) Acceptable/ guideline 0, 100, 300, or 1,000 mg/kg/day	Maternal NOAEL = 100 mg/kg/day Maternal LOAEL = 300 mg/kg/day based on premature delivery/abortions, soft stools, emaciation, lusterless fur, decreased activity, and bradypnea. Developmental NOAEL = 300 mg/kg/day Developmental LOAEL = 1,000 mg/kg/day based on decreased viable litters available for evaluation
870.3700a Prenatal developmental— rat	42178312 (1988) Acceptable/ guideline 0, 100, 300, or 1,000 mg/kg/day	Maternal NOAEL = 100 mg/kg/day Maternal LOAEL = 300 mg/kg/day based on decreased body weight, body weight gain, and food consumption and increased water consumption . Developmental NOAEL = 300 mg/kg/day Developmental LOAEL = 1,000 mg/kg/day based on increased incidence of skeletal variations at gestation day 21 and unspecified visceral variations at postnatal day (PND) 56.
870.3800 Reproduction and fertility effects— rat	42178313 (1991) Acceptable/ guideline 0; 200; 1,000; or 5,000 ppm M: 0, 18, 87, or 453 mg/kg/day F: 0, 20, 96, or 498 mg/kg/day	Parental/Systemic NOAEL = 87 mg/kg/day (M), 96 mg/kg/day (F) Parental/Systemic LOAEL = 453 mg/kg/day (M), 498 mg/kg/day (F) based on decreased body weight, body weight gain, and food consumption (both sexes) and increased liver weight (both sexes) and histopathological lesions of liver and kidneys (M) Reproductive NOAEL = 453 mg/kg/day (M), 498 mg/kg/day (F) Reproductive LOAEL = not established. Offspring NOAEL = 87 mg/kg/day (M), 96 mg/kg/day (F) Offspring LOAEL = 453 mg/kg/day (M), 498 mg/kg/day (F) based on decreased body weight on lactation days 14 and 21

TABLE 1.—TOXICITY PROFILE OF PYRIPROXYFEN TECHNICAL—Continued

Guideline No./Study Type	MRID No. (year)/ Classification /Doses	Results
870.4100b Chronic toxicity—dogs	42178309 (1991) Acceptable/ guideline 0, 30, 100, 300, or 1,000 mg/kg/day	NOAEL = 100 mg/kg/day (M) and (F) LOAEL = 300 mg/kg/day (M), 300 mg/kg/day (F) based on decreased body weight gain and increased relative liver weight (both sexes) and increased cholesterol and triglycerides and decreased red cell counts and hemoglobin in males
870.4300 Chronic/Carcinogenicity— rats	42178314, 43210501, 43210502, 43210503 (1991) Acceptable/ guideline 0, 120, 600, or 3,000 ppm M: 0, 5.42, 27.31, or 138.0 mg/kg/ day F: 0, 7.04, 35.1, or 182.7 mg/kg/day	NOAEL = 138 mg/kg/day (M), 35.1 mg/kg/day (F) LOAEL = not established in males, 182.7 mg/kg/day (F) based on decreases in body weight gain No evidence of carcinogenicity
870.4200 Carcinogenicity—mice	42178310 (1991) Acceptable/ guideline 0, 120, 600, or 3,000 ppm M: 0, 16.8, 84.0, or 420 mg/kg/day F: 0, 21.9, 109.5, or 547 mg/kg/day	NOAEL = 84 mg/kg/day (M), 109.5 mg/kg/day (F) LOAEL = 420 mg/kg/day (M), 547 mg/kg/day (F) based on renal lesions (M) and (F) No evidence of carcinogenicity
870.5265 Gene mutation	44503506 (1995) Acceptable/ guideline	Non-mutagenic when tested up to 5,000 micrograms (mg)/plate or cytotoxic levels, in presence and absence of activation; in <i>S. typhimurium</i> strains TA98, TA100, TA1535, and TA1537; and in <i>E.coli</i> strain WP2uvra with 2-OH-PY (metabolite of pyriproxyfen).
870.5265 Gene mutation	44503507 (1993) Acceptable/ guideline	Non-mutagenic when tested up to 5,000 mg/plate or cytotoxic levels, in presence and absence of activation; in <i>S. typhimurium</i> strains TA98, TA100, TA1535, and TA1537; and in <i>E.coli</i> strain WP2uvra with 4'-OH-PY, 5'-OH-PYR, DPH-PYR, POPA, and PYPAC (metabolites of pyriproxyfen).
870.5265 Gene mutation	44503508 (1995) Acceptable/ guideline	Non-mutagenic when tested up to 5,000 mg/plate or cytotoxic levels, in presence and absence of activation; in <i>S. typhimurium</i> strains TA98, TA100, TA1535, and TA1537; and in <i>E.coli</i> strain WP2uvra with 2,5-OH-PY (metabolite of pyriproxyfen).
870.5265 Gene mutation	42178315 (1988) Acceptable/ guideline	Non-mutagenic when tested up to 5,000 mg/plate or cytotoxic levels, in presence and absence of activation; in <i>S. typhimurium</i> strains TA98, TA100, TA1535, TA1537, and TA1538; and in <i>E.coli</i> strain WP2uvra with 2-OH-PY (pyriproxyfen technical).
870.5300 Gene mutation	42178316 (1990) Acceptable/ guideline	Non-mutagenic at the HGPRT locus in Chinese hamster lung V79 cells tested up to cytotoxic concentrations or limit of solubility, in presence and absence of activation.
870.5375 Chromosome aberration	41321722 (1989) Acceptable/ guideline	Did not induce structural chromosome aberration in Chinese hamster ovary (CHO) cell cultures in the absence or presence of activation.
870.5550 Unscheduled DNA synthesis	42178317 (1988) Acceptable/ guideline	There was no evidence that unscheduled DNA synthesis, as determined by radioactive tracer procedures (nuclear silver grain counts) was induced in HeLa cells exposed up to cytotoxic levels, both in the presence or absence of S-9.
870.7485 Metabolism and pharmacokinetics— rat	42178318 (1988) Acceptable/ guideline	Rats were orally dosed with <sup>14</sup> C-labeled pyriproxyfen at 2 or 1,000 mg/kg and at repeated oral doses (14 daily doses) of unlabeled pyriproxyfen at 2 mg/kg followed by administration of a single oral dose of labeled pyriproxyfen at 2 mg/kg. Most radioactivity was excreted in the feces (81–92%) and urine (5–12%) over a 7 day collection period. Expired air containing CO <sub>2</sub> was not detected. Tissue radioactivity levels were very low (less than 0.3%) except for fat. Examination of urine, feces, liver, kidney, bile, and blood metabolites yielded numerous (> 20) identified metabolites when compared to synthetic standards. The major biotransformation reactions of pyriproxyfen include: 1. Oxidation of the 4'- position of the terminal phenyl group. 2. Oxidation at the 5'-position of pyridine. 3. Cleavage of the ether linkage and conjugation of the resultant phenols with sulfuric acid.

### B. Toxicological Endpoints

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

of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

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

(aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

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

A summary of the toxicological endpoints for pyriproxyfen used for human risk assessment is shown in Table 2 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years old and general population	None	None	An appropriate endpoint attributable to a single oral dose was not available in the data base, including maternal toxicity in the developmental toxicity studies.
Chronic Dietary all populations	NOAEL= 35.1 mg/kg/day UF = 100 Chronic RfD = 0.35 mg/kg/day	FQPA SF = 1X cPAD = cRfD ÷ FQPA SF = 0.35 mg/kg/day	Subchronic toxicity and chronic toxicity (feeding)—rat (co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results.
Short-Term Incidental, Oral (1–30 days) Residential	Oral Maternal NOAEL = 100 mg/kg/day	LOC for MOE = 100	Rat developmental toxicity study Maternal LOAEL = 300 mg/kg/day based on decreased body weight, body weight gain, and food consumption, and increased water consumption
Intermediate-Term Incidental, Oral (1–6 months) Residential	Oral NOAEL = 35.1 mg/kg/day	LOC for MOE = 100	Subchronic toxicity and chronic toxicity (feeding)—rat (co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results.
Short-, and Intermediate-Term Dermal (1–30 days and 1–6 months) (Occupational/Residential)	None	None	Based on the systemic toxicity NOAEL of 1,000 mg/kg/day (limit dose) in the 21 day dermal toxicity study in rats, quantification of dermal risks is not required. In addition, no developmental concerns (toxicity) were seen in either rats or rabbits.
Long-Term Dermal (6 months–lifetime) (Occupational/Residential)	Oral NOAEL= 35.1 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100	Subchronic and chronic toxicity (feeding)—rat (co-critical) LOAEL = 141.28 mg/kg/day based decreased body weight and clinical pathology results
Short-, and Intermediate-Term Inhalation (1–30 days and 1–6 months) (Occupational/Residential)	None	None	Based on the absence of significant toxicity at the LOAEL of 1.0 mg/L (limit dose), the quantification of inhalation risks is not required. In addition, no developmental concerns (toxicity) were seen in either rats or rabbits.
Long-Term Inhalation (6 months–lifetime) (Occupational/Residential)	Oral study NOAEL= 35.1 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100	Subchronic and chronic toxicity (feeding)—rat (co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	Cancer classification ("Group E")	Risk Assessment not required	No evidence of carcinogenicity

<sup>1</sup> UF = uncertainty factor, FQPA SF = Food Quality Protection Act safety factor, NOAEL = no-observed-adverse-effect-level, LOAEL = lowest-observed-adverse-effect-level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, LOC = level of concern, MOE = margin of exposure

\*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from pyriproxyfen in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An aRfD for females 13–50 years old and the general population, including infants and children, was not selected because an acute oral endpoint attributed to a single-dose exposure could not be identified in any of the toxicology data base, including maternal toxicity in the developmental toxicity studies. Thus, the risk from acute exposure is considered negligible.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID<sup>TM</sup>), version 1.3 analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments:

a. A tier 1 (assumptions: Tolerance level residues and 100 percent crop treated (PCT) was conducted.

b. The established tolerances of 40 CFR 180.510 and the new tolerances established in this document were included in the analysis.

c. Anticipated residues and PCT were not used in this analysis.

d. The processing factors applied were the DEEM default values.

For chronic dietary risk, EPA's level of concern is >100% cPAD. Dietary exposure estimates for representative

population subgroups are presented in Table 3 of this unit. The results of the chronic analysis indicate that the estimated chronic dietary risk associated with the existing and EPA-recommended uses of pyriproxyfen is below EPA's level of concern.

TABLE 3.—SUMMARY OF RESULTS FROM CHRONIC DEEM<sup>TM</sup> ANALYSIS OF PYRIPROXYFEN

Subgroup	Exposure (mg/kg/day)	% cPAD
U.S. Population (total)	0.003836	1.1
All Infants (< 1 year old)	0.006852	2.0
Children 1–2 years old	0.013707	3.9
Children 3–5 years old	0.010107	2.9
Children 6–12 years old	0.005969	1.7
Youth 13–19 years old	0.003389	1.0
Adults 20–49 years old	0.002658	0.8
Females 13–49 years old	0.002702	0.8
Adults 50+ years old	0.002676	0.8

iii. *Cancer.* In accordance with the Agency's 1986 Guidelines for Carcinogenic Risk Assessment, the RfD/Peer Review Committee classified pyriproxyfen as a "Group E" chemical-negative for carcinogenicity to humans. This classification is based on the lack of evidence of carcinogenicity in mice and rats.

iv. *Anticipated residue and PCT information.* Anticipated residues and PCT information was not used in the Agency's assessment.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient

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

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

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD.

Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyriproxyfen they are further discussed in the aggregate risk in Unit III.E.

Pyriproxyfen is relatively long-lived in soil and water, with variable half-lives of approximately 2 weeks to 2 months. Pyriproxyfen is immobile, as indicated by the relative mobility scheme in Dragun (1998) for five soils and one sediment. The registrant determined the half-lives, 6.8 and 9 days, respectively, for the phenyl-label and pyridyl-label portions of pyriproxyfen. Since there is only one value, the longest half-life (9 days) was multiplied by 3 using EFED input guidance. Thus, the aerobic soil half-life in the modeling assessment was 27 days.

EPA determined that the residue of concern in water is pyriproxyfen *per se*. Drinking water estimates include surface water EDWCs based on the linked PRZM/EXAMS models and the SCI-GROW groundwater regression model, which was developed from studies with different hydrology and study conditions. Both models assumed a maximum seasonal application rate of 0.11 lb active ingredient (ai)/acre (A), 3 times per year (citrus and stone fruit).

Based on the PRZM/EXAMS model the EECs of pyriproxyfen for surface water was estimated to be 2.15 parts per billion (ppb) for the peak concentration, and 0.40 ppb for the long term average. Based on the SCI-GROW model the EECs of pyriproxyfen for groundwater was estimated to be 0.006 ppb for both the acute and chronic exposure.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyriproxyfen is currently registered for use on the following residential non-dietary sites: Flea and tick control (home environment and pet treatments) as well as products for ant and roach control (indoor and outdoor applications). Formulations include carpet powders, foggers, aerosol sprays, liquids (shampoos, sprays, and pipettes for pet treatments), granules, bait (indoor and outdoor), and impregnated materials (pet collars). There is a

potential for short-term dermal and inhalation exposures to pet owners and homeowners who apply products containing pyriproxyfen (handlers); however, EPA did not select short-term dermal or inhalation endpoints. Therefore, due to the lack of toxicity observed in animal testing, no residential pet owner/homeowner handler risk of concern is expected.

Toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, furniture, and pets. There is potential for exposure expected for the following scenarios:

i. *Hand-to-mouth.* Short-, intermediate-, and long-term hand-to-mouth exposures by toddlers from treated carpets, flooring (note the efficacy of carpet powders is approximately 365 days).

ii. *Hand-to-mouth.* Short- and intermediate-term hand-to-mouth exposures by toddlers from petting treated animals (shampoos, sprays, spot-on treatments, and collars). Long-term hand-to-mouth exposures by toddlers from petting treated animals (pet collars; note efficacy of pet collars up to 395 days).

iii. *Dermal.* Long-term dermal exposures from treated carpets, flooring, and pets (note that treated furniture is included in the carpet/flooring assessment). Due to the lack of toxicity observed in animal testing, the Agency did not select any short- or intermediate-term dermal endpoints and no dermal risk of concern for these durations is expected. A long-term dermal assessment is included, since EPA selected a long-term dermal endpoint.

iv. *Ingestion of granules or bait by toddlers (acute, episodic event).* For the granular ingestion scenario, it should be noted that the Agency believes that if a toddler were to be exposed to a pellet/granular formulation (i.e., ant bait), the event is most likely to be "episodic," that is, a one-time occurrence and not likely to be repeated. It is not likely that a toddler would repeatedly locate and ingest very small, sand colored granules. For pyriproxyfen, EPA did not select an acute dietary endpoint, since an appropriate endpoint could not be attributed to a single-oral dose; therefore, no acute dietary risk of concern is expected.

Exposure and risk estimates from post-application exposure to indoor crack and crevice treatments are not presented in this assessment, as indoor broadcast treatments (i.e., carpet powders and sprays) are anticipated to have a higher exposure potential. Additionally, the Agency acknowledges that pet owners could retreat the home

environment and/or the pet near the end of the efficacy period identified on the product labels. However, there are no chemical-specific residue data for pyriproxyfen to determine the dissipation rate of residues or whether residues may be additive upon retreatment. Therefore, a tier 1 assessment was performed based on day 0 residues without accounting for daily residue dissipation. EPA anticipates that this assessment is protective as pyriproxyfen residues would be expected to dissipate from day 0 residue values.

#### 4. *Cumulative exposure to substances with a common mechanism of toxicity.*

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

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

#### D. *Safety Factor for Infants and Children*

1. *In general.* 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.

2. *Prenatal and postnatal sensitivity.* Based on the available data, there is no quantitative and qualitative evidence of increased susceptibility observed following *in utero* pyriproxyfen exposure to rats and rabbits or following pre/postnatal exposure in the 2–generation reproduction study.

3. *Conclusion.* There is a complete toxicity data base for pyriproxyfen and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X because there was no evidence of prenatal or postnatal extra sensitivity or increased susceptibility in developmental studies in rats and rabbits, and in reproduction studies in rats. Likewise, there was no quantitative or qualitative evidence of increased susceptibility to rat or rabbit fetuses identified in the guideline prenatal developmental toxicity studies for rats and rabbits. Additionally, in the two non-guideline studies that evaluated perinatal and prenatal development, there was no evidence of quantitative or qualitative increased susceptibility. In one study, when pregnant rats were treated from gestation day 17 to lactation day 20, the resulting toxicity was comparable between adults (clinical signs, decreased body weight gain and food consumption) and offspring (decreased body weight and dilation of the renal pelvis) at the same dose. In the other study, when rats were exposed to pyriproxyfen prior to and in the early stages of pregnancy, no developmental toxicity was seen at the limit dose. Lastly, in the reproduction toxicity study, offspring toxicity (decreased body weight on pups during lactation days 14 to 21) occurred only in the presence of decreases in body weight in parental animals at the same dose level (i.e., comparable toxicity in adults and offspring).

#### *E. Aggregate Risks and Determination of Safety*

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

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

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at

this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An acute dietary RfD for females 13–49 and the general U.S. population, including infants and children, was not selected because an acute oral endpoint attributable to a single-dose exposure could not be identified in the toxicology data base, including maternal toxicity in the developmental toxicity studies. No acute dietary risk is expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyriproxyfen from food will utilize 1.1% of the cPAD for the U.S. population, 2.0% of the cPAD for all infants and 3.9% of the cPAD for children 1–2 years old. Pyriproxyfen is the active ingredient in many registered residential products for flea and tick control on pets and in the home for ant and roach control for indoor and outdoor applications. Based on the use pattern, the residential assessment was performed for toddlers since they are anticipated to have the higher chronic residential exposure to residues of pyriproxyfen. The total chronic food and residential aggregate MOEs range from 850 to 13,000. As these MOEs are greater than 100, the chronic aggregate risk does not exceed EPA's level of concern. In addition, there is potential for chronic dietary exposure to pyriproxyfen in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

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

Population Subgroup	Aggregate MOE (Food + Residential)	Target MOE	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	9,200	100	0.40	0.006	12,000
All infants	1,000	100	0.40	0.006	3,200
Children 1–2 years old	860	100	0.40	0.006	3,100
Children 3–5 years old	940	100	0.40	0.006	10,000

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyriproxyfen.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 26,000 for the U.S. population, 1,800 for all infants (<1 year old), and 1,600 for children (1–2 years old). These aggregate MOEs do not exceed the Agency’s level of concern for aggregate exposure to food and residential uses. In

addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyriproxyfen in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency’s level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Target MOE	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	26,000	100	0.40	0.006	35,000
All infants (<1 year old)	1,800	100	0.40	0.006	9,400
Children (1–2 years old)	1,600	100	0.40	0.006	9,400
Females (13–49 years old)	37,000	00	0.40	0.006	30,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food

and water and intermediate-term exposures for pyriproxyfen.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 9,200 for the U.S. population, 650 for all infants (<1 year old, and 580 for children (1–2 years old). These aggregate MOEs do not exceed the Agency’s level of concern for aggregate

exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyriproxyfen in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency’s level of concern, as shown in Table 6 of this unit:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Target MOE	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. population	9,200	100	0.40	0.006	12,000
All infants (<1 year old)	650	100	0.40	0.006	3,000
Children (1–2 years old)	580	100	0.40	0.006	3,000
Females (13–49 years old)	13,000	100	0.40	0.006	10,000

5. *Aggregate cancer risk for U.S. population.* There was no evidence of carcinogenicity in a 78-week mouse feeding study and a 2-year rat feeding study. Pyriproxyfen was classified as a “Group E” chemical (no evidence of carcinogenicity to humans) by the Agency based on the absence of evidence of carcinogenicity in male and female rats as well as in male and female mice.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that

no harm will result to the general population, and to infants and children from aggregate exposure to pyriproxyfen residues.

**IV. Other Considerations**

*A. Analytical Enforcement Methodology*

In conjunction with the residue studies on cabbage, cauliflower, mustard greens, cantaloupe, cucumber, summer squash, olive, okra, and sugar apple, the petitioner submitted adequate concurrent recovery data for a gas chromatography/nitrogen phosphorous

detector (GC/NPD) method (RM–33P–1–3a) used to determine residues of pyriproxyfen in/on these crops. The method has undergone an adequate radiovalidation, independent laboratory validation (ILV) trial, petition method validation (PMV) trial, and has been forwarded to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Method (PAM) Vol. II (DP Barcode D257337, W. Donovan, 7/1/99). HED concludes that the GC/NPD method RM–33P–1–3a is adequate for enforcement of the recommended

tolerance levels for residues of pyriproxyfen per se in/on Brassica leafy vegetables, cucurbit vegetables, olive, okra, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, birba, fig, avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, and mamey sapote. As tolerances for residues of pyriproxyfen in livestock commodities are not required at this time, enforcement methodology for determining residues in livestock are not required.

MRM testing data have previously been provided (PP#6F04737, DP Barcode D228556, J. Garbus, 5/6/97) for pyriproxyfen. Pyriproxyfen was recovered from fortified apple and cotton samples through protocols A, C, D, E, and F. The results have been forwarded to FDA.

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: griffith.francis@epa.gov.

#### B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of pyriproxyfen in/on any of the crops involved in the proposed new uses. Therefore, international harmonization is not an issue at this time.

#### V. Conclusion

Therefore, the tolerances are established for residues of pyriproxyfen, [2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine], in or on Brassica, head and stem, subgroup 5A; Brassica, leafy greens, subgroup 5B; vegetable, cucurbit, group 9; olive and olive, oil at 0.70, 2.0, 0.10, 1.0, and 2.0 ppm, respectively.

#### 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-2002-0345 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 May 6, 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 telephone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to: Mr. Tompkins, 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-2002-0345, 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](mailto: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 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.

**VIII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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: February 24, 2003.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

2. Section 180.510 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

**§ 180.510 Pyriproxyfen; tolerances for residues.**

- (a) \* \* \*
- (1) \* \* \*

Commodity	Parts per million
* * *	* *
Brassica, head and stem, subgroup 5A .....	0.70
Brassica, leafy greens, subgroup 5B .....	2.0
* * *	* *
Olive .....	1.0
Olive, oil .....	2.0
* * *	* *
Vegetable, cucurbit, group 9 ....	0.10
* * *	* *

\* \* \* \* \*

[FR Doc. 03-5478 Filed 3-6-03; 8:45 am]  
**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2003-0037; FRL-7290-9]

**1,3 Benzene Dicarboxylic Acid, 5-Sulfo-, 1,3-Dimethyl Ester, Sodium Salt, Polymer with 1,3-Benzene Dicarboxylic Acid, 1,4-Benzene Dicarboxylic Acid, Dimethyl 1,4-Benzene Dicarboxylate and 1,2-Ethanediol; Tolerance Exemption**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol; when used as an inert ingredient. Rhodia 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 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol.

**DATES:** This regulation is effective March 7, 2003. Objections and requests for hearings, identified by docket ID number OPP-2003-0037, must be received on or before May 6, 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 XI. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-8380; e-mail address: gandhi.bipin@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide

manufacturer, or antimicrobial pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111), e.g., Crop Production.
- Industry (NAICS 112), e.g., Animal Production.
- Industry (NAICS 311), e.g., Food manufacturing.
- Industry (NAICS 32532), e.g., Pesticide Manufacturing.
- Industry (NAICS 32561), e.g., Antimicrobial Pesticide.

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0037. 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](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 November 15, 2002 (67 FR 69217) (FRL-7280-1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP 2E6515) by Rhodia, Inc., CN 7500, Prospect Plains Rd., Cranbury, NJ 08512-7500. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol; CAS Reg. No. 212842-88-1.

Section 408(c)(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(c)(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 an exemption from the requirement of 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..." and specifies factors EPA is to consider in establishing an exemption.

### III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

### IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCFA, 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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The

definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, oxygen and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to be substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol, also meets, as required, the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's minimum number average molecular weight (NAMW) of 2,580 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic

acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol.

### V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational, non-dietary exposure was possible. The minimum NAMW of 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol is 2,580 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

### VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of the FFDCFA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol share a common mechanism of toxicity with any other chemicals. However, 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol conform to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has

determined that a cumulative risk assessment is not necessary.

#### VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol.

#### VIII. Determination of Safety for Infants and Children

FFDCA 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 unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

#### IX. Other Considerations

##### A. Endocrine Disruptors

There is no available evidence that 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol is an endocrine disruptor.

##### B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

##### C. International Tolerances

The Agency is not aware of any country requiring a tolerance for 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

#### X. Conclusion

Accordingly, EPA finds that exempting residues of 1,3 benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol from the requirement of a tolerance will be safe.

#### XI. 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 the 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-2003-0037 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 May 6, 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](mailto: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 XI.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-2003-0037, 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).

**XII. Statutory and Executive Order Review**

This final rule establishes an exemption from the tolerance requirement 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 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 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.

**XIII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This 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 30, 2003.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

2. In § 180.960 the table is amended by adding alphabetically the following inert ingredient to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

\* \* \* \* \*

Polymers	CAS No.
* * *	* *
1,3 Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2-ethanediol, minimum number average molecular weight (in amu), 2,580	212842-88-1
* * *	* *

[FR Doc. 03-5479 Filed 3-6-03; 8:45 am]

BILLING CODE 6560-50-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 412

[CMS-1177-F2]

RIN 0938-AK69

#### Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Implementation and FY 2003 Rates; Correcting Amendment

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** In the August 30, 2002 issue of the *Federal Register* (67 FR 55954), we published a final rule for the Prospective Payment System for Long Term Care Hospitals. The effective date was October 1, 2002. This correcting amendment corrects a limited number of technical and typographical errors identified in the August 30, 2002 final rule.

**EFFECTIVE DATE:** This correcting amendment is effective March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Tzvi Hefter, (410) 786-4487.

#### SUPPLEMENTARY INFORMATION:

##### Need for Corrections

1. We redesignated § 412.23(e)(2) as § 412.23(e)(2)(ii) in the August 30, 2002 final rule, but failed to make a conforming change to existing § 412.22(h)(3)(ii) of the Code of Federal Regulations (CFR) which contains a cite to § 412.23(e)(2) instead of § 412.23(e)(2)(ii). This incorrect cite, if left uncorrected, would change our policy concerning satellite hospitals. In

order to avoid this result, we are revising § 412.22(h)(3)(ii), to reference § 412.23(e)(2)(ii).

2. When we added § 412.541(d)(1), we inadvertently omitted information on outlier payments. The regulation on interim payments for hospitals not receiving periodic interim payments under the long-term care hospital prospective payment system (LTCH PPS) was designed to conform with the interim payment regulation at § 412.116(d) under the inpatient prospective payment system (IPPS). As it now reads, the paragraph misrepresents CMS outlier policy for the LTCH PPS by prohibiting LTCHs from including outliers on interim bills. As revised, instead of prohibiting appropriate outlier payments for Medicare patients with unusually long lengths of stay, this regulation will now conform to the regulation at § 412.116(d) and allow appropriate outlier payments. Section 412.541(d)(1) is revised by deleting the last sentence and replacing it with the following: "Payment for the interim bill is determined as if the bill were a final discharge bill and includes any outlier payment determined as of the last day for which services have been billed."

3. In the August 30, 2002 final rule, we incorrectly stated two wage index amounts for MSA 3810 in Table 1 on page 56065 of the rule. On page 56065 in the third column (*Full wage index*) of Table 1, the figure 0.8513 is corrected to read 0.9794. On page 56065 in the fourth column (*1/5 wage index*) of Table 1, the figure 0.9703 is corrected to read 0.9959. We established in the August 30, 2002 final rule (67 FR 56018) for the LTCH PPS that the wage data used in calculations for the wage index would be computed based on the same data used by inpatient acute care hospital prospective payment system (IPPS). Wage index values published in the IPPS final rule on August 1, 2002 (67 FR 50155, 50199, and 50217) have been determined to be incorrect. On September 30, 2002, a program memorandum (Transmittal A-02-092) set forth the correct values and presently a correction notice is being prepared for publication for the IPPS wage index values. Since the IPPS data upon which the LTCH wage index for MSA 810 is based has been corrected, this data change would necessarily require a correction in the LTCH wage index for MSA 3810. Publishing this correction provides the accurate wage index adjustment factor under the LTCH PPS that will disclose to providers in this metropolitan statistical area (MSA) how this adjustment will affect their payments.

#### Correction of Errors in the Preamble of August 30, 2002 Final Rule

1. On page 56065 in the third column (*Full wage index*) of Table 1, the figure 0.8513 is corrected to read 0.9794.

2. On page 56065 in the fourth column (*1/5 wage index*) of Table 1, the figure 0.9703 is corrected to read 0.9959.

#### Summary of Technical Corrections to the Regulations Text of the August 30, 2002 Final Rule

1. In the August 30, 2002 final rule, we redesignated § 412.23(e)(2) as § 412.23(e)(2)(ii), but did not make a conforming change to § 412.22(h)(3)(ii). Presently, § 412.22(h)(3)(ii) cites § 412.23(e)(2) instead of § 412.23(e)(2)(ii). This error, which appears to change our policy concerning satellite hospitals, is corrected by revising § 412.22(h)(3)(ii), to reference § 412.23(e)(2)(ii).

2. In the August 30, 2002 final rule (67 FR 56055), we inadvertently omitted part of a sentence in § 412.541(d)(1). Presently, the sentence reads as "Payment for the interim bill is determined as if the bill were a final discharge bill" but does not address outlier payments. This regulation was designed to conform with the policy on billing for outliers on an interim bill of the IPPS, in § 412.116(d). The last sentence of § 412.541(d)(1) is revised to read as follows: "Payment for the interim bill is determined as if the bill were a final discharge bill and includes any outlier payment determined as of the last day for which services have been billed."

#### Waiver of Proposed Rulemaking and Effective Date

We ordinarily publish a correcting amendment of proposed rulemaking in the *Federal Register* to provide a period for public comment before the provisions of a correcting amendment such as this can take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of finding and its reasons in the correcting amendment issued.

We find for good cause that it is unnecessary to undertake notice and public comment procedures because this correcting amendment does not make any substantive policy changes. This document makes technical corrections and conforming changes to the August 30, 2002 final rule (67 FR 55954). Therefore, for good cause, we waive notice and public comment procedures under 5 U.S.C. 553(b)(B). In

addition, since these corrections make no substantive policy changes, LTCHs would not require additional time to prepare to implement these items. Therefore, for good cause, we find it unnecessary to delay the effective date for the changes in this correcting amendment. Consequently, we waive the 30-day delay in effective date for this correcting amendment.

#### List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV part 412 is amended as set forth below:

#### PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.22 is amended by revising paragraph (h)(3)(ii) to read as follows:

##### § 412.22 [Amended]

\* \* \* \* \*

(h) *Satellite facilities.* \* \* \*

(3) \* \* \*

(ii) Any hospital excluded from the prospective payment systems under § 412.23(e)(2)(ii).

\* \* \* \* \*

##### § 412.541 [Amended]

3. Section 412.541 is amended by revising the the final sentence of paragraph (d)(1) to read as follows:

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* Payment for the interim bill is determined as if the bill were a final discharge bill and includes any outlier payment determined as of the last day for which services have been billed.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 3, 2003.

**Ann Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 03-5360 Filed 3-6-03; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 1

RIN 9991-AA36

[Docket No. OST-1999-6189]

#### Organization and Delegation of Powers and Duties, Update of Secretarial Delegations

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA) and to the Under Secretary of Transportation for Security. By this action, the Secretary revokes the delegation of authority to the Federal Motor Carrier Safety Administrator to carry out the provisions of 49 U.S.C. 5103a related to security risk determinations and delegates the authority to the Under Secretary of Transportation for Security to reflect the current organizational posture of the Department of Transportation and to facilitate the orderly transfer of the functions of the Transportation Security Administration (TSA), and the functions of the Secretary related thereto, to the Department of Homeland Security pursuant to section 403 of the Homeland Security Act (HSA).

**EFFECTIVE DATE:** This final rule is effective on March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia A. Burke, Office of the Chief Counsel, MC-CC, (202) 366-0834, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications 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.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>. You can also view and download this document by going to the webpage of the Department's Docket Management System (<http://dms.dot.gov>). On that webpage, click on "search." On the next

page, type in the four-digit docket number shown on the first page of this document. Then click on "search."

#### Background

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, [Public Law 107-56, 115 Stat. 272 at 396, (October 26, 2001)], amended title 49 United States Code, by adding a new section 5103a, relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. Section 5103a(a)(1) provides that "a State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license."

Section 101 of the Aviation and Transportation Security Act, (ATSA)[Public Law 107-71, 115 Stat. 597, (November 19, 2001)], amended title 49 United States Code, by adding a new section 114, creating the TSA and providing that the Under Secretary shall be responsible for security in all modes of transportation, including security responsibilities not only over aviation security, but over other modes of transportation that are exercised by the Department. See 49 U.S.C. 114(d)(2). On December 28, 2001, the Secretary of Transportation issued a final rule amending Part 1 of title 49 CFR, to reflect the new DOT operating administration and its general responsibilities and on July 23, 2002, the TSA issued a final rule (49 CFR 1502.1) stating the responsibilities of the Under Secretary of Transportation for Security, including security responsibilities over all modes of transportation. The Secretary's decision to transfer primary responsibility over the security determination function to TSA takes into account the statutory changes brought about by the ATSA and the HSA. However, the FMCSA will continue to have § 5103a related responsibilities under the commercial driver's license (CDL) program (49 U.S.C. 31305(a)(5)(C)). The revised delegations more accurately reflect the respective roles and responsibilities of the two administrations.

This final rule updates the delegations of authority from the Secretary to the FMCSA Administrator and the Under Secretary of Transportation for Security to reflect the organizational posture of the Department. As such, the final rule

is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b).

Furthermore, this rule does not impose substantive requirements on the public. Also, this final rule facilitates the Department of Transportation's ability to orderly transfer the functions of the TSA and the functions of the Secretary related thereto to the Department of Homeland Security pursuant to section 403 of the Homeland Security Act of 2002. Consequently, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective on the date of publication in the **Federal Register**.

#### Regulatory Analyses and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

##### B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

##### C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

##### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which

amends the CFR to reflect a delegation of authority from the Secretary to the FMCSA Administrator and to the Undersecretary of Transportation for Security, will not have a significant economic impact on a substantial number of small businesses.

##### E. Paperwork Reduction Act

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

##### F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

##### List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of Title 49, Code of Federal Regulations, is amended as follows:

#### PART 1—[AMENDED]

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

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–56, 115 Stat. 396; Pub. L. 107–71, 115 Stat. 597.

2. Add § 1.68 to read as follows:

##### § 1.68 Delegations to the Under Secretary of Transportation for Security for the Transportation Security Administration.

(a) Carry out the functions vested in the Secretary by 49 U.S.C. 5103a relating to security risk determinations for the issuance of licenses to operate motor vehicles transporting hazardous materials in commerce.

(b) [Reserved]

3. In § 1.73 revise paragraphs (d)(2) and (e) to read as follows:

##### § 1.73 Delegations to the Administrator of the Federal Motor Carrier Safety Administration.

\* \* \* \* \*

(d) \* \* \*

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5112 relating to highway routing of hazardous materials; 49 U.S.C. 5109 relating to motor carrier safety permits, except subsection (f); 49 U.S.C. 5113 relating to unsatisfactory safety ratings of motor carriers; 49 U.S.C. 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 49 U.S.C. 5105(e) relating to inspections of motor vehicles carrying hazardous

material; and 49 U.S.C. 5119 relating to uniform forms and procedures.

(e) Carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 relating to commercial motor vehicle operators, including the requirement of section 31305(a)(5)(C) that States issue a hazardous materials endorsement to a commercial driver's license only after being informed pursuant to 49 U.S.C. 5103a that the applicant does not pose a security risk warranting denial of the license.

\* \* \* \* \*

Issued in Washington, DC, on this 27th day of February, 2003.

**Norman Y. Mineta,**

*Secretary of Transportation.*

[FR Doc. 03–5288 Filed 3–6–03; 8:45 am]

BILLING CODE 4910–62–P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 300

[Docket No. 030124019–3040–02; I.D. 010703B]

RIN 0648–AQ67

##### Pacific Halibut Fisheries; Catch Sharing Plan

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

**ACTION:** Final rule; annual management measures for Pacific halibut fisheries and approval of catch sharing plan, and final rule; changes to the Catch Sharing Plan and to sport fishing management.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A and implementing regulations for 2003. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC).

**DATES:** The amendment to § 300.63(a)(3)(ii) is effective March 1, 2003. The final rule for the annual management measures for Pacific halibut fisheries and approval of catch sharing plan is effective March 1, 2003.

**ADDRESSES:** Copies of the CSP and the environmental assessment/regulatory impact review (EA/RIR) are available at NMFS Northwest Region, 7600 Sand Point Way NE., Seattle, WA 98115-0070. The CSP is also available on the Northwest Region home page at <http://www.nwr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907-586-7228 or Jamie Goen, 206-526-6140.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule also is accessible via the Internet at the Office of the Federal Register's Web site at <http://www.access.gpo.gov/su--docs/aces/aces140.htm>.

**Background**

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2003 under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773-773k). Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2003 IPHC annual management measures are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements. These management measures are effective until superceded by the 2004 management measures that NMFS will publish in the **Federal Register**.

The IPHC held its annual meeting in Victoria, British Columbia, on January 21-24, 2003, and adopted regulations for 2003. The substantive changes to the previous IPHC regulations (67 FR 12885, March 20, 2002) include:

1. New commercial fishery opening date of March 1;
2. New commercial fishery closing date of November 15;
3. Exemption from clearance requirements in Area 4 for those vessel operators using a NMFS-approved vessel monitoring system and complying with the requirements of 50 CFR 679.28(f)(3), (f)(4), and (f)(5); receiving a confirmation number from NOAA Enforcement prior to fishing; and transmitting until all halibut caught are landed;

4. Opening dates for the Area 2A commercial directed halibut fishery;

5. Revising the term "vessel" to "harvesting vessel" for purposes of allowing fillets from legally landed and retained fish to be possessed only aboard a vessel, in port, up to 1800 hours local time on the calendar day following the offload;

6. Using the term "landed" halibut rather than "delivered" halibut for purposes of meeting the requirement of retaining records by vessel operators;

7. Updating coordinates for the Cape Spencer light used for the Area 2C-3A boundary (58°11'54" N, 136°38'24" W) to agree with the U.S. Coast Guard light list;

8. Allowing Area 4D Community Development Quota (CDQ) harvest to be taken in Area 4E;

9. Adoption of the revised Area 2A CSP;

10. New depth-based closed areas for the Area 2A commercial directed halibut fishery, and;

11. Season dates for the Area 2A tribal fishery.

The IPHC recommended to the governments of Canada and the United States catch limits for 2003 totaling 74,920,000 lb, identical to the regulatory area catch limits in 2002. The IPHC staff reported on the assessment of the Pacific halibut stock in 2002. Some significant changes occurred in the assessment as a result of changes in the underlying data being analyzed and the persistence of smaller sizes at the same age in the central part of the halibut range. These changes created some uncertainty about differences in the biomass of the stock estimated from the current and the previous assessment. Analyses were conducted for the 2002 assessment to ensure that the stock is not in any danger of being overharvested. However, the staff needs to resolve these technical issues of the assessment over the next year. In addition, IPHC staff is investigating a new harvest policy that may result in greater stability in the yield from the fishery and insulate the process of setting catch limits from technological changes in the assessment. This harvest policy will also need to be reviewed by the IPHC. The resolution of the technical issues of the assessment may indicate a larger estimate of biomass in the central region of the stock distribution, but application of the proposed harvest policy might dictate slightly lower yields. Because these two processes may be somewhat counterbalancing, the staff wishes to complete its investigations before recommending any changes to present catch limits or the harvest policy. While

the trajectory of the halibut stock biomass is downward, the biomass is still above the long-term average level and is expected to remain above this level for the next several years.

This action also implements the CSP for regulatory Area 2A. This plan was developed by the PFMC under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention and to adopt such regulations as may be necessary to implement the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested that the PFMC allocate halibut catches should such allocation be necessary.

**Catch Sharing Plan for Area 2A**

The PFMC's Area 2A CSP allocates the halibut catch limit for Area 2A among treaty Indian, non-treaty commercial, and non-treaty sport fisheries in and off Washington, Oregon, and California. Under the CSP, 35 percent of the Area 2A total allowable catch (TAC) is allocated to Washington treaty Indian tribes in Subarea 2A-1, and 65 percent is allocated to non-treaty fisheries in Area 2A. Treaty fisheries are divided into commercial fisheries, and ceremonial and subsistence fisheries. The allocation to non-treaty fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The non-treaty commercial allocation is further divided between a directed halibut longline fishery (85 percent) and an incidental catch allowance in the salmon troll fishery (15 percent). The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon and California. North of Point Chehalis, WA (46°53'18" N. lat.), halibut may be retained by longline vessels participating in the limited entry, primary sablefish fishery. Incidental halibut retention in the primary sablefish fishery is only allowable when the overall Area 2A TAC is above

900,000 lb (408.2 mt), which it is in 2003. [NOTE: New for 2003, regulations for the Pacific Coast groundfish fishery require participants in the primary sablefish fishery in which halibut may be retained to follow depth-based management restrictions (*i.e.*, closed areas) as described in a proposed rule published in the **Federal Register** on January 7, 2003 (68 FR 936). The final rule for the Pacific Coast groundfish fishery, including depth-based management measures, will publish in the **Federal Register**. The CSP also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

For 2003, PFMC recommended changes to the CSP to modify the Pacific halibut fisheries in Area 2A in 2003 and beyond pursuant to recommendations from the Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW). These changes to the CSP will implement closed areas for the Washington North Coast sport fishery subarea and the nontreaty commercial halibut fishery to protect yelloweye rockfish, allocate subarea halibut quota between the May and June sport seasons in Washington's North Coast subarea, cap the incidental halibut retention allocation for the primary sablefish fishery at 70,000 lb (31.8 kg) when halibut is available to that fishery, move the season ending date for Oregon sport fisheries in the North Central and South Central areas from September 30 to October 31, provide more flexibility for inseason sport fishery management, and revise the names of Oregon sport seasons.

A complete description of the PFMC recommended changes to the CSP, notice of a draft Environmental Assessment and Regulatory Impact Review (EA/RIR), and proposed sport fishery management measures were published in the **Federal Register** on February 6, 2003 (68 FR 6103) with a request for public comments by February 18, 2003. No public comments were received. Therefore, NMFS has finalized the EA/RIR, made a finding of no significant impact, and approved the changes to the CSP as proposed. Copies of the complete CSP for Area 2A as modified and the final EA/RIR are available from the NMFS Northwest Regional Office (see **ADDRESSES**).

The ODFW held public workshops (after the IPHC set the Area 2A quota) in early February 2003, to develop recommendations on the opening dates of the sport fisheries. WDFW did not hold public meetings after the IPHC annual meeting in 2003 because the catch limit and season structure are the

same as in 2002. The WDFW and ODFW sent letters to NMFS providing the following recommendations on the opening dates and season structure for managing the sport fisheries consistent with the CSP.

WDFW recommended a May 8 to July 18 season for eastern Puget Sound and a May 22 to August 1 season for western Puget Sound, 5 days per week (closed Tuesday and Wednesday). The recommended number of fishing days is based on an analysis of past harvest patterns in this fishery and meets the requirements of the CSP for the overall Puget Sound sport fishery subarea. For the Washington North Coast subarea, WDFW has recommended a season opening May 1 and continuing until the May sub-quota is taken, 5 days per week (closed Sunday and Monday), and a second season opening June 18 and continuing until the remaining quota is projected to be taken, 5 days per week (closed Sunday and Monday). WDFW also recommended changing the North Coast subarea's closed area to a "C-shaped" area, known as the Yelloweye Rockfish Conservation Area, in accordance with (f)(1)(ii) of the CSP (see **ADDRESSES**). This change in the size and shape of the closed area is intended to protect yelloweye rockfish, an overfished groundfish species that coexists with Pacific halibut. The "C-shaped" area has been determined to be an area with high interception of yelloweye rockfish in recreational fisheries. This area will be closed to recreational groundfish and halibut fishing. For the Washington South Coast subarea, WDFW has recommended a season opening May 1 and continuing until the quota is taken, 5 days per week (closed Friday and Saturday) in the offshore area and 7 days per week in the nearshore area. WDFW recommendations for the Puget Sound, North Coast and South Coast Washington subareas meet the requirements of the CSP.

Both WDFW and ODFW have recommended opening the Columbia River subarea on May 1 and continuing the season until the quota has been reached, 7 days per week. This recommended season meets the requirements of the CSP.

ODFW recommended starting the nearshore fishery in the Oregon Central Coast and South Coast subareas, on May 1 and continuing the season until the sub-quota for that fishery is taken, 7 days per week. For the all-depth fisheries in those subareas, ODFW recommended a 6 day spring season of May 8, 9, 10, 15, 16, and 17, based on an analysis of past harvest rates. ODFW further recommended a 4-day summer

all-depth season of August 1, 2, 8, and 9. If the spring season does not take the entire spring sub-quota for these subareas, ODFW recommended these additional potential opening dates: June 19, 20, 21, 26, 27, and 28. If the summer season does not take the entire summer sub-quota for these subareas, ODFW recommended these additional potential opening dates: August 22 and 23, September 5, 6, 19, and 20, October 17 and 18. These recommendations meet the requirements of the CSP for these subareas.

For the southernmost subarea, south of Humber Mountain, Oregon, ODFW recommended opening this subarea on May 1 and continuing the season until September 30, 7 days per week. This recommended season meets the requirements of the CSP.

NMFS is implementing sport fishing management measures in Area 2A based on recommendations from the states in accordance with the CSP.

#### **Technical Correction to Halibut Regulations**

With this rule, NMFS will revise the Federal halibut regulations at 50 CFR 300.63, which authorize vessels with IPHC licenses that are operating in the primary sablefish longline fishery north of Pt. Chehalis to land halibut taken incidentally in that fishery. The technical correction will alter the regulations to more clearly state that no halibut taken in this fishery may be landed south of Pt. Chehalis. This is a minor clarification and has no substantive effect on the environment or the regulated community because it only clarifies where halibut taken incidentally in the primary sablefish longline fishery may be landed.

#### **Annual Halibut Management Measures**

The annual management measures that follow for the 2003 Pacific halibut fishery are identical to those recommended by the IPHC and approved by the Secretary of State.

#### **2003 Pacific Halibut Fishery Regulations**

Regulations respecting the Convention Between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

##### *1. Short Title*

These regulations may be cited as the Pacific Halibut Fishery Regulations.

##### *2. Application*

(1) These Regulations apply to persons and vessels fishing for halibut

in, or possessing halibut taken from the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 21 apply to commercial fishing for halibut.

(4) Section 22 applies to the United States treaty Indian fishery in subarea 2A-1.

(5) Section 23 applies to customary and traditional fishing in Alaska.

(6) Section 24 applies to sport fishing for halibut.

(7) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

### 3. Interpretation

(1) In these Regulations,

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) *Authorized clearance personnel* means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) *Commercial fishing* means fishing, other than treaty Indian ceremonial and subsistence fishing as referred to in section 22, and customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to National Marine Fisheries Service regulations published at 50 CFR Code of Federal Regulations Part 300, the resulting catch of which is sold or bartered; or is intended to be sold or bartered;

(e) *Commission* means the International Pacific Halibut Commission;

(f) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) *Fishing period limit* means the maximum amount of halibut that may

be retained and landed by a vessel during one fishing period;

(i) *Land or offload* with respect to halibut, means the removal of halibut from the catching vessel;

(j) *License* means a halibut fishing license issued by the Commission pursuant to section 4;

(k) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) *Operator*, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(m) *Overall length* of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(n) *Person* includes an individual, corporation, firm, or association;

(o) *Regulatory area* means an area referred to in section 6;

(p) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(q) *Sport fishing* means all fishing other than commercial fishing, treaty Indian ceremonial and subsistence fishing as referred to in section 22, and customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to National Marine Fisheries Service regulations published in 50 Code of Federal Regulations Part 300;

(r) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(s) *VMS transmitter* means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.<sup>1</sup>

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

(3) In these Regulations, all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

### 4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on

<sup>1</sup> Call NOAA Enforcement Division, Alaska Region, at 907-586-7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both.

(a) The directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 and the incidental commercial fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(b) The incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) A license issued in respect of a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery or the incidental commercial fishery during the sablefish fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 p.m. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, Code of Federal Regulations, Part 904.

#### 5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

- (a) Closed areas;
- (b) Fishing periods;

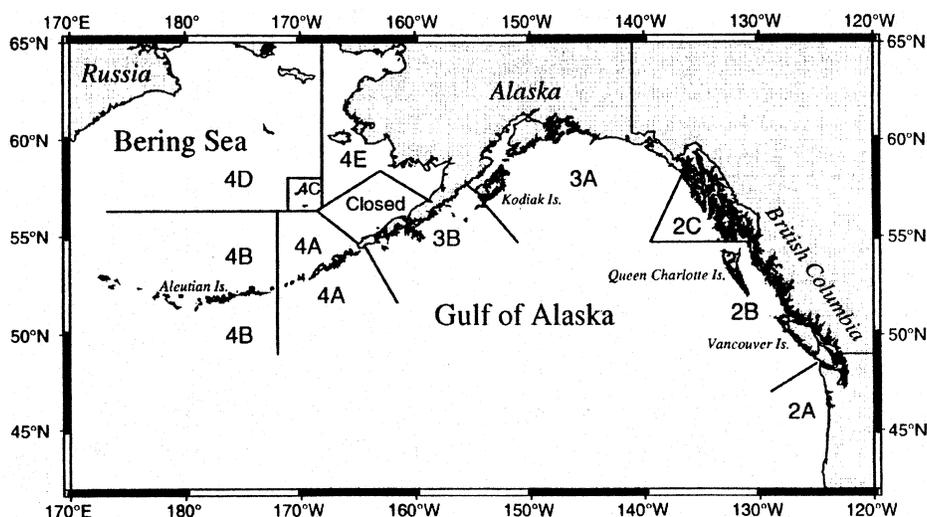
- (c) Fishing period limits;
- (d) Gear restrictions;
- (e) Recreational bag limits;
- (f) Size limits; or
- (g) Vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, Provincial fishery officials, and the media.

#### 6. Regulatory Areas

The following areas shall be regulatory areas (see Figure 1) for the purposes of the Convention:



**Figure 1. Regulatory areas for the Pacific halibut fishery.**

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11'54" N. lat., 136°38'24" W. long.) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41'15" N. lat., 155°35'0" W. long.) to Cape Ikolik (57°17'17" N. lat., 154°47'18" W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. lat., 154°08'44" W. long.), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending

150° true from Cape Lutke (54°29'00" N. lat., 164°20'00" W. long.) and south of 54°49'00" N. lat. in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00'00" W. long. and south of 56°20'00" N. lat.;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20'00" N. lat.;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00'00" W. long., south of 58°00'00" N. lat., and west of 168°00'00" W. long.;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B,

north and west of Area 4C, and west of 168°00'00" W. long.;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00'00" W. long., and south of 65°34'00" N. lat.

#### 7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13,

provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to December 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed fishery<sup>2</sup> shall begin at 0800 hours and terminate at 1800 hours local time on June 25, July 9, July 23, August 6, August 20, September 3, and September 17 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery<sup>3</sup> is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS.

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 1 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

<sup>2</sup> The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53'18" N. lat.) under regulations promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

<sup>3</sup> The incidental fishery during the directed, fixed gear sablefish season is restricted to waters that are north of Point Chehalis, Washington (46°53'18" N. lat.) under regulations promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved referred to in paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00'00" N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36'0" N. lat., 164°55'42" W. long.) to a point at 56°20'00" N. lat., 168°30'00" W. long.; thence to a point at 58°21'25" N. latitude, 163°00'00" W. long.; thence to Strogonof Point (56°53'18" N. lat., 158°50'37" W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00'00" N. lat. and 54°49'00" N. lat. are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limit	
	Pounds	Metric tons
2A: Directed commercial, and incidental commercial during salmon troll fishery ...	262,000	118.8
2A: Incidental commercial during sablefish fishery	70,000	31.7
2B .....	11,750.0	5,328.8
2C .....	8,500.00	3,854.9
3A .....	22,630.0	10,263.0
3B .....	17,130.0	7,768.7
4A .....	4,970.00	2,254.0
4B .....	4,180.00	1,895.7
4C .....	2,030.00	920.6
4D .....	2,030.00	920.6
4E .....	390,000	176.9

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all Individual Fishing Quotas and all Community Development Quotas issued by the National Marine Fisheries Service have been taken, or November 15, whichever is earlier:

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified

for the Area 4D and Area 4E Community Development Quotas. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

**12. Fishing Period Limits**

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut

on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall length (in feet)	Vessel class
1-25 .....	A
26-30 .....	B
31-35 .....	C
36-40 .....	D
41-45 .....	E
46-50 .....	F

Overall length (in feet)	Vessel class
51-55 .....	G
56+ .....	H

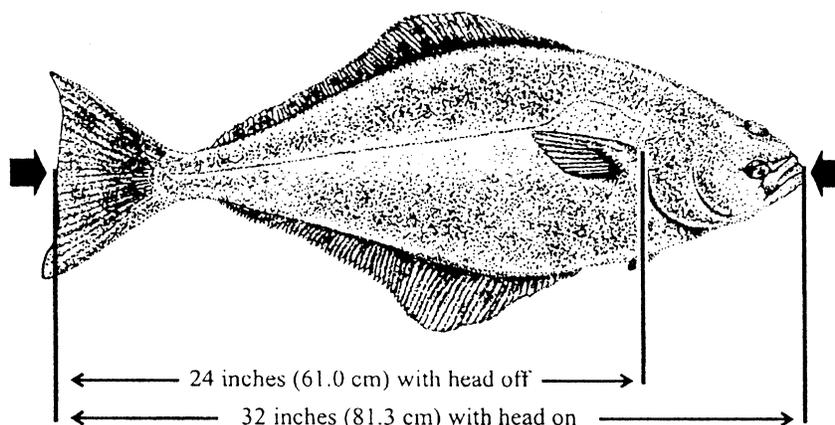
(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

**13. Size Limits**

(1) No person shall take or possess any halibut that

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.



**Figure 2. Minimum commercial size.**

(2) No person shall possess on board a vessel a halibut filleted or a halibut that has been mutilated, or otherwise disfigured in any manner that prevents the determination of whether the halibut complies with the size limits specified in this section, except that this paragraph shall not prohibit the possession on board a vessel:

(a) Of halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at Title 50, Code of Federal Regulations, Part 679; and

(b) Of fillets from halibut that have been offloaded in accordance with

section 17 may be possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload.<sup>4</sup>

(3) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

**14. Careful Release of Halibut**

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and

returned to the sea with a minimum of injury by:

(a) Hook straightening;  
(b) Cutting the ganglion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

**15. Vessel Clearance in Area 4**

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), (16), or (17).

<sup>4</sup>DFO has more restrictive regulations therefore section 13(2)b does not apply to fish caught in Area 2B or landed in British Columbia.

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs 5, 8, and 9, the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be

obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that is used to fish for halibut only in Areas 4D or 4E and lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(17) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR sections 679.28(f)(3), (4) and (5); and

(b) The operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800-304-4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

#### 16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations in the Groundfish/Individual Fishing Quota (IFQ) Daily Fishing Longline and Pot Gear Logbook provided by NMFS, or Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association, or the Alaska Department of Fish and Game (ADF&G) longline-pot logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the state vessel number (ADF&G or Washington Department of Fish and Wildlife or Oregon Department of Fish and Wildlife or California Department of Fish and Game vessel number);

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during

transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Halibut Fishery logbook provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the Department of Fisheries and Ocean's vessel number;

(b) The date(s) upon which the fishing gear is set or retrieved;

(c) The latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) The number of skates deployed or retrieved, and number of skates lost; and

(e) The total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(f) Mailed to the Department of Fisheries and Oceans (white copy) within seven days of offloading; and

(g) Mailed to the International Pacific Halibut Commission (yellow copy) within seven days of the final offload if not collected by an International Pacific Halibut Commission employee.

(8) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24-hours of offloading.

(9) No person shall make a false entry in a log referred to in this section.

#### 17. Receipt and Possession of Halibut

(1) No person shall receive halibut from a United States vessel that does not have on board the license required by section 4.

(2) No person shall offload halibut from a vessel unless the gills and

entrails have been removed prior to offloading.<sup>5</sup>

(3) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(4) A registered buyer (as that term is defined in regulations promulgated by the National Marine Fisheries Service and codified at Title 50, Code of Federal Regulations, Part 679) who receives halibut harvested in Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on Federal catch reports: date of offload; name of vessel; vessel number; scale weight obtained at the time of offloading, including the weight (in pounds) of halibut purchased by the registered buyer, the weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the weight of halibut (in pounds) retained for personal use or for future sale, and the weight (in pounds) of halibut discarded as unfit for human consumption.

(5) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on state fish tickets: the date of offload, vessel number, total weight obtained at the time of offload including the weight (in pounds) of halibut purchased, the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits, the weight of halibut (in pounds) retained for personal use or for future sale, and the weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date, locality, name of vessel, the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of Individual Vessel Quotas (IVQs); pounds retained for personal use; and pounds discarded as unfit for human consumption.

(7) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (4), (5), and (6) of section 17.

(8) A copy of the fish tickets or catch reports referred to in paragraphs (4), (5), and (6) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(9) No person shall possess any halibut taken or retained in contravention of these Regulations.

(10) When halibut are landed to other than a commercial fish processor the records required by paragraph (5) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (8).

(11) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

#### 18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations<sup>6</sup> published at title 50, Code of Federal Regulations, section 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

<sup>5</sup> DFO did not adopt this regulation therefore section 17 paragraph 2 does not apply to fish caught in Area 2B.

<sup>6</sup> Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished even if some of the catch occurred earlier in a different area.

(4) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel when in compliance with paragraph (3) and if halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

#### 19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear.

(2) No person shall possess halibut taken with any gear other than hook and line gear.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's name;

(b) The vessel's state license number; or

(c) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain and possess, but not sell or barter, halibut taken with trawl gear only as authorized by the Prohibited Species Donation regulations of the National Marine Fisheries Service.

#### 20. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut

(a) May be retained for personal use; or

(b) May be sold if it complies with the provisions of section 13.

#### 21. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

#### 22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in subarea 2A-1 by members of United States treaty Indian

tribes located in the State of Washington shall be regulated under regulations promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

(2) Subarea 2A-1 includes all waters off the coast of Washington that are north of 46°53'18" N. lat. and east of 125°44'00" W. long., and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs 7 and 8 of section 19, apply to commercial fishing for halibut in subarea 2A-1 by the treaty Indian tribes.

(4) Commercial fishing for halibut in subarea 2A-1 is permitted with hook and line gear from March 1 through November 15, or until 456,500 lb (207.0 mt) is taken, whichever occurs first.

(5) Ceremonial and subsistence fishing for halibut in subarea 2A-1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 27,000 pounds (12.2 metric tons).

#### 23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by the National Marine Fisheries Service and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

(3) Section 23 is in effect only when National Marine Fisheries Service publishes subsistence (customary and traditional use) regulations in 50 CFR part 300.

#### 24. Sport Fishing for Halibut

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) In all waters off Alaska:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(3) In all waters off British Columbia:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(4) In all waters off California, Oregon, and Washington:

(a) The total allowable catch of halibut shall be limited to 232,499 lb (105.4 mt) in waters off Washington and 262,001 pounds (118.8 metric tons) in waters off California and Oregon;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in Section 25. All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17'30" N. lat., 124°23'70" W. long. north to 48°24'10" N. lat., 124°23'70" W. long., there is no quota. This area is managed by setting a season that is projected to result in a catch of 63,278 lb (29 mt).

(A) The fishing season in eastern Puget Sound (east of 123°49'30" W. long.) is May 8 through July 18 and the fishing season in western Puget Sound (west of 123°49'30" W. long.) is May 22 through August 1, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (4)(b)(i) of this section and north of the Queets River (47°31'42" N. lat.), the quota for landings into ports in this area is 113,915 lb (52 mt).

(A) The fishing seasons are:

(1) Commencing May 1 and continuing 5 days a week (Tuesday through Saturday) until 82,019 lb (37 mt) are estimated to have been taken and the season is closed by the Commission.

(2) From June 18, and continuing thereafter for 5 days a week (Tuesday through Saturday) until the overall area quota of 113,915 lb (52 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area southwest of Cape Flattery is closed to sport fishing for halibut. The "C-shaped" yelloweye rockfish conservation area that is closed to recreational halibut fishing is defined by the following coordinates in the order listed:

48°18' N. lat.; 125°18' W. long.;  
48°18' N. lat.; 124°59' W. long.;  
48°11' N. lat.; 124°59' W. long.;  
48°11' N. lat.; 125°11' W. long.;  
48°04' N. lat.; 125°11' W. long.;  
48°04' N. lat.; 124°59' W. long.;  
48°00' N. lat.; 124°59' W. long.;  
48°00' N. lat.; 125°18' W. long.;

and connecting back to 48°18' N. lat.; 125°18' W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10" N. lat.), the quota for landings into ports in this area is 48,623 lb (22 mt).

(A) The fishing season commences on May 1 and continues 5 days a week (Sunday through Thursday) in all waters, and commences on May 1 and continues 7 days a week in the area from Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long., until 48,623 lb (22 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46'00" N. lat.), the quota for landings into ports in this area is 11,923 lb (5 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 11,923 lb (5 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01'08" N. lat.), the quota for landings into ports in this area is 230,639 lb (104.6 mt).

(A) The fishing seasons are:

(1) The first season commences May 1 and continues every day through October 31, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until the combined subquotas of the north central and south central inside 30-fathom fisheries (19,797 lb (9.0 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(2) The second season is open on May 8, 9, 10, 15, 16, and 17. The projected catch for this season is 156,835 lb (71.1 mt). If sufficient unharvested catch remains for additional fishing days, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: June 19, 20, 21, 26, 27, and 28. If a decision is made inseason by NMFS to allow fishing on any of these reopening dates, notice of the opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the

reopening dates unless the date is announced on the NMFS hotline.

(3) If sufficient unharvested catch remains, the third season will open on August 1, 2, 8, and 9 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 229,103 lb (103.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An announcement will be made on the NMFS hotline in mid-July as to whether the fishery will be open on August 1, 2, 8, and 9. No halibut fishing will be allowed on these dates unless the dates are announced on the NMFS hotline. If the harvest during this opening does not achieve the 229,103 lb (103.9 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: August 22 and 23, September 5, 6, 19, and 20, October 17 and 18. If a decision is made inseason to allow fishing on one or more of these reopening dates, notice of the reopening date will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the reopening dates unless the date is announced on the NMFS hotline.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and Humbug Mountain, Oregon (42°40'30" N. lat.), the quota for landings into ports in this area is 18,261 lb (8.3 mt).

(A) The fishing seasons are:

(1) The first season commences May 1 and continues every day through October 31, in the area inside the 30-fathom (55-m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until the combined subquotas of the north central and south central inside 30-fathom fisheries (19,797 lb (9.0 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(2) The second season is open on May 8, 9, 10, 15, 16, and 17. The projected catch for this season is 14,609 lb (6.6 mt). If sufficient unharvested catch remains for additional fishing days, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: June 19, 20, 21, 26, 27, and 28. If a decision is made inseason by NMFS to allow fishing on any of these reopening dates, notice of the opening will be announced on the NMFS hotline

(206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the reopening dates unless the date is announced on the NMFS hotline.

(3) If sufficient unharvested catch remains, the third season will open on August 1, 2, 8, and 9 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 229,103 lb (103.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An announcement will be made on the NMFS hotline in mid-July as to whether the fishery will be open on August 1, 2, 8, and 9. No halibut fishing will be allowed on these dates unless the dates are announced on the NMFS hotline. If the harvest during this opening does not achieve the 229,103 lb (103.9 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the potential season reopening dates will be: August 22 and 23, September 5, 6, 19, and 20, October 17 and 18. If a decision is made inseason to allow fishing on one or more of these reopening dates, notice of the reopening date will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the reopening dates unless the date is announced on the NMFS hotline.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(vii) In the area south of Humburg Mountain, Oregon (42°40'30" N. lat.) and off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 7,860 lb (3.6 mt).

(A) The fishing season will commence on May 1 and continue every day through September 30.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(c) The Commission shall determine and announce closing dates to the public for any area in which the subquotas in this Section are estimated to have been taken.

(d) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(5) Any minimum overall size limit promulgated under IPHC or NMFS

regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(6) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(7) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(8) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

(9) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(10) The possession limit for halibut on land in Area 2A is two daily bag limits.

(11) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(12) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(13) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(14) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(15) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

#### 25. Flexible Inseason Management Provisions in Area 2A

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), or their designees, is authorized to modify regulations during the season after making the following determinations.

(a) The action is necessary to allow allocation objectives to be met.

(b) The action will not result in exceeding the catch limit for the area.

(c) If any of the sport fishery subareas north of Cape Falcon, OR are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to another Washington sport subarea.

(d) If any of the sport fishery subareas south of Leadbetter Point, WA are not

projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(a) Modification of sport fishing periods;

(b) Modification of sport fishing bag limits;

(c) Modification of sport fishing size limits;

(d) Modification of sport fishing days per calendar week; and

(e) Modification of subarea quotas north of Cape Falcon, OR.

(3) Notice procedures.

(a) Actions taken under this section will be published in the **Federal Register**.

(b) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206-526-6667 or 800-662-9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(a) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(b) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(c) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and

will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA.

#### 26. Fishery Election in Area 2A

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The sport fishery under Section 24;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 8 and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.323(a)(2); or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(2) No person shall fish for halibut in the sport fishery in Area 2A under Section 24 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 in Area 2A.

#### 27. Area 2A Non-Treaty Commercial Fishery Closed Area

Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N. lat. The closed area follows approximate depth contours.

Coordinates for the specific boundaries that approximate the depth contours are as follows:

(1) Between the U.S./Canada border and 46°16' N. lat., the eastern boundary of the RCA extends to the shoreline.

(2) Between 46°16' N. lat. and 40°10' N. lat., the RCA is defined along an eastern, inshore boundary approximating 27 fm (49 m). The 27 fm depth contour used between 46°16' N. lat. and 40°10' N. lat. as an eastern boundary for the RCA is defined by straight lines connecting all of the following points in the order stated:

- (1) 46°16.00' N. lat., 124°12.39' W. long.;
- (2) 46°14.85' N. lat., 124°12.39' W. long.;
- (3) 46°3.95' N. lat., 124°3.64' W. long.;
- (4) 45°43.14' N. lat., 124°0.17' W. long.;
- (5) 45°23.33' N. lat., 124°1.99' W. long.;
- (6) 45°9.54' N. lat., 124°1.65' W. long.;
- (7) 44°39.99' N. lat., 124°8.67' W. long.;
- (8) 44°20.86' N. lat., 124°10.31' W. long.;
- (9) 43°37.11' N. lat., 124°14.91' W. long.;
- (10) 43°27.54' N. lat., 124°18.98' W. long.;
- (11) 43°20.68' N. lat., 124°25.53' W. long.;
- (12) 43°15.08' N. lat., 124°27.17' W. long.;
- (13) 43°6.89' N. lat., 124°29.65' W. long.;
- (14) 43°1.02' N. lat., 124°29.70' W. long.;
- (15) 42°52.67' N. lat., 124°36.10' W. long.;
- (16) 42°45.96' N. lat., 124°37.95' W. long.;
- (17) 42°45.80' N. lat., 124°35.41' W. long.;
- (18) 42°38.46' N. lat., 124°27.49' W. long.;
- (19) 42°35.29' N. lat., 124°26.85' W. long.;
- (20) 42°31.49' N. lat., 124°31.40' W. long.;
- (21) 42°29.06' N. lat., 124°32.24' W. long.;
- (22) 42°14.26' N. lat., 124°26.27' W. long.;
- (23) 42°4.86' N. lat., 124°21.94' W. long.;
- (24) 42°0.10' N. lat., 124°20.99' W. long.;
- (25) 42°0.00' N. lat., 124°21.03' W. long.;
- (26) 41°56.33' N. lat., 124°20.34' W. long.;
- (27) 41°50.93' N. lat., 124°23.74' W. long.;
- (28) 41°41.83' N. lat., 124°16.99' W. long.;

(29) 41°35.48' N. lat., 124°16.35' W. long.;

(30) 41°23.51' N. lat., 124°10.48' W. long.;

(31) 41°4.62' N. lat., 124°14.44' W. long.;

(32) 40°54.28' N. lat., 124°13.90' W. long.;

(33) 40°40.37' N. lat., 124°26.21' W. long.;

(34) 40°34.03' N. lat., 124°27.36' W. long.;

(35) 40°28.88' N. lat., 124°32.41' W. long.;

(36) 40°24.82' N. lat., 124°29.56' W. long.;

(37) 40°22.64' N. lat., 124°24.05' W. long.;

(38) 40°18.67' N. lat., 124°21.90' W. long.;

(39) 40°14.23' N. lat., 124°23.72' W. long.; and

(40) 40°10.00' N. lat., 124°17.22' W. long.;

(3) Between the U.S./Canada border and 40°10' N. lat., the RCA is defined along a western, offshore boundary approximating 100 fm (183 m). The 100 fm depth contour used north of 40°10' N. lat. as a western boundary for the RCA is defined by straight lines connecting all of the following points in the order stated:

- (1) 48°15.00' N. lat., 125°41.00' W. long.;
- (2) 48°14.00' N. lat., 125°36.00' W. long.;
- (3) 48°09.50' N. lat., 125°40.50' W. long.;
- (4) 48°08.00' N. lat., 125°38.00' W. long.;
- (5) 48°05.00' N. lat., 125°37.25' W. long.;
- (6) 48°02.60' N. lat., 125°34.70' W. long.;
- (7) 47°59.00' N. lat., 125°34.00' W. long.;
- (8) 47°57.26' N. lat., 125°29.82' W. long.;
- (9) 47°59.87' N. lat., 125°25.81' W. long.;
- (10) 48°01.08' N. lat., 125°24.53' W. long.;
- (11) 48°02.08' N. lat., 125°22.98' W. long.;
- (12) 48°02.97' N. lat., 125°22.89' W. long.;
- (13) 48°04.47' N. lat., 125°21.75' W. long.;
- (14) 48°06.11' N. lat., 125°19.33' W. long.;
- (15) 48°07.95' N. lat., 125°18.55' W. long.;
- (16) 48°09.00' N. lat., 125°18.00' W. long.;
- (17) 48°11.31' N. lat., 125°17.55' W. long.;
- (18) 48°14.60' N. lat., 125°13.46' W. long.;
- (19) 48°16.67' N. lat., 125°14.34' W. long.;
- (20) 48°18.73' N. lat., 125°14.41' W. long.;
- (21) 48°19.98' N. lat., 125°13.24' W. long.;
- (22) 48°22.95' N. lat., 125°10.79' W. long.;
- (23) 48°21.61' N. lat., 125°02.54' W. long.;

- (24) 48°23.00' N. lat., 124°49.34' W. long.;
- (25) 48°17.00' N. lat., 124°56.50' W. long.;
- (26) 48°06.00' N. lat., 125°00.00' W. long.;
- (27) 48°04.62' N. lat., 125°01.73' W. long.;
- (28) 48°04.84' N. lat., 125°04.03' W. long.;
- (29) 48°06.41' N. lat., 125°06.51' W. long.;
- (30) 48°06.00' N. lat., 125°08.00' W. long.;
- (31) 48°07.28' N. lat., 125°11.14' W. long.;
- (32) 48°03.45' N. lat., 125°16.66' W. long.;
- (33) 47°59.50' N. lat., 125°18.88' W. long.;
- (34) 47°58.68' N. lat., 125°16.19' W. long.;
- (35) 47°56.62' N. lat., 125°13.50' W. long.;
- (36) 47°53.71' N. lat., 125°11.96' W. long.;
- (37) 47°51.70' N. lat., 125°09.38' W. long.;
- (38) 47°49.95' N. lat., 125°06.07' W. long.;
- (39) 47°49.00' N. lat., 125°03.00' W. long.;
- (40) 47°46.95' N. lat., 125°04.00' W. long.;
- (41) 47°46.58' N. lat., 125°03.15' W. long.;
- (42) 47°44.07' N. lat., 125°04.28' W. long.;
- (43) 47°43.32' N. lat., 125°04.41' W. long.;
- (44) 47°40.95' N. lat., 125°04.14' W. long.;
- (45) 47°39.58' N. lat., 125°04.97' W. long.;
- (46) 47°36.23' N. lat., 125°02.77' W. long.;
- (47) 47°34.28' N. lat., 124°58.66' W. long.;
- (48) 47°32.17' N. lat., 124°57.77' W. long.;
- (49) 47°30.27' N. lat., 124°56.16' W. long.;
- (50) 47°30.60' N. lat., 124°54.80' W. long.;
- (51) 47°29.26' N. lat., 124°52.21' W. long.;
- (52) 47°28.21' N. lat., 124°50.65' W. long.;
- (53) 47°27.38' N. lat., 124°49.34' W. long.;
- (54) 47°25.61' N. lat., 124°48.26' W. long.;
- (55) 47°23.54' N. lat., 124°46.42' W. long.;
- (56) 47°20.64' N. lat., 124°45.91' W. long.;
- (57) 47°17.99' N. lat., 124°45.59' W. long.;
- (58) 47°18.20' N. lat., 124°49.12' W. long.;
- (59) 47°15.01' N. lat., 124°51.09' W. long.;
- (60) 47°12.61' N. lat., 124°54.89' W. long.;
- (61) 47°08.22' N. lat., 124°56.53' W. long.;
- (62) 47°08.50' N. lat., 124°54.95' W. long.;
- (63) 47°01.92' N. lat., 124°57.74' W. long.;
- (64) 47°01.14' N. lat., 124°59.35' W. long.;
- (65) 46°58.48' N. lat., 124°57.81' W. long.;
- (66) 46°56.79' N. lat., 124°56.03' W. long.;
- (67) 46°58.01' N. lat., 124°55.09' W. long.;
- (68) 46°55.07' N. lat., 124°54.14' W. long.;
- (69) 46°59.60' N. lat., 124°49.79' W. long.;
- (70) 46°58.72' N. lat., 124°48.78' W. long.;
- (71) 46°54.45' N. lat., 124°48.36' W. long.;
- (72) 46°53.99' N. lat., 124°49.95' W. long.;
- (73) 46°54.38' N. lat., 124°52.73' W. long.;
- (74) 46°52.38' N. lat., 124°52.02' W. long.;
- (75) 46°48.93' N. lat., 124°49.17' W. long.;
- (76) 46°41.50' N. lat., 124°43.00' W. long.;
- (77) 46°34.50' N. lat., 124°28.50' W. long.;
- (78) 46°29.00' N. lat., 124°30.00' W. long.;
- (79) 46°20.00' N. lat., 124°36.50' W. long.;
- (80) 46°18.00' N. lat., 124°38.00' W. long.;
- (81) 46°17.52' N. lat., 124°35.35' W. long.;
- (82) 46°17.00' N. lat., 124°22.50' W. long.;
- (83) 46°15.02' N. lat., 124°23.77' W. long.;
- (84) 46°12.00' N. lat., 124°35.00' W. long.;
- (85) 46°10.50' N. lat., 124°39.00' W. long.;
- (86) 46°8.90' N. lat., 124°39.11' W. long.;
- (87) 46°0.97' N. lat., 124°38.56' W. long.;
- (88) 45°57.04' N. lat., 124°36.42' W. long.;
- (89) 45°54.29' N. lat., 124°40.02' W. long.;
- (90) 45°47.19' N. lat., 124°35.58' W. long.;
- (91) 45°41.75' N. lat., 124°28.32' W. long.;
- (92) 45°34.16' N. lat., 124°24.23' W. long.;
- (93) 45°27.10' N. lat., 124°21.74' W. long.;
- (94) 45°17.14' N. lat., 124°17.85' W. long.;
- (95) 44°59.51' N. lat., 124°19.34' W. long.;
- (96) 44°49.30' N. lat., 124°29.97' W. long.;
- (97) 44°45.64' N. lat., 124°33.89' W. long.;
- (98) 44°33.00' N. lat., 124°36.88' W. long.;
- (99) 44°28.20' N. lat., 124°44.72' W. long.;
- (100) 44°13.16' N. lat., 124°56.36' W. long.;
- (101) 43°56.34' N. lat., 124°55.74' W. long.;
- (102) 43°56.47' N. lat., 124°34.61' W. long.;
- (103) 43°42.73' N. lat., 124°32.41' W. long.;
- (104) 43°30.92' N. lat., 124°34.43' W. long.;
- (105) 43°17.44' N. lat., 124°41.16' W. long.;
- (106) 43°7.04' N. lat., 124°41.25' W. long.;
- (107) 43°3.45' N. lat., 124°44.36' W. long.;
- (108) 43°3.90' N. lat., 124°50.81' W. long.;
- (109) 42°55.70' N. lat., 124°52.79' W. long.;
- (110) 42°54.12' N. lat., 124°47.36' W. long.;
- (111) 42°43.99' N. lat., 124°42.38' W. long.;
- (112) 42°38.23' N. lat., 124°41.25' W. long.;
- (113) 42°33.02' N. lat., 124°42.38' W. long.;
- (114) 42°31.89' N. lat., 124°42.04' W. long.;
- (115) 42°30.08' N. lat., 124°42.67' W. long.;
- (116) 42°28.27' N. lat., 124°47.08' W. long.;
- (117) 42°25.22' N. lat., 124°43.51' W. long.;
- (118) 42°19.22' N. lat., 124°37.92' W. long.;
- (119) 42°16.28' N. lat., 124°36.11' W. long.;
- (120) 42°5.65' N. lat., 124°34.92' W. long.;
- (121) 42°0.00' N. lat., 124°35.27' W. long.;
- (122) 42°00.00' N. lat., 124°35.26' W. long.;
- (123) 41°47.04' N. lat., 124°27.64' W. long.;
- (124) 41°32.92' N. lat., 124°28.79' W. long.;
- (125) 41°24.17' N. lat., 124°28.46' W. long.;
- (126) 41°10.12' N. lat., 124°20.50' W. long.;
- (127) 40°51.41' N. lat., 124°24.38' W. long.;
- (128) 40°43.71' N. lat., 124°29.89' W. long.;
- (129) 40°40.14' N. lat., 124°30.90' W. long.;

- (130) 40°37.35' N. lat., 124°29.05' W. long.;
- (131) 40°34.76' N. lat., 124°29.82' W. long.;
- (132) 40°36.78' N. lat., 124°37.06' W. long.;
- (133) 40°32.44' N. lat., 124°39.58' W. long.;
- (134) 40°24.82' N. lat., 124°35.12' W. long.;
- (135) 40°23.30' N. lat., 124°31.60' W. long.;
- (136) 40°23.52' N. lat., 124°28.78' W. long.;
- (137) 40°22.43' N. lat., 124°25.00' W. long.;
- (138) 40°21.72' N. lat., 124°24.94' W. long.;
- (139) 40°21.87' N. lat., 124°27.96' W. long.;
- (140) 40°21.40' N. lat., 124°28.74' W. long.;
- (141) 40°19.68' N. lat., 124°28.49' W. long.;
- (142) 40°17.73' N. lat., 124°25.43' W. long.;
- (143) 40°18.37' N. lat., 124°23.35' W. long.;
- (144) 40°15.75' N. lat., 124°26.05' W. long.;
- (145) 40°16.75' N. lat., 124°33.71' W. long.;
- (146) 40°16.29' N. lat., 124°34.36' W. long.; and
- (147) 40°10.00' N. lat., 124°21.12' W. long.

#### 28. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

#### Classification

##### IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, the notice-and-comment and delay-in-effective date requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of the effectiveness and content of the IPHC regulations, 5 U.S.C. 553(a)(1). Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

##### Catch Sharing Plan for Area 2A

An EA/RIR was prepared on the proposed changes to the CSP. NMFS has determined that the proposed changes to the CSP and the management measures implementing the CSP

contained in these regulations will not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

At the proposed rule stage, the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification or on the economic impacts of the rule. No regulatory flexibility analysis has been prepared.

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause to waive the requirement to provide a 30-day delay in effectiveness (5 U.S.C. 553(d)) because it is contrary to the public interest to delay the effectiveness date of this rule for 30 days. This rule must be made effective for the opening of the 2003 Pacific halibut fishing season on March 1, 2003. Delaying the opening of the fishing season is contrary to the public interest because it would cause unnecessary economic burden on fishery participants due to loss of fishing opportunity. Because the annual quotas and management measures are ultimately determined by an international commission, the IPHC, the AA is constrained and cannot respond by publishing the final rule until after the IPHC has adopted the annual quotas and management measures for the year. NMFS's implementation of changes to the CSP could not begin until after January 24, 2003, when the IPHC adopted annual quotas and management measures for 2003. There was not enough time between when the IPHC adopted the annual quotas and management measures for 2003 and the scheduled March 1, 2003, start of the fishing season to publish the regulations in the **Federal Register** with enough time for a 30-day delay in effectiveness. In addition, good cause exists to waive the 30-day delay in effectiveness for the minor technical amendment to 50 CFR 300.63 pursuant to 5 U.S.C. 553(d)(3) because this amendment only clarifies the regulatory language and does not include a substantive change to the regulations.

#### List of Subjects in 50 CFR part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

**Authority:** 16 U.S.C. 773–773k.

Dated: February 27, 2003

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS, SUBPART E—PACIFIC HALIBUT FISHERIES

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

2. Section 300.63, paragraph (a)(3)(ii) is revised to read as follows:

#### § 300.63 Catch sharing plans, local area management plans, and domestic management measures.

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(ii) It is unlawful for any person to possess or land halibut south of 46°53'18" N. lat. that were taken and retained as incidental catch authorized by this section in the directed longline sablefish fishery.

\* \* \* \* \*

[FR Doc. 03–5171 Filed 3–3–03; 3:18 pm]

**BILLING CODE 3510–22–P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 030303A]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

**ACTION:** Trip limit reduction.

**SUMMARY:** NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

**DATES:** This rule is effective 12:01 a.m., local time, March 5, 2003, through June

30, 2003, unless changed by further notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Mark Godcharles, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Mark.Godcharles@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with hook-and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(2), from the date that 75 percent of the southern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone will be reached on March 4, 2003. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the

southern Florida west coast subzone effective 12:01 a.m., local time, March 5, 2003. The 500-lb (227-kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2003), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone that, from November 1 through March 31, extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat. (a line directly west from the Monroe/Collier County, FL boundary), i.e., the area off Collier County.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to reduce the trip limit constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under Executive Order 12866.

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

Dated: March 3, 2003.

**John H. Dunnigan,**

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

[FR Doc. 03-5471 Filed 3-4-03; 2:44 pm]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 03114012-3046-02; I.D. 121902F]

**RIN 0648-AQ46**

**Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Area Closure to Trawl, Pot, and Hook-and-Line Fishing in Waters off Cape Sarichef**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to seasonally close a portion of the waters located near Cape Sarichef in the Bering Sea subarea to directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear. This action is necessary to support NMFS research on the effect of fishing on the localized abundance of Pacific cod. It is intended to further the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Effective March 15, 2003.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durrall, or by calling the Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown at (907) 586-7228, or melanie.brown@noaa.gov.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

In October 2002, the Council adopted a proposed regulatory amendment to implement a seasonal closure to directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in a portion of the waters off

Cape Sarichef in the Bering Sea subarea. The purpose of this action is to support a NMFS research project investigating the effect of commercial fishing on Pacific cod abundance in localized areas. This study is an integral part of a NMFS comprehensive research program designed to evaluate effects of fishing on the foraging behavior of Steller sea lions. The western distinct population segment (DPS) of Steller sea lions is listed as endangered under the Endangered Species Act and is likely to be adversely affected by the Atka mackerel, pollock, and Pacific cod fisheries. Steller sea lion protection measures are currently implemented to ensure that the pollock, Atka mackerel, and Pacific cod fisheries are not likely to jeopardize the continued existence of or adversely modify or destroy critical habitat for the western DPS of Steller sea lions (68 FR 204, January 2, 2003).

Currently, the information available to evaluate alternative methods for protecting Steller sea lions and their critical habitat is very limited. Improved information could enhance the effectiveness and efficiency of existing protection measures. NMFS and other management agencies and organizations have undertaken numerous research initiatives to learn more about Steller sea lions and interactions with their environment, including fishery related effects potentially associated with the ongoing decline of the western DPS of Steller sea lions.

The goal of the study is to evaluate the effects of commercial trawl fishing on Pacific cod and to test a localized depletion hypothesis. This hypothesis states that the commercial fisheries by depleting the local Steller sea lion prey may adversely affect the critical habitat of Steller sea lions. This study is designed as a comparison between sites within the area subject to intensive seasonal trawling and control sites within a nearby zone where trawling is prohibited and requires that experimental pot gear be deployed before and after the period of intense trawl fishing for Pacific cod. NMFS will deploy pot fishing gear in the restriction area during March 15 through March 31, a time period that historically includes a less intense rate of fishing during the winter trawl fishery for Pacific cod. This time period would reduce the risk of trawl gear disturbing the experimental pot gear. Pot loss or displacement would lead to economic losses to NMFS and would reduce the quality of the information gathered in the study. The commercial pot and hook-and-line gear closures are necessary to ensure that observed fishing effects are due to trawl fishing and not to additional fishing

effort by hook-and-line and pot vessels moving into the area due to the trawl closure. A concern also exists that pot and hook-and-line vessels would enter areas historically fished by trawl gear. A complete description of the study is available in the EA/RIR/IRFA for this action (see **ADDRESSES**).

This final rule imposes a seasonal ban on all directed groundfish fishing by vessels using trawl, pot, or hook-and-line gear in waters located outside the existing 10-nm no-trawl area around Cape Sarichef and inside the boundary of the following coordinates joined in order by straight lines:

54°30' N lat., 165°14' W long.;  
54°35' N lat., 165°26' W long.;  
54°48' N lat., 165°04' W long.;  
54°44' N lat., 164°56' W long.; and,  
54°30' N lat., 165°14' W long.

Cape Sarichef is located at coordinates 164°56.8' W long. and 54°34.30' N lat. See Figure 21 in the regulatory language below.

This fishing restriction will be in effect annually during the period of March 15 through March 31 in the years 2003 through 2006. The Council will review the experimental results after March 2003 to decide whether any changes to the rule are needed in 2004 through 2006.

The proposed rule for this action was published in the **Federal Register** on January 23, 2003 (68 FR 3225). No comments were received during the 15-day public review and comment period, and no changes are made from the proposed rule in the final rule.

#### Classification

NMFS has determined that the seasonal adjustments of fishery closure this rule implements is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

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

Nothing in this action results in any changes in reporting or recordkeeping requirements.

Species listed under the Endangered Species Act (ESA) are present in the action area. According to an informal consultation completed on November 25, 2002, no listed species are likely to be adversely affected by this action.

The analysis for this action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

An IRFA was prepared prior to publication of the proposed rule. The proposed rule was published in the **Federal Register** on January 23, 2003 (68 FR 3225), and included a summary of the IRFA. The public comment period

ended on February 7, 2003. No comments were received on the IRFA. The entities that will be regulated by this action are the catcher vessels and catcher processors that would have fished in the treatment area in the second half of March, and that will not be able to do so from 2003 through 2006. These include vessels using trawl, hook-and-line, and pot gear. The numbers of small and large entities active in Alaskan statistical area 655430 in the second half of March for each year from 1998 through 2001 ranged between 21 in 2000 and 57 in 1998. This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

NMFS considered three alternatives to the proposed action. The status quo would not have accomplished the objectives of this action. A second alternative would have restricted trawling activities during the same period in an "arc" shaped treatment area that overlaps the treatment area in the preferred alternative. However, because of some differences in shape, the area in this alternative restricts trawling activity more than is necessary to increase the experimental results. Closing the area to trawling, but allowing an influx of hook-and-line and pot gear, may confound the experimental results and may lead to gear conflicts when the treatment area is reopened to trawling in early April. These negative impacts are mitigated by the preferred alternative which adjusts the area of the arc to avoid certain areas of particular concern to fishermen and prevents new entry by other gear users. A third alternative would have used the same treatment area as the second alternative, but would have restricted hook-and-line and pot activity as well as trawl activity. However, because of some differences in shape, the area in this alternative restricts trawling activity more than is necessary to increase the experimental results. This negative impact is mitigated by the preferred alternative which adjusts the area of the arc to avoid areas of particular concern to fishermen.

This action must be effective by March 15, 2003, to facilitate NMFS' experiments to evaluate the effects of commercial trawl fishing on Pacific cod and to help determine whether commercial fisheries adversely affect the critical habitat of Steller sea lions by depleting the local Steller sea lion prey. The 16-day closure is necessary to ensure the quality of the information gathered, to prevent losses to NMFS from gear interactions, and to minimize disruption to trawl fishermen who have historically used this area. NMFS

selected the time period from March 15 – 31 for this experiment because it is historically a period of reduced fishing activity between the two periods of intense trawling activity. This time period also is expected to minimize gear conflicts. NMFS worked with the affected industry at the October 2002 Council meeting to tailor the closed area to minimize disruptions to fishing activity while accomplishing the goals of the experiment. Delaying this action for 30 days would unnecessarily jeopardize the experiment by preventing the collection of data during this 16–day trawling period. Accordingly, the need to publish this measure in a timely manner constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 28, 2003.

**William T. Hogarth,**  
*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons discussed in the preamble, 50 CFR part 679 is amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105 277; Sec. 3027, Pub. L. 106 31, 113 Stat. 57.

2. In § 679.22, paragraph (a)(11) is revised to read as follows:

**§679.22 Closures.**

\* \* \* \* \*

(a) \* \* \*

(11) *Cape Sarichef Research Restriction Area (applicable through*

*March 31, 2006)*(i) *Description of Cape Sarichef Research Restriction Area.* The Cape Sarichef Research Restriction Area is all waters located outside of the 10 nm no trawl area around Cape Sarichef, as described in Tables 4 and 5 to this part, and inside the boundary of the following coordinates joined in order by straight lines (Figure 21 to part 679):

- 54°30' N lat., 165°14' W long.;
- 54°35' N lat., 165°26' W long.;
- 54°48' N lat., 165°04' W long.;
- 54°44' N lat., 164°56' W long.; and,
- 54°30' N lat., 165°14' W long.

(ii) Closure. The Cape Sarichef Research Restriction Area is closed from March 15 through March 31 to directed fishing for groundfish by vessels named on a Federal Fisheries Permit issued under § 679.4(b) and using trawl, pot, or hook-and-line gear.

\* \* \* \* \*

3. Figure 21 to part 679 is added to read as follows:

**BILLING CODE 3510–22–S**

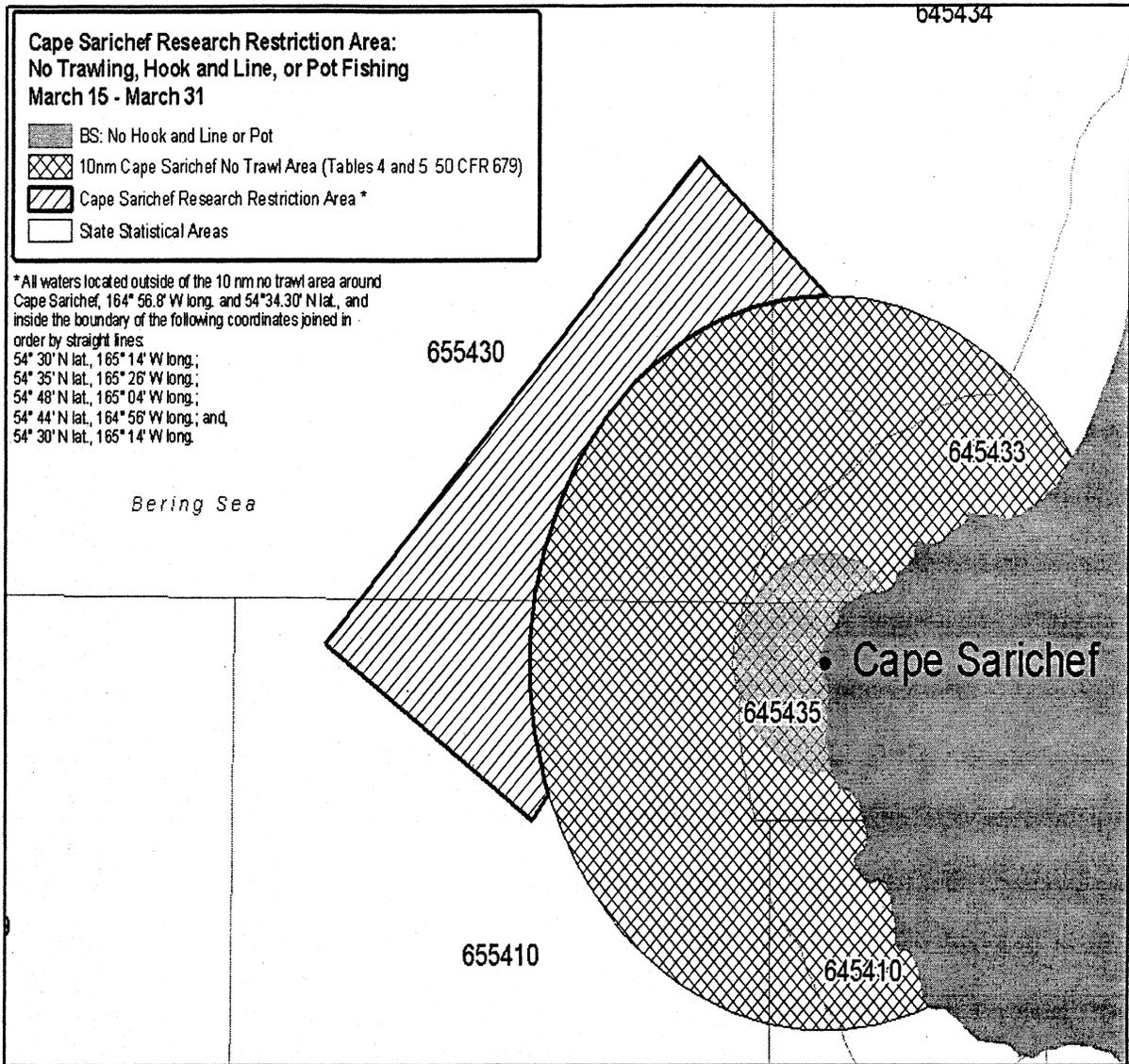


Figure 21 Cape Sarichef Research Restriction Area (Applicable through March 31, 2006)

[FR Doc. 03-5173 Filed 3-3-03; 3:16 pm]

BILLING CODE 3510-22-C

# Proposed Rules

Federal Register

Vol. 68, No. 45

Friday, March 7, 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 AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 317 and 327

[Docket No. 00-036W]

RIN 0583-AC85

#### Product Labeling: Defining United States Cattle and United States Fresh Beef Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is withdrawing an advance notice of proposed rulemaking (ANPR) entitled "Product Labeling: Defining United States Cattle and United States Fresh Beef Products," which was published in the **Federal Register** on August 7, 2001. In the ANPR, the Agency requested comments on the need for regulations to clarify the definition of "United States cattle" and "United States fresh beef products," and whether such products should bear labeling claims that are different from the claims that are permitted under FSIS' current policy. Under FSIS policy, beef products that are made from animals that are documented to have been born, raised, slaughtered, and prepared in the United States are permitted to be labeled as USA products. The country-of-origin labeling provisions (Section 10816) in the Farm Security and Rural Investment Act of 2002 (the Farm Bill)<sup>1</sup> supplant the issues raised in the ANPR and, therefore, FSIS is withdrawing the ANPR.

**ADDRESSES:** Send an original and two copies of comments to the FSIS Docket Clerk, Docket # 00-036W, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700. Any comments will be available for public inspection in the Docket Room from

8:30 a.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, FSIS, by telephone at (202) 205-0279 or by fax at (202) 205-3625.

**SUPPLEMENTARY INFORMATION:**

#### Background

FSIS published the ANPR (66 FR 41160) in response to the Conference Report accompanying the Agriculture Appropriations for 2000.<sup>2</sup> The report directed the Secretary of Agriculture, in consultation with the affected industries, to promulgate regulations to define which cattle and fresh beef products are "Products of the U.S.A." The report also directed the Secretary to determine the terminology that would best reflect in labeling that such beef products are, in fact, U.S. products. The report stated that clarifying regulations would facilitate the development of voluntary, value-added promotion programs that benefit U.S. producers, business, industry, consumers, and commerce.

Under the mandate of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), FSIS issues regulations to ensure that labeling statements about the origin of a product are truthful, accurate, and not misleading. Under FSIS regulations, producers and processors wishing to make such labeling statements on the labels of products shipped from Federal establishments must submit documentation that verifies that the statements are truthful and accurate.

The Department's Agriculture Marketing Service (AMS) has the authority to establish voluntary programs under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) to verify/certify the origin of animals, which can be reflected in labeling statements. However, producers wishing to make such statements are not required to have their production practices verified/certified by an AMS program. In 1998, AMS proposed program guidelines to certify that livestock, meat, and meat products are eligible to be labeled as "U.S. Beef" because they are derived from animals that were born, raised, slaughtered, and

prepared in the United States. There was to be a fee for this service, however, and no firm took advantage of it.

#### Provisions in the 2002 Farm Bill

On May 13, 2002, the President signed the Farm Bill into law. The new law amends the Agriculture Marketing Act of 1946 to require retailers to inform consumers of the country-of-origin of covered commodities at the point of final retail sale. The term "covered commodity" is defined in the law as muscle cuts of beef (including veal), lamb, and pork; ground beef, lamb, and pork; wild and farm-raised fish and shellfish; perishable agricultural commodities (fresh fruits and vegetables); and peanuts. The Act directs the Secretary, through AMS, to implement the requirements by September 30, 2004.

On October 11, 2002, AMS published a notice in the **Federal Register** (67 FR 63367) entitled "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946." In accordance with the notice, during the interim period between the signing of the law and its implementation date, compliance with the guidelines is voluntary. One of the provisions of the Farm Bill is that a retailer of beef, lamb, and pork may designate the covered meat commodity as having originated in the United States only if it is "exclusively born, raised, and slaughtered in the United States."

As a result of the enactment of the Farm Bill, FSIS is withdrawing the ANPR and will not proceed with further regulatory action pursuant to this rulemaking.

#### Summary of Comments on the ANPR

FSIS received 1,036 comments on the 2001 ANPR from trade associations, consumer groups, farmers unions of various states, the Canadian Government, the U.S. Chamber of Commerce, and citizens/consumers. More than 900 comments were from write-in campaigns by cattle producers/consumers who support the definition for labeling purposes as "born, raised, slaughtered, and processed (prepared) in the United States." There was almost no support for any other labeling terminology, no support for a petition

<sup>1</sup> Public Law 107-171 (May 13, 2002).

<sup>2</sup> Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2000 (Public Law 106-78 (October 23, 1999)).

submitted by the beef industry that suggested that cattle born outside the United States and finished in U.S. feedlots for at least 100 days be allowed to be labeled as "Product of the U.S.A.," and a strong interest in maintaining the existing FSIS policy. According to one respondent, any change in the existing policy of FSIS would be costly and damaging to the industry, provide no real benefit for consumers, and undermine U.S. efforts in international negotiations.

Many respondents opposed any change in FSIS' country-of-origin labeling policy simply because no change was warranted. One commenter said that there is no convincing evidence that there is a problem that needs to be addressed by additional Federal regulation. The comment went on to say that applying the current definition for "USA Beef" and "Fresh American Beef" more broadly to country-of-origin labels such as "Product of the USA" is not necessary and would be disruptive. It concluded that substantiation and verification of "born, raised, slaughtered, and prepared in the United States" would be unreliable and expensive since there is no national tracking system for cattle in this country.

A trade association director commented that the introduction of new rules for a single product category would not be helpful or acceptable. The comment stated that it would only add to the inconsistencies and confusion for industry, regulatory, and U.S. Customs Service officials. In addition, the commenter said such a change would set an undesirable precedent for further processed and other types of products.

Although there was minimal support for a mandatory program, most commenters strongly believed that a labeling program should be kept voluntary. One commenter stated that mandatory labeling should be restricted to protection of consumer health and safety. Others cautioned that what is acceptable for a voluntary labeling program would be unacceptable as a mandatory program. Voluntary labeling of U.S. beef will be market driven in private sector retail and foodservice channels, said the commenter. USDA should provide certification and audit services for alternative U.S. labels and allow competitive market forces to determine the merit of various labels in the marketplace, the commenter concluded.

Many of the commenters discussed the inconsistency of USDA's geographic labeling policies, the variety of the claims used to certify U.S. origin, and the differences in regulations governing

domestic and foreign products. Some called the policy confusing but acceptable, because it was consistent with international practices. Others maintained that it was incumbent upon USDA to authorize a single, universal term.

Several respondents who opposed the meat industry petition, referred to above, mentioned a fear of Foot and Mouth Disease and Bovine Spongiform Encephalopathy. One commenter said that it would be devastating to the U.S. livestock industry and to consumer confidence if an infected animal or product entered the United States and received a "Made in USA" label.

As a result of Congress' action, FSIS is withdrawing the advance notice of proposed rulemaking. Comments on "country-of-origin" labeling should be submitted in response to the AMS published notice entitled "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities and Peanuts under the Authority of the Agricultural Marketing Act of 1946."

#### Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS Web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at

<http://www.fsis.usda.gov/oa/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Signed in Washington, DC on March 3, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03-5363 Filed 3-6-03; 8:45 am]

BILLING CODE 3410-DM-P

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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket No. EE-RM/TP-02-001]

RIN 1904-AB12

#### Office of Energy Efficiency and Renewable Energy; Energy Conservation Program for Consumer Products: Test Procedure for Refrigerators and Refrigerator-Freezers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking contains an amendment to the test procedure for measuring the energy consumption of refrigerators and refrigerator-freezers for models with a long-time automatic defrost function. The amendment gives credit for a slight improvement in energy efficiency because the defrost heater on such models of refrigerators and refrigerator-freezers is not required to heat the evaporator from its coldest temperature. This change in the test procedure will encourage use of efficiency enhancing technology. Because the amendment to the rule is not expected to receive any significant adverse comments, the amendment is also being issued as a direct final rule in this **Federal Register**. **DATES:** Public comments on the amendment proposed herein will be accepted until April 7, 2003.

**ADDRESSES:** Written comments should be addressed to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW, Washington, DC 20585-0121. E-mail address: [Brenda.Edwards-Jones@ee.doe.gov](mailto:Brenda.Edwards-Jones@ee.doe.gov). You should identify all such documents both on the envelope and on the documents as Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators and Refrigerator-Freezers, Docket No. EE-RM/TP-02-001.

Copies of public comments received may be read in the Freedom of

Information Reading Room (Room No. 1E-190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-9611, e-mail:

*Michael.Raymond@ee.doe.gov*; or

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507, e-mail: *Francine.Pinto@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** This Notice of Proposed Rulemaking (NPR) proposes an amendment to the test procedure for measuring the energy consumption of refrigerators and refrigerator-freezers. The amendment changes the calculation of the test time period for long-time automatic defrost to allow for a control capable of timing defrost to occur other than during a compressor "on" cycle, thereby taking advantage of the natural warming of the evaporator during an "off" cycle, and saving additional energy. The amendment has no effect on the testing of refrigerators and refrigerator-freezers that do not have a long-time automatic defrost system.

Today, the Department of Energy (Department) is also publishing, elsewhere in this issue of the **Federal Register**, a direct final rule that makes the change to this test procedure that is being proposed in this NPR. As explained in the preamble of the direct final rule, the Department considers this amendment to be uncontroversial and unlikely to generate any significant adverse or critical comments. If no significant adverse or critical comments are received by the Department on the amendment, the direct final rule will become effective on the date specified in that rule, and there will be no further action on this proposal. If significant adverse or critical comments are timely received on the direct final rule, the direct final rule will be withdrawn. The public comments will then be addressed in a subsequent final rule based on the rule proposed in this NPR (which is the same as the rule set forth in the direct final rule). Because the Department will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule amendment, *see* the information provided in the direct final rule in this **Federal Register**.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on February 28, 2003.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 03-5405 Filed 3-6-03; 8:45 am]

**BILLING CODE 6450-01-P**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 203**

**[Regulation C; Docket No. R-1145]**

**Home Mortgage Disclosure**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule; official staff commentary.

**SUMMARY:** In 2002, the Board revised Regulation C and imposed new data collection requirements with an effective date of January 1, 2004. This proposal would revise the official staff commentary to Regulation C to provide transition rules for applications received before January 1, 2004, on which final action is taken on or after January 1, 2004.

**DATES:** Comments must be received on or before April 8, 2003.

**ADDRESSES:** Comments should refer to Docket No. R-1145 and should be mailed to Jennifer Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may also be delivered, between 8:45 a.m. and 5:15 p.m., to the Board's mail facility in the West Courtyard, located on 21st Street between Constitution and C Street, NW. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

**FOR FURTHER INFORMATION CONTACT:** John C. Wood, Counsel, Kathleen C. Ryan, Senior Attorney, or Dan S. Sokolov, Attorney, Division of Consumer and

Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3667 or (202) 452-2412. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801-2810) has three purposes. One is to provide the public and government officials with data that will help show whether lenders are serving the housing needs of the neighborhoods and communities in which they are located. A second purpose is to help public officials target public investment to promote private investment where it is needed. A third purpose is to provide data that assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA accordingly requires certain depository and for-profit nondepository lenders to collect, report, and disclose data about originations, purchases, and refinancings of home purchase and home improvement loans. Lenders must also report data about applications that did not result in originations.

The Board's Regulation C implements HMDA. 12 CFR part 203. Regulation C generally requires that lenders report data about:

- *Each application or loan*, including the application date; the action taken and the date of that action; the loan amount; the loan type and purpose; and, if the loan is sold, the type of purchaser;
- *Each applicant or borrower*, including ethnicity, race, sex, and income; and
- *Each property*, including location and occupancy status.

Lenders report this information to their supervisory agencies on an application-by-application basis using a loan application register format (HMDA/LAR) set forth in appendix A to the regulation. Each application must be recorded within 30 calendar days after the end of each calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application) on the lender's HMDA/LAR. Lenders must make their HMDA/LARs—with certain fields redacted to preserve applicants' privacy—available to the public. The Federal Financial Institutions Examination Council (FFIEC), acting on behalf of the supervisory agencies, compiles the reported information and prepares an individual disclosure statement for each institution, aggregate reports for all covered lenders in each metropolitan

area, and other reports. These disclosure statements and reports are available to the public.

## II. The 2002 Revisions to Regulation C

The Board published final revisions to Regulation C on February 15, 2002, and June 27, 2002 (“the 2002 revisions”). 67 FR 7222; 67 FR 43218. The 2002 revisions include a requirement that lenders report the difference between a loan’s annual percentage rate (APR) and the yield on Treasury securities with comparable maturity periods, if the difference equals or exceeds thresholds set by the Board; whether a loan is subject to the Home Ownership and Equity Protection Act; the lien status of applications and loans; and whether an application or loan involves a manufactured home. Certain definitions have also been revised. The definition of an application has been revised to include a request for preapproval as defined in the regulation, for purposes of reporting denials of such requests and identifying loan originations that result from a request for preapproval. The definition of a home improvement loan and the definition of a refinancing have been revised. In addition, the 2002 revisions require lenders to request information on applicants’ ethnicity, race, and sex in applications taken by telephone, and conform the collection of data on ethnicity and race to standards established by the Office of Management and Budget (OMB) in 1997.

The 2002 revisions were initially scheduled to take effect on January 1, 2003. In May 2002 the Board delayed the effective date, with two exceptions, to January 1, 2004. 67 FR 30771, May 8, 2002. The Board based its decision to delay the effective date on a determination that some HMDA reporters, especially the largest ones, would not be able to fully implement the revised rule by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. The two exceptions related to telephone applications and to census tract data: (1) For all applications taken on or after January 1, 2003, lenders must ask telephone applicants for information on the applicant’s race or national origin and sex; and (2) for all applications and loans reported on lenders’ 2003 LARs, lenders must use the census tract numbers and corresponding geographic areas from the 2000 Census.

## III. Proposed Guidance for Transition from the Current to the Revised Rule

Proposed staff comment 4(a)–4 addresses the collection and reporting of certain data items for applications received before January 1, 2004, for which final action is taken on or after January 1, 2004. Under the proposed transition rules, lenders (1) Would not have to indicate whether an application or loan involved a request for preapproval or related to a manufactured homes; and (2) could at their option continue to apply the current definitions of a home improvement loan and a refinancing. They would follow special rules for reporting applicants’ race and ethnicity, to take account of the changed categories. No transition rules are provided for reporting the purchaser type, rate spread, whether a loan is subject to HOEPA, and the lien status of applications and originated loans, because information about these items is available at the time of final action.

In each case, the Board weighed the burden and benefit of applying the effective date to applications received before January 1, 2004. The proposed comment seeks to preserve the integrity of the HMDA data to the extent possible, while minimizing lender burden. For example, the Board believes that the benefit of data that meet revised definitions is not sufficient to warrant the burden on lenders to begin applying the revised definitions before January 1, 2004, or to “look back” in 2004 to determine if data should be reported. The proposed rule is discussed below in the order that the affected data items appear on the revised HMDA/LAR. For all other data items, the January 1, 2004, effective date applies, including the data items reported under “type of purchaser” and “other data,” as discussed in Part IV.

### Property Type

Currently lenders must report in the “loan purpose” field whether an application or loan involves a one- to four-family or a multifamily dwelling; and manufactured homes are reported as one- to four-family dwellings. The 2002 revisions add a new field for “property type” and require lenders to identify applications and loans that involve manufactured housing. The proposed comment provides that lenders may but need not indicate whether an application received before January 1, 2004, involves manufactured housing. Lenders may report the property type as a one- to four-family dwelling.

### Purpose of Loan—Home Improvement and Refinancing

Regulation C requires lenders to report home improvement loans and refinancings. The definitions of a home improvement loan and a refinancing were substantially revised in the final rules adopted in 2002. At the time an application is taken, lenders must apply these definitions (and the definition of a home purchase loan, which has not been revised) to determine whether and how the application or loan must be reported under HMDA.

A home improvement loan is currently defined in § 203.2(f) as a loan that is intended in whole or in part for home improvement *and* that the lender classifies as a home improvement loan. Under the 2002 revisions, dwelling-secured loans for home improvement purposes must be reported as home improvement loans, without regard to whether the loans are classified as home improvement loans. Loans for home improvement purposes that are not dwelling-secured will continue to be reported only if the lender classifies the loans as home improvement loans.

A refinancing is defined as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower. Currently, the commentary to § 203.1(c) allows lenders to select from among four scenarios in deciding which refinancings to report:

(1) The existing obligation was a home purchase or home improvement loan, as determined by the lender (for example, by reference to available documents);

(2) the applicant states that the existing obligation was a home purchase or home improvement loan;

(3) the existing obligation was secured by a lien on a dwelling; or

(4) the new obligation will be secured by a lien on a dwelling.

Under the 2002 revisions, reportable refinancings are those in which both the existing and the new loans are secured by a lien on a dwelling.

The proposed transition rule will not require lenders to “look back” in reporting home improvement loans and refinancings. The proposed comment provides that for applications received before January 1, 2004, but for which final action is taken on or after January 1, 2004, lenders may continue to apply the current definitions. For example, if a lender receives an application in 2003 for a loan that the lender does not currently classify as a home improvement loan, the lender need not report that application on its 2004 LAR. Similarly, if a lender receives an

application in 2003 for a home equity loan to consolidate credit card debt, and originates the loan in 2004, the lender may report the loan on its 2004 LAR as a refinancing if this is the lender's practice under the current rule. The proposed comment permits lenders to apply the revised definitions to applications received before January 1, 2004, at the option of the lender.

#### *Preapproval*

Under the 2002 revisions, lenders must identify whether an application for a home purchase loan is a request for a preapproval as defined in the revised regulation. Currently, requests for preapproval are reported only if the request is approved and results in a traditional loan application, in which case the lender reports on the disposition of that application. The 2002 revisions require lenders to report information on requests for preapproval that are denied, whether or not they resulted in a traditional loan application; they allow, but do not require, lenders to report requests for preapproval that are approved but not accepted by the applicant.

Lenders have asked whether the revised rule requires them to collect information on requests for preapproval that are received in 2003, on the chance that the request might receive final action in 2004. The proposed transition rules provide that lenders may but need not identify requests for preapproval received in 2003 as such. For applications received before January 1, 2004, they may use the code for "not applicable" in the preapproval field on the HMDA/LAR.

#### *Applicant Information*

Changes were made in the 2002 revisions to the requirement to collect information about an applicant's ethnicity and race, and corresponding changes were made to the codes that must be used on the HMDA/LAR in 2004. These changes were made to conform collection of information under Regulation C to standards issued by OMB in 1997 that are used for the 2000 Census.

Some racial classifications and codes remain unchanged. For example, the classification "American Indian or Alaskan Native" and its corresponding code have not changed; the meaning of the classification "black" has been clarified but not substantively changed by adding the phrase "or African-American," and the corresponding code remains the same under the revised rule.

However, changes to other racial classifications and codes, and the

introduction of a separate question on Hispanic ethnicity, complicate the transition from the current rule to the revised rule. For example, under the current rule, code 2 is used for an applicant whose race is "Asian or Pacific Islander," while under the 2002 revisions, code 2 is used for an applicant who is "Asian," and code 4 is used for "Native Hawaiian or Other Pacific Islander." Moreover, while the current classifications for race include "Hispanic," under the 2002 revisions an applicant's *race* cannot be identified as "Hispanic." Rather, the 2002 revisions require that an applicant be asked to identify his or her *ethnicity* as "Hispanic or Latino," or "not Hispanic or Latino." Thus, if a lender receives an application in 2003 in which the applicant's race is identified as "Hispanic," and the lender takes final action on the application in 2004, using code 4 (the current code for "Hispanic") on the 2004 LAR would result in an erroneous identification of the applicant's race.

Under the transition rules, lenders would report monitoring data collected during 2003 on the 2004 LAR in accordance with rules set forth in 4(a)(iv) of the proposed comment. The Board believes lenders can implement the proposed conversion rules by modifying their data collection and reporting systems. The proposed comment states that, in the example offered above, (1) the lender would report the applicant's ethnicity as code 1 ("Hispanic or Latino") and (2) would report the applicant's race as code 7 ("not applicable").

#### **IV. Other Revisions**

The Board has received inquiries from lenders about the applicability of other changes in the 2002 revisions to applications received before January 1, 2004, including changes made to "type of purchaser" and the addition of the data items under "other data" such as the lien status on an originated loan. These data items do not impose a significant burden on lenders to "look back" to applications received in 2003. Thus, the effective date of January 1, 2004, remains in place for these requirements, as discussed below.

#### *Type of Purchaser*

Section 203.4(a)(8) requires lenders to report the type of entity that purchases a loan that the lender originates (or purchases) and sells within the same calendar year. In 2002 the Board revised the list of the types of purchasers and the applicable codes. Because the lender's determination as to type of purchaser is made when the loan is

sold, there is no need for a transition rule.

#### *Other Data*

The 2002 revisions will require lenders to collect and report new data items under "other data" on the 2004 LAR:

- The rate spread on originated loans (excluding unsecured home improvement loans), where the spread (or difference) between the loan's APR and the yield on Treasury securities of comparable maturity meets or exceeds certain thresholds;
- Whether originated loans and purchased loans are subject to the Home Ownership and Equity Protection Act (HOEPA); and
- The lien status of applications and originated loans (whether a loan is unsecured, or secured by a first or subordinate lien on a dwelling).

This information must be reported for all loans closed on or after January 1, 2004. No exception is needed, because information about these items is available at final action.

The 2002 revisions require lenders to use the rate lock date to determine the yield on comparable Treasury securities; lenders must consult the yield on Treasury securities as of the 15th-of-the-month prior to the date the rate is locked or set for the final time before the loan is consummated. Thus, lenders may have to modify their procedures in 2003 to ensure that they retain the rate lock date for loans that may be consummated after December 31, 2003.

Lenders may also have to look back to the Treasury yields from 2003 for a loan consummated in 2004, if the rate was locked before January 15, 2004. Lenders currently are required to make such comparisons to comply with HOEPA and Regulation Z (12 CFR part 226). Historical information on the appropriate Treasury yields, and a tool to assist lenders in calculating the spread between a loan's APR and the Treasury yield will be available to lenders on the Board's web site in May 2003.

The Board does not believe that these requirements warrant an exception to the requirement to report the rate spread for all loans closed on or after January 1, 2004. The Board solicits comment, however, on whether there are less burdensome alternatives to requiring lenders to use the rate lock date for calculating the rate spread during the transition period. Lenders could use the date the application was received or the date of consummation to calculate the rate spread, or the Board could specify a date (such as January 1, 2004) that would not require lenders to look back

to 2003 to calculate the rate spread. If lenders used the date of application or consummation, they would not have to modify their systems because they already capture these dates for current reporting requirements.

The requirements to report HOEPA status and lien status do not require an exception to the effective date. HOEPA status is required only on originated and purchased loans, and is determined based on the difference between the APR at consummation and the yield on Treasury securities with comparable maturity periods; or on the total points and fees charged for the loan. A lender may have to research Treasury yields from 2003 depending on when the application was received; however, as with the rate spread, historical information on Treasury yields is readily available.

For lien status, the 2002 revisions provide that lenders may rely on the best information readily available to them at the time of final action (in 2004). 67 FR 43218, 43227, June 27, 2002. Thus, lenders will not have to look back to 2003 to report lien status.

#### V. Form of Comment Letters

Comment letters should refer to Docket No. R-1145 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). If accompanied by an original document in paper form, comments may also be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

#### VI. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed commentary is clearly stated and effectively organized, and how the Board might make the commentary easier to understand.

#### List of Subjects in 12 CFR part 203

Banks, Banking, Federal reserve system, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

#### PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 2801–2810.

2. In Supplement I to part 203, under Section 203.4—Compilation of Loan Data, under 4(a) *Data Format and Itemization*, a new paragraph 4 is added:

#### SUPPLEMENT I to PART 203—STAFF COMMENTARY

\* \* \* \* \*

#### Section 203.4—Compilation of Loan Data

4(a) *Data Format and Itemization.*

\* \* \* \* \*

► 4. *Transition rules for applications received before January 1, 2004, when final action is taken on or after January 1, 2004.* For applications received before January 1, 2004, on which final action is taken on or after January 1, 2004, data must be collected and reported on the HMDA LAR under the revised Regulation C that takes effect on January 1, 2004, subject to the exceptions for property type, loan purpose, requests for preapproval, and applicant information set forth in this comment.

i. *Property type.* Lenders need not determine whether an application received before January 1, 2004 involves a manufactured home, and may report the property type as 1- to 4-family.

ii. *Loan purpose.* For applications received before January 1, 2004, lenders may use the definitions of a home improvement loan and a refinancing that were in effect in 2003. For example, a lender need not report data on an application received before January 1, 2004, for a dwelling-secured loan made for the purpose of home improvement, if the lender did not classify the loan as a home improvement loan. Similarly, a lender may report data on an application for a refinancing received in 2003 whether or not the existing obligation was secured by a lien on a dwelling.

iii. *Requests for preapproval.* Lenders need not report requests for preapproval (as that term is defined in § 203.2(b)(2) of the revised Regulation C) received before January 1, 2004, that do not result in a loan application. Lenders need not specify whether an application for a home purchase loan application involved a request for preapproval, and should use code 3 (not applicable) in the preapproval field on the LAR. Lenders may at their option, report requests for preapproval that are denied or that are approved but not accepted.

iv. *Applicant information.* For applications received before January 1,

2004, lenders must collect data on race or national origin using the categories in effect in 2003, and must convert the data to the codes in effect in 2004 for reporting purposes, using the following conversion guide:

(A) *Ethnicity.* The revised Regulation C requires lenders to request an applicant's ethnicity first (Hispanic or Latino, Not Hispanic or Latino), and then to request the applicant's race. The HMDA/LAR has been revised accordingly, so that ethnicity and race are distinct fields.

(1) If code 4 (Hispanic) was entered for race under the 2003 codes, use code 1 (Hispanic or Latino) for reporting ethnicity.

(2) If code 1, 2, 3, 5, 6, or 8 was entered for race under the 2003 codes, use code 4 (not applicable) for reporting ethnicity.

(3) If code 7 (information not provided by applicant in mail or telephone application) was entered for race under the 2003 codes, use code 3 (information not provided by applicant in mail, Internet, or telephone application) for reporting ethnicity.

#### B. Race.

(1) If the applicant's race was identified as American Indian or Alaskan Native, Black, or White under the 2003 codes, use the corresponding code for 2004. For example, if code 3 (Black) was entered for race in 2003, use code 3 (Black or African-American).

(2) If the applicant's race was identified as Asian or Pacific Islander in 2003, use code 2 (Asian).

(3) If the applicant's race was identified as Hispanic in 2003, use code 7 (not applicable).

(4) If the applicant's race was identified as code 6 (Other) in 2003, use code 7 (not applicable).

(5) If the applicant's race was identified as code 7 (Information not provided by applicant in mail or telephone application) in 2003, use code 6 (Information not provided by applicant in mail, Internet, or telephone application).

(6) If code 8 (Not applicable) was used in 2003, use code 7 (Not applicable). ◀

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, March 3, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-5365 Filed 3-6-03; 8:45 am]

BILLING CODE 6210-01-P

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

[Docket No. 2001-SW-07-AD]

RIN 2120-AA64

**Airworthiness Directives; Eurocopter France Model AS332C, L, L1, and L2 Helicopters****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD) for Eurocopter France Model AS332C, L, L1, and L2 helicopters that would have required inspecting the cockpit pedal unit adjustment lever (lever) for a crack at specified time intervals by either a borescope or by a dye-penetrant inspection and replacing any cracked lever with an airworthy lever before further flight. That proposal was prompted by reports of cracks detected in the lever. This action revises the proposed rule by eliminating the borescope inspection and by requiring a modification that is a terminating action for the requirements of the proposal. The actions specified by this proposed AD are intended to prevent failure of the lever, loss of access to the brake pedals on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before May 6, 2003.**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-07-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5490, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001-SW-07-AD." The postcard will be date stamped and returned to the commenter.

**Discussion**

A proposal to amend 14 CFR part 39 to add an AD for Eurocopter France Model AS332C, L, L1, and L2 helicopters was published as an NPRM in the **Federal Register** on October 31, 2001 (66 FR 54960). That NPRM would have required inspecting the lever for a crack and replacing any unairworthy lever, P/N 332A27-2344-20, with an airworthy lever. That NPRM was prompted by reports of cracks detected in the lever. That condition, if not corrected, could result in failure of the lever, loss of access to the brake pedals on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, Eurocopter France has issued new service information that eliminates the borescope inspection and specifies a

modification of the pedal unit. Eurocopter Alert Service Bulletin No. 67.00.19, dated July 23, 2001, describes the dye-penetrant inspection of the pedal units, and Eurocopter Alert Service Bulletin No. 67.00.20, dated June 8, 2001, describes replacing the pilot's and co-pilot's pedal adjustment levers. The Direction Generale De L'Aviation Civile, which is the airworthiness authority for France, has classified these alert service bulletins as mandatory and issued AD Nos. 2000-487-017(A)R1 and 2000-486-077(A)R1, both dated September 05, 2001, to ensure the continued airworthiness of these helicopters in France.

We have determined that we should incorporate the latest manufacturer's service information into our proposal, eliminate the proposed borescope inspection, and mandate terminating actions for this unsafe condition. Therefore, since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours to accomplish the dye-penetrant inspection; 5 work hours to remove and replace the pedal unit assembly with a new pedal assembly; or 6 work hours to remove, modify, and replace the modified pedal unit assembly. The average labor rate is \$60 per work hour. Required parts would cost approximately \$4,990 for replacing a cracked pedal unit assembly with a new pedal unit assembly, or \$290 for modifying the installed pedal unit. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$16,770 to replace the pedal unit assembly throughout the entire fleet, or \$2,730 to modify the pedal unit for the entire fleet, assuming one dye-penetrant inspection regardless of which method of compliance is applicable.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Eurocopter France:** Docket No. 2001–SW–07–AD.

**Applicability:** Model AS332C, L, L1, and L2 helicopters, with a pilot or co-pilot anti-torque pedal adjustment lever (lever), part number (P/N) 332A27.2344.20, that has not been modified in accordance with MOD 0726179, 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 (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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the lever, loss of braking ability on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters with 4,450 or more hours time-in-service (TIS), within 50 hours

TIS and thereafter at intervals not to exceed 1,500 hours TIS, perform a dye-penetrant inspection of the lever, P/N 332A27.2344.20, in accordance with paragraph 2.B. of the Accomplishment Instructions in Eurocopter Alert Service Bulletin (ASB) No. 67.00.19, dated July 23, 2001, except returning levers and reporting to the manufacturer are not required.

(b) For helicopters with less than 4,450 hours TIS, on or before accumulating 4,500 hours TIS, and thereafter at intervals not to exceed 1,500 hours TIS, perform a dye-penetrant inspection of the lever, P/N 332A27.2344.20, in accordance with paragraph 2.B. of the Accomplishment Instructions in ASB No. 67.00.19, dated July 23, 2001, except returning levers and reporting to the manufacturer are not required.

(c) Replace any cracked lever with an airworthy lever before further flight.

(d) Before June 5, 2003, modify the pedal unit and replace the adjustment levers in accordance with the Accomplishment Instructions, Paragraph 2, in ASB No. 67.00.20, dated June 8, 2001. Modifying the pedal unit and replacing the adjustment levers in accordance with ASB 67.00.20, dated June 8, 2001, is a terminating action for the requirements of this AD.

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

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

(f) Special flight permits will not be issued.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2000–487–017(A)R1 and 2000–486–077(A)R1, both dated September 5, 2001.

Issued in Fort Worth, Texas, on February 20, 2003.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 03–5250 Filed 3–6–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–CE–05–AD]

RIN 2120–AA64

#### Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C 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 all SOCATA—Groupe AEROSPATIALE (SOCATA) Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. This proposed AD would require you to replace certain safety belts and restraint systems. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this proposed AD are intended to prevent failure of the safety belts and restraint systems caused by inadvertent opening of this equipment, which could result in bodily injury to the occupant during turbulence or landing.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before April 29, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–05–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–05–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 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) 894-1160; facsimile: (954) 964-4141. You may also view this information at the Rules Docket at the address above.

**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:**

**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-05-AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What Events Have Caused This Proposed 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, TB

200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. The DGAC reports inadvertent opening of the Anjou Aeronautique/TRW Repa S.A./L'Aiglou Types 343, 343-1, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems.

Further investigation into this subject found that a Model TBM 700 airplane was involved in a fatal accident on March 25, 2002. The report on this accident indicated that the pilot's seat belt buckle was broken and that all seat belts in the aircraft would snap open when given a sharp jerk. The belts involved were all Type 343-1 belts. The report also noted that belts tested in several other TBM 700 airplanes at a nearby hangar were found to snap open when given the quick-jerk test.

*What Are the Consequences if the Condition Is Not Corrected?*

Failure of the safety belts and restraint systems caused by inadvertent opening of this equipment could result in bodily injury to the occupant during turbulence or landing.

*Is There Service Information That Applies to This Subject?*

SOCATA has issued the following service letters for the affected airplanes:

Models	Service letter
TB 9, TB 10, TB 20, TB 21, and TB 200	SL 10-057, dated June 2002.
TMB 700	SL 70-027, dated June 2002.
Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C	SL 023, dated June 2002.

*What Are the Provisions of This Service Information?*

The service letters include procedures for:  
 —Repetitive visual inspections of the seat belt assembly; and  
 —Replacement of the seat belt assembly.

*What Action Did the DGAC Take?*

The DGAC classified these service letters as mandatory and, in order to ensure the continued airworthiness of these airplanes in France, issued the following French ADs:  
 —AD Number 2002-104(AB), dated February 20, 2002; and  
 —AD Number 2002-105(AB), dated February 20, 2002.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

These airplane models are manufactured in France and are type certificated for operation in the United

States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC 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 DGAC; 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 SOCATA Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C

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 replace the Anjou Aeronautique/TRW Repa S.A./L'Aiglou Types 343, 343-1, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems.

**Cost Impact**

*How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 617 airplanes in the U.S. registry:

Models	How many	Models	How many
TB 9, TB 10, TB 20, TB 21, and TB 2 .....	420	Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C .....	39
TBM 700 .....	158		

*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 seat belt assembly replacement for Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$60 per hour = \$120 for all 4 seats	4 seats × \$83 (each seat belt assembly) = \$332	\$452	\$452 × 420 = \$189,840

We estimate the following costs to accomplish the proposed seat belt assembly replacement for Model TBM 700 airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × \$60 per hour = \$180 for all 6 seats	6 seats × \$135 (each seat belt assembly) = \$810	\$990	\$990 × 158 = \$156,420

We estimate the following costs to accomplish the proposed seat belt assembly replacement for Models Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$60 per hour = \$120 for all 4 seats	4 seats × \$33 (each seat belt assembly) = \$132	\$252	\$252 × 39 = \$9,828

## 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:

**Socata—Groupe Aerospatiale:** Docket No. 2003-CE-05-AD.

(a) *What airplanes are affected by this AD?* This AD affects Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C 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 safety belts and restraint systems caused by inadvertent opening of this equipment, which could result in bodily injury to the occupant during turbulence or landing.

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

Actions	Compliance	Procedures
<p>(1) For Models TB 9, TB 10, TB 20, TB 21, TB 200, replace the Anjou Aeronautique/TRW Repa S.A./L'Aiglon Types 343, 343-1, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems, as follows.</p> <p>(i) Replace safety type belt (2 points) with SOCATA part number (P/N) Z00.N6003987223 or FAA-approved equivalent P/N.</p> <p>(ii) Replace safety type belt (3 points) with SOCATA P/N Z00.N6003987224 or FAA-approved equivalent P/N.</p>	<p>Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.</p>	<p>In accordance with EADS SOCATA Service Letter SL 10-057, dated June 2002, and the applicable airplane maintenance manual.</p>
<p>(2) For Model TMB 700, replace the Anjou Aeronautique/TRW Repa S.A./L'Aiglon Types 343, 343-1, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems, as follows.</p> <p>(i) Replace safety type belt P/N T700A2510007103 (gray or beige color) with SOCATA P/N T700A251000710900 (gray) or P/N T700A251000711600 (beige), or FAA-approved equivalent P/Ns.</p> <p>(ii) Replace safety type belt P/N T700A2510007104 (gray or beige color) with SOCATA P/N T700A251000711000 (gray) or P/N T700A251000711700 (beige), or FAA-approved equivalent P/Ns.</p> <p>(iii) Replace safety type belt P/N T700A2510007105 (gray or beige color) with SOCATA P/N T700A251000710800 (gray) or P/N T700A251000711500 (beige), or FAA-approved equivalent P/Ns.</p>	<p>Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.</p>	<p>In accordance with EADS SOCATA Service Letter SL 70-027, dated June 2002, and the applicable maintenance manual.</p>
<p>(3) For Models Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C, replace the Anjou Aeronautique/TRW Repa S.A./L'Aiglon Types 343, 343-1, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems with SOCATA P/N Z00.N6003987223 or FAA-approved equivalent P/N.</p>	<p>Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.</p>	<p>In accordance with EADS SOCATA Service Letter SL 023, dated June 2002, and the applicable airplane maintenance manual.</p>
<p>(4) On any affected models, do not install any Anjou Aeronautique/TRW Repa S.A./L'Aiglon Types 343, 343-1, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems.</p>	<p>As of the effective date of this AD .....</p>	<p>Not applicable.</p>

(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 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.

**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) *How do I get copies of the documents referenced in this AD?* You may get copies of

the documents 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) 894-1160; facsimile: (954) 964-4141. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 2:** The subject of this AD is addressed in the following French ADs:

AD Number 2002-104(AB), dated February 20, 2002; and

AD Number 2002-105(AB), dated February 20, 2002.

Issued in Kansas City, Missouri, on February 28, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-5387 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

RIN 1024-AD10

#### Special Regulations, Areas of the National Park System; Saguario National Park, Designated Bicycle Routes

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) has proposed this rule to designate a route where bicycles may be used off road in Saguario National Park. This rule is necessary because the NPS regulations for bicycle use off park roads in units of the National Park System require that a special regulation be promulgated in order to allow use on trails outside of developed park areas.

**DATES:** Comments must be received by May 6, 2003.

**ADDRESSES:** Comments may be sent to the Superintendent, Saguario National Park, 3693 South Old Spanish Trail, Tucson, AZ 85730-5601 E-mail: [SAGU\\_Cactus\\_Forest\\_Trail@nps.gov](mailto:SAGU_Cactus_Forest_Trail@nps.gov). Fax: (520) 733-5183.

**FOR FURTHER INFORMATION CONTACT:** Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Phone number: (202) 208-4206. E-mail: [Kym\\_Hall@nps.gov](mailto:Kym_Hall@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Description of Saguario National Park

Saguario National Park is an important national resource visited by approximately 755,618 people annually. The gross area acreage is 91,445.96 (Federal: 87,156.17; Nonfederal: 4,289.79) of which 71,400 acres are designated wilderness. Giant saguaro cacti, unique to the Sonoran Desert, sometimes reach a height of 50 feet in this cactus forest, which covers the valley floor and the slopes of the Rincon and Tucson Mountains. The Cactus Forest Trail is a multi-use trail (5.3 miles long) that originates at the northern boundary of the park and eventually bisects the Cactus Forest Loop Drive. The segment of the Cactus

Forest Trail within the loop drive is 2.5 miles long. Cactus Forest Loop Drive, an 8 mile paved loop road located in the western portion of the Rincon Mountain District, originates from the main entrance and visitor center and is the only paved road in the park. The Cactus Forest Trail is designed along the natural topography and vegetation of the area and meanders through a relatively even elevation with rolling hills and gentle peaks. The trail is lined with a variety and abundance of desert trees and shrubs.

##### Legislation and Purposes of Saguario National Park

Saguario National Park was initially reserved as a national monument on March 1, 1933 (Proclamation No. 2032, 47 Stat. 2557), and transferred from the Forest Service, U.S. Dept. of Agriculture, to the National Park Service on August 10, 1933. This area was of outstanding scientific interest because of the exceptional growth of various species of cacti, including the so-called giant saguaro cactus. Proclamation 3439 (November 16, 1961), enlarged the boundaries of the Saguario National Monument to include certain lands within the Tucson Mountains containing a remarkable display of relatively undisturbed lower Sonoran desert vegetation, including a spectacular saguaro stand. Public Law 94-567 (October 1976) designated parts of Saguario National Monument as a wilderness area, known as the Saguario Wilderness.

On January 3, 1991 Congress passed the "Saguario National Monument Expansion Act of 1991" to authorize the addition of approximately 3,540 acres to the Rincon unit of Saguario National Monument in order to protect, preserve, and interpret the monument's resources, and to provide for education and benefit to the public. Under the Saguario National Park Establishment Act of 1994, Saguario National Monument was given full recognition and statutory protection and renamed a National Park. See 16 U.S.C. 410ZZ.

##### Management Plans

Saguario National Park General Management Plan (GMP) was completed in 1988. The GMP envisions the Rincon Mountain District as a main attraction for the first-time visitors, with the focus on the Saguario forest and the lower Sonoran desert. Suggested frontcountry recreational uses include " \* \* \* biking, jogging, picnicking, sunset watching, and horseback riding", while the " \* \* \* backcountry wilderness would continue to be used primarily by hikers and horseback riders." In the 1988 plan,

the Cactus Forest trail is located in the frontcountry natural zone with a historic zone overlay. The management emphasis of the natural zone is the conservation of natural resources and processes. The plan states that "In certain locations, uses are allowed that do not adversely affect these resources and processes."

The park's trail plan for the Cactus Forest section of the Rincon Mountain District was completed in 1991. In addition to hiking and equestrian use, the plan proposed that the Cactus Forest Trail inside the Cactus Forest Loop Road be open to bicycle use for a one-year trial period. The plan also proposed the monitoring program designed to evaluate the environmental and social impacts of mountain bike use on the trail. The park adopted the plan's proposal and the trial period was extended for more than 10 years. The monitoring plan results indicated, overall, that any adverse impacts associated with bicycle use was negligible.

Since 1992, bicyclists, pedestrians, and equestrians were allowed to use the portion of the Cactus Forest Trail within the paved loop drive area. Recently, it was brought to the Park's attention that National Park Service regulations appear to require promulgation of a special regulation to permit bicycle use along the 2.5-mile section of the Cactus Forest Trail. In reviewing the actions leading to the opening of this trail for mountain bike use over ten years ago, the Park discovered that the requirements in the regulation governing bicycle use had not been followed. While the trail is located in the frontcountry as identified in the GMP, the area is designated a natural zone. Under the servicewide regulations, because the trail is not in a developed area or special use zone the park is required by 36 CFR 4.30(b) to adopt a special regulation to designate a route for bicycle use. In part the regulations state that:

Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources. Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations. (36 CFR 4.30)

Based on the criteria in the regulations, and the fact that the trail was not identified as being in a developed zone in the GMP in 1988, the Park determined that it did not then have the authority to allow such use on

the trail. On April 15, 2002, the park closed the Cactus Forest Trail to bicycle use and initiated an Environmental Assessment and the special regulation process. In addition, the park will be addressing the bicycle use issue in a comprehensive way through the new GMP process that began in September 2002. The new GMP is scheduled to be complete in approximately 2–3 years. Apart from this proposed rule, in the meantime, bicycles are allowed to use paved and unpaved roads in the park pursuant to 36 CFR 4.30(a).

### History of Bicycle Use

In the early 1990's the NPS was in the process of preparing a trails management plan for the Cactus Forest section of the park. During the planning process, public scoping revealed that some members of the local community and the visiting public were interested in mountain bike trails in the park. Based on this information, the NPS analyzed the appropriateness of establishing mountain bike trails. As noted above, the park opened that portion of the trail inside the Cactus Forest Loop Road to mountain bike use for a one-year trial period. The park monitored the trail for resource and social impacts by implementing a monitoring plan that included sixteen photo-points along the trail. Park staff monitored these locations on a monthly basis.

The park recorded approximately 1,200 bicyclists, or nearly 50% of all trail users, on the trail between May 1, 1992 and June 30, 1993. There were no major incidents or accidents during the trial period. At the end of the one-year period, the park concluded that monitoring data revealed little measurable resource impact caused by bicycle use and the decision was made to keep the Cactus Forest Trail inside the loop road open to bicycle use. The park continued to monitor the trail for resource damage at the designated monitoring points, performed patrols, and engaged in informal contact with visitors using the trail. Continued use of that trail by bicyclists had been authorized by the Superintendent's Compendium since that time. Until bicycle use was prohibited in April 2002, the trail continued to be a popular trail for mountain biking. Much of the trail follows an old two-track road that was allowed to revegetate and become a trail. About half the use of the trail is by hikers and equestrians.

### Impacts

*Soils:* Reinstating mountain bike use would likely result in added visitation on the trail. This type of use would

impact soils differently than hiking and equestrian use. Some monitoring points show that soil erosion and loss has been exacerbated by the "cupping" of the cross-section of the trail that is caused by repeated use in the center of the trail. At times, multiple uses occurring on the trail have resulted in beneficial impacts by redistributing soils across the trail. Soils may be distributed from the center of the trail to the sides by cyclists, and then loosened and redistributed in the center of the trail by horses and hikers. Park staff would continue to maintain the trail depending on available staffing and funding levels. With proper trail repair and maintenance, the overall effect of added visitation on soils would be of minor intensity.

*Vegetation:* Mountain bike use would contribute to a greater amount of disturbance of vegetation from riders dismounting from their bikes onto the side of the trail to yield to another trail user or to push their bike uphill. Vegetation that is affected is typically located in steeper slopes or where the trail curves and is lost through repeated trampling. Impacts from the added use would be of minor intensity. Trail repair and rehabilitation may offset some of the impacts associated with trailside vegetation loss. Trailside re-vegetation efforts could help to restore the natural scene, as well as contribute to a more defined trail path.

*Wildlife:* Wildlife would be frightened or displaced by the presence of visitors. However, given the higher speeds that mountain bicycles may reach on the trail, there may be a greater tendency for cyclists to encounter and frighten wildlife. There may also be a greater tendency for mountain bikers to run over smaller vertebrates such as snakes on the trail. These factors, along with an anticipated increase in the amount of use on the trail are expected to result in more individual wildlife species being frightened and displaced from the immediate area. Overall, the impacts of this use on wildlife would be of minor intensity.

*Archeological resources:* Reinstating bicycle use on the Cactus Forest Trail would not have any additional impacts on archeological resources or historic structures. As with any increase in visitation, however, there is a greater possibility that cultural resources could be discovered and/or damaged. Bicycle use off the trail would not be permitted and it is anticipated that visitors would remain on the trail; therefore, impacts to archeological resources and historic structures would be negligible.

*Visitor conflicts:* Bicyclists would view the opportunity for an off-road experience in the park as beneficial.

However, some hikers and equestrians would feel as though their ability to experience park resources along the trail is diminished if they see mountain bike use as incompatible with their desired experience. Some hikers and equestrians may choose to use the trail less or avoid the trail completely. However, the multi-use orientation of the trail would be likely to have no more than minor impacts on a hiker or equestrian's ability to experience the park. This is because a number and variety of other trails in the Cactus Forest area are open to hiking and equestrian use only.

*Visitor safety:* There would be a greater potential for visitor accidents under this proposed rule in comparison to no bicycle use. Mountain bikes traveling at higher speeds could inadvertently collide with other recreationists, regardless of their mode of travel. Horses may be frightened by bicyclists and their response may result in a number of unsafe situations. Given the past record of incidents on this trail, however, reinstating mountain bike use would not be considered an unsafe use if recreationists continued to abide by the recommended trail etiquette/rules. Overall impacts to visitor safety would be negligible to minor in intensity.

*Threatened species:* According to the U.S. Fish and Wildlife Service's October 2001 list of listed, proposed and candidate species for the area, there are seven species of concern, including four federally listed species (Mexican spotted owl, cactus ferruginous pygmy-owl, lesser long-nosed bat, Gila topminnow), one delisted species (American peregrine falcon), and two species proposed for listing (Chiricahua leopard frog, Goodding Onion) that are known to or might occur in the Rincon Mountain District where the Cactus Forest Trail is located.

The Goodding onion has not been recorded in the Rincon Mountains. The Cactus Forest Trail is in the same watershed as a drainage that could potentially be used to restock Gila topminnow. However, the Cactus Forest Trail is well below and disjunct from that drainage, and activities on the Cactus Forest Trail would have no impact on that drainage or affect its potential to reintroduce this fish. Despite surveys throughout the Rincon Mountains by Saguro and other NPS biological staff, Chiricahua leopard frogs have never been recorded in Saguro National Park. Furthermore, the proposed action will not affect potential habitat for this frog, which requires surface water above 3,000' elevation.

The Cactus Forest Trail is located over a mile from the known Lesser long-

nosed bat roost, and neither the trail, nor any of the activities proposed to occur on it, would be expected to disturb bats (which forage after dark), or saguaros or agaves, upon which the bats forage. Cactus ferruginous pygmy-owls (cfpo) have not been confirmed to occur in the Park since 1995; however, they probably inhabit, and may breed, in the low (<4000') elevations of the Rincon Mountain District of the Park. Within the last 20 years, two possible detections of this species occurred within a half-mile of the Cactus Forest Trail. Based on the descriptions of recently occupied territories, it does not appear that human presence, particularly established presence, is a deterrent to owl occupancy of a site.

American peregrine falcons are known to occur in the Rincon Mountain District, and may forage and perch around the project area in the non-breeding season. Peregrines may be affected by and try to avoid human activities on the Cactus Forest Trail; however, hiking, riding or biking on an established trail would be expected to have negligible to minor impacts on these birds. Five Mexican spotted owl protected activity centers lie within the Rincon Mountain District above 7000' elevation. Designated critical habitat for the owl does not include the Cactus Forest Trail, nor is the project area suitable habitat for the owls.

#### Authorizing Bicycle Use

The proposed rule would open the approximately 2.5 mile section of the Cactus Forest Trail located within the Cactus Forest Drive loop to mountain biking on a permanent basis. The park would continue to monitor and mitigate the environmental impacts of mountain bike use through the use of volunteer organizations and local interest groups to ensure that the trail is maintained in good condition and issues of concern are immediately brought to the attention of the park management staff.

#### Public Comments

Saguaro National Park conducted initial internal scoping with appropriate park staff, internal scoping was conducted by an interdisciplinary team of Saguaro National Park, and planning professionals of the National Park Service, Intermountain Support Office in Denver. Teams members conducted a field trip on July 11, 2002 to discuss purpose and need; important resource topics; past, present, and possible mitigation measure of the proposed action. Affiliated Native American tribes were contacted by letter dated July 12, 2002 to solicit any interests or concerns with the proposed action. External

scoping was through a public scoping letter dated August 2002 and mailed to interested and affected parties. A press release was mailed to local newspapers.

#### Compliance With Other Laws

##### *Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule. The Pima County Parks and Recreation Department supports the establishment of this rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule simply implements the servicewide bicycle regulation with respect to a specific route in Saguaro National Park.

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

There are no businesses in the surrounding area economically dependent on continued mountain bike use on this trail. The park does not have any mountain bike rental concessioners and the users are mainly private individuals using the trail for recreational purposes.

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

##### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

##### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implications assessment is not required. No taking of personal property will occur as a result of this rule.

##### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only effects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

##### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

##### *Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

##### *National Environmental Policy Act*

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). A copy of the EA is available by contacting the Superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, Arizona 85730-5601. The EA may also be viewed via the Internet at <http://www.nps.gov/sagu/CactusTrailEA.pdf>.

### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Affiliated Native American tribes were contacted by letter dated July 12, 2002 to solicit any interests or concerns with the proposed action. Two tribes responded; the Tohono O'odham and the Hopi Tribes. Both tribes expressed concern that archeological resources be surveyed for impacts from this proposed bicycle use. The NPS has determined that the archeological resources will not sustain adverse impacts and have indicated this in writing to the tribes.

### **Clarity of Rule**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.11 Saguaro National Park.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

**Drafting Information:** The primary authors of this regulation were Delpha Maunders, National Park Service Santa Fe, Kym Hall, NPS Regulations Program Manager, and Sarah Craighead, Superintendent, Saguaro National Park.

**Public Participation:** If you wish to comment, you may submit your comments by any one of several

methods. You may mail comments to Superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, Arizona 85730-5601. Fax: (520) 733-5153. You may also comment via the Internet to [SAGU\\_Cactus\\_Forest\\_Trail@nps.gov](mailto:SAGU_Cactus_Forest_Trail@nps.gov). Please also include "Attn: Bicycle Rule" in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to Superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, Arizona. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### **List of Subjects in 36 CFR Part 7**

District of Columbia, National parks, Reporting and recordkeeping requirements.

We propose to amend 36 CFR part 7 as set forth below:

### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

The authority for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

1. Add § 7.11 to read as follows:

#### **§ 7.11 Saguaro National Park**

(a) Bicycles. That portion of the Cactus Forest Trail inside the Cactus Forest Drive is open to non-motorized bicycle use.

(b) [Reserved].

Dated: February 3, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03-5501 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[CA 245-0375b; FRL-7446-2]

#### **Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District, Imperial County Air Pollution Control District, and Monterey Bay Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Antelope Valley Air Pollution Control District (AVAPCD), Imperial County Air Pollution Control District (ICAPCD), and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern definitions, circumvention, emergency episodes, and volatile organic compound (VOC) emissions from organic solvents. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by April 7, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814.

Antelope Valley Air Quality  
Management District, 43301 Division  
St., Ste. 206, Lancaster, CA 93535-  
4649.

Imperial County Air Pollution Control  
District, 150 South 9th Street, El  
Centro, CA 92243-2801.

Monterey Bay Unified Air Pollution  
Control District, 24580 Silver Cloud  
Ct., Monterey, CA 93940-6536.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, EPA Region IX, (415) 947-4120.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: AVAPCD 701, ICAPCD 101, and MBUAPCD 415 and 433. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 12, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-5325 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[IA 167-1167; FRL-7458-7]

### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the Iowa State Implementation Plan (SIP) and Operating Permits Programs. This revision pertains primarily to the state's construction and operating permits program. This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revision.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed action must be received in writing by April 7, 2003.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 20, 2003.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 03-5309 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030225045-3045-01; I.D. 020603A]

**RIN 0648-AQ29**

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 2

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP) developed by the New England and Mid-Atlantic Fishery Management Councils (Councils). Pursuant to the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this proposed rule would modify the monkfish overfishing definition reference points and optimum yield (OY) target control rule to be consistent with the most recent stock assessment and other scientific information. This rule also proposes an expedited process for setting annual target total allowable catch (TAC) and a method for adjusting monkfish trip limits and days-at-sea (DAS) allocations to achieve the annual target TACs. Based on this method, this proposed rule would establish a target TAC and corresponding trip limits and DAS allocations for fishing year (FY) 2003. In addition, this proposed rule would eliminate the default measures adopted in the original FMP that would result in elimination of the directed monkfish fishery and reduce incidental catch limits. Finally, this proposed rule would clarify the regulations pertaining to the monkfish area declaration requirements by specifying that vessels intending to fish under either a monkfish, multispecies, or scallop DAS, under the less restrictive measures of the Northern Fishery Management Area (NFMA), declare their intent to fish in the NFMA for a minimum of 30 days.

**DATES:** Public comments must be received on or before March 24, 2003.

**ADDRESSES:** Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Monkfish Framework 2." Comments may also be submitted via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Framework Adjustment 2 to the FMP, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA, 01950. Copies of the Framework 2 EA/RIR/IRFA are also available online at [www.nefmc.org](http://www.nefmc.org) under "Plans and Reports."

**FOR FURTHER INFORMATION CONTACT:** Allison Ferreira, Fishery Policy Analyst, (978) 281-9103, fax (978) 281-9135, e-mail [Allison.Ferreira@noaa.gov](mailto:Allison.Ferreira@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The monkfish fishery is jointly managed by the Councils. The FMP contains default measures that would eliminate the

directed monkfish fishery by allocating zero monkfish DAS. These measures were scheduled to take effect during Year 4 (May 1, 2002) of the FMP's 10-year rebuilding schedule, but were delayed until May 1, 2003, as a result of the implementation of an emergency interim rule (67 FR 35928; May 22, 2002) and its extension (67 FR 67568; November 6, 2002). The emergency interim rule temporarily amended the fishing mortality rate (F) criteria in the FMP to be consistent with the most recent stock assessment. The emergency rule also implemented the measures contained in Framework Adjustment 1 to the FMP (which was disapproved by NMFS in conjunction with the implementation of the emergency rule) since these measures were deemed to be consistent with the revised F criteria.

The purpose of the proposed action is to continue the 10-year stock rebuilding program started in 1999 under the original FMP, consistent with updated scientific information. As noted above, the FMP contains default measures that, unless eliminated or delayed, will end the directed fishery (no allocation of monkfish DAS) and reduce several of the incidental catch limits starting May 1, 2003. The default measures were developed in the original FMP based on scientific analysis and projections done in 1997. More recent analyses and stock assessments have indicated that the scientific basis for the default measures is no longer valid, and the measures are not appropriate. Furthermore, the most recent stock assessment (SAW 34; January 2002) has invalidated the lower F reference points contained in the FMP, and suggested alternative reference points for the monkfish overfishing definition and control rules. In addition to revising the overfishing definitions in the FMP to make them consistent with the best available science and the provisions of the Magnuson-Stevens Act, this action proposes to establish an expedited process for setting annual target TACs, and the necessary trip limits and/or DAS allocations to meet such target TACs. Furthermore, this proposed rule would establish target TACs and corresponding trip limits for FY 2003 utilizing the proposed method.

#### Monkfish Overfishing Definition Reference Points

The threshold fishing mortality rate ( $F_{\text{threshold}}$ ) is the criterion by which the overfishing status is determined. Framework 2 would revise the  $F_{\text{threshold}}$  reference point by setting  $F_{\text{threshold}}$  equal to  $F_{\text{max}}=0.2$ , as recommended by the 34th Stock Assessment Workshop.  $F_{\text{max}}$  is the proxy for the fishing mortality rate

that will achieve maximum sustainable yield (MSY) from a rebuilt stock.

The minimum biomass threshold ( $B_{\text{threshold}}$ ) is the criterion by which a stock is determined to be overfished. The biomass target ( $B_{\text{target}}$ ) is a proxy for the expected biomass at MSY ( $B_{\text{msy}}$ ). The National Standard Guidelines prescribe that  $B_{\text{threshold}}$  be set at whichever of the following is greater: At one-half the  $B_{\text{target}}$ , or the minimum stock size at which rebuilding to  $B_{\text{target}}$  would be expected to occur within 10 years, if the stock were exploited at  $F_{\text{threshold}}$ . The existing  $B_{\text{threshold}}$ s in the FMP were established based on the 33rd percentile of NMFS' fall trawl survey biomass index values for the years 1963–1994;  $B_{\text{threshold}} = 1.46$  kg/tow for the NFMA and  $B_{\text{threshold}} = 0.75$  kg/tow for the Southern Fishery Management Area (SFMA). At the time the FMP was implemented, the Councils believed that this was an acceptable proxy for a risk adverse  $B_{\text{threshold}}$ . Language in the FMP, however, indicates that it is unclear how this  $B_{\text{threshold}}$  relates to rebuilding because of the inability to model monkfish stock dynamics and predict rebuilding potential due to a lack of biological data on the monkfish resource. Although a recent cooperative industry survey provided valuable biological information on the monkfish resource, there continues to be a lack of sufficient information necessary to conduct reliable projections for monkfish rebuilding, or to produce a reliable estimate of F. As a result, it is currently not possible for NMFS to determine the minimum stock size at which rebuilding to  $B_{\text{target}}$  would be expected to occur within 10 years if the stock were exploited at  $F_{\text{threshold}}$ . Because a  $B_{\text{threshold}}$  of one-half the  $B_{\text{target}}$  is consistent with National Standard 1, and because there are no other suitable proxies for  $B_{\text{threshold}}$  given the data-poor situation, the proposed action would revise the  $B_{\text{threshold}}$  values contained in the FMP to be equivalent to one-half the  $B_{\text{target}}$  established for each management area. This would establish a  $B_{\text{threshold}} = 1.25$  for the NFMA, and  $B_{\text{threshold}} = 0.93$  for the SFMA. Under the proposed action, the  $B_{\text{targets}}$  established in the FMP would remain unchanged.

The results of the 2002 NMFS fall trawl survey indicate that the 3-year average biomass index is 2.23 kg/tow for the NFMA and 0.813 kg/tow for the SFMA. Applying the new  $B_{\text{threshold}}$  criteria that would be established by this rule, the stock in the NFMA remains not overfished. However, the stock in the SFMA, which is currently considered not overfished, would be considered overfished under the proposed revision.

#### Setting Annual Target TACs and Associated Management Measures

Framework 2 would require the Monkfish Monitoring Committee (MFMC) to submit to the Council and Regional Administrator the target TACs for the upcoming year by December 1 based on a formulaic index- and landings-based method. This method would compare the current 3-year average biomass index (observed biomass index) values to annual biomass index targets, which are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the 2009 biomass index target ( $B_{\text{target}}$ ), a proxy for the monkfish biomass level at MSY. Annual target TACs would be set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous fishing year. Once the annual target TACs are established and submitted to the RA, the RA would adjust trip limits and/or DAS, if necessary, through rulemaking consistent with the Administrative Procedures Act (APA) based on the methodology established in this framework. If the TAC resulting from the application of the TAC setting procedures described herein does not require a change to existing management measures, then the RA would not be required to take any regulatory action under the procedures established in Framework 2.

The MFMC is currently required to meet on or before November 15 each year to review the status of the monkfish resource and develop TACs for the upcoming fishing year. If the results of the most recent NMFS fall trawl survey are available at that time, the MFMC would incorporate these results into the formulaic method as described in this framework to establish target TACs for the upcoming fishing year.

Under the target TAC setting method contained in Framework 2, if the observed biomass index is below the annual index target, the target TAC would be set proportionally below the previous year's landings. If the observed biomass index is above the annual index target, the target TAC would be increased from the previous year's landings by  $\frac{1}{2}$  of the ratio of the biomass index to the index target, with certain limitations as described below. In cases where F can be determined, the annual target TAC would always be set at a value that would not exceed  $F_{\text{threshold}}$  ( $F=0.2$ ). For example, if F for the previous fishing year exceeded  $F_{\text{threshold}}$ , but a reduction in the target TAC is not required under the index-based method,

the target TAC would be reduced proportionally from the previous year's landings to end overfishing. When  $F$  cannot be determined and the observed biomass index is above the annual index target, the target TAC for the previous year would be increased by the method described above, but not by more than 20 percent of the previous year's landings.

Once the stock in a management area is rebuilt (the observed biomass index is at or above  $B_{\text{target}}$ ), the target TAC would be adjusted based on the ratio of current  $F$  to  $F_{\text{threshold}}$ , allowing for an increase in the target TAC if  $F$  is below  $F_{\text{threshold}}$ . This would set the OY target reference point at  $F_{\text{threshold}}$ . However, if  $F$  cannot be determined and the observed biomass index is above  $B_{\text{target}}$ , the target TAC would be set at no more than 20 percent above the previous year's landings.

In the situation where landings decline from the previous fishing year and the observed biomass index is above the annual index target, the MFMC would review the circumstances surrounding the landings decline and recommend to the Councils a target TAC equivalent to either the previous year's landings or target TAC. The Councils, after considering the MFMC's recommendation, would then recommend a target TAC to the RA regarding whether the target TAC should be set at the previous year's landings or target TAC. If the RA concurs with this recommendation, the target TAC and associated trip limits would be promulgated through rulemaking and consistent with the requirements of the APA. Otherwise, the RA would notify the Councils in writing of his or her reasons for non-concurrence.

The intent of the Councils in establishing a formulaic method for setting annual target TACs, described above, was to enable the RA to set future TACs and associated management measures outside of the framework adjustment process established in the FMP. In this proposed rule, NMFS is clarifying that the expedited process for setting annual TACs contained in the Framework 2 document is to be done through the rulemaking process specified under the APA.

The Framework 2 document analyzes a range of target TAC alternatives for FY 2004. The intent of this analysis is to facilitate the expedited process for annual adjustments and to provide the public with ample notice of the possible impacts of such adjustments. The expedited annual adjustment process to be established in this framework would not preclude the Councils from

initiating a framework adjustment at anytime to implement other measures deemed necessary to meet the objectives of the FMP.

#### **FY 2003 TACs and Possession Limits**

For FY 2003, the TACs under the proposed action would be 10,211 mt in the SFMA and 17,708 mt in the NFMA. As a result, trip limits for monkfish limited access vessels in the SFMA would be increased from FY 2002 (May 1, 2002 – April 30, 2003) levels (550 lb (249.5 kg) tail weight per DAS for Category A and C vessels, and 450 lb (204.1 kg) tail weight per DAS for Category B and D vessels), to 1,250 lb (567 kg) tail weight per DAS for Category A and C vessels, and 1,000 lb (453.6 kg) tail weight per DAS for Category B and D vessels. In the NFMA, there is currently no trip limit for monkfish limited access vessels while fishing under either a monkfish or Northeast (NE) multispecies DAS, and no change is proposed. However, monkfish open-access Category E vessels fishing exclusively in the NFMA on a NE multispecies DAS would have their monkfish incidental catch limits increased from 300 lb (136.1 kg) tail weight per DAS or 25 percent of the total weight of fish on board to the lesser of 400 lb (181.4 kg) tail weight per DAS or 50 percent of total weight of fish on board.

#### **Revision to the Area Declaration Regulations**

Regulations implementing the FMP (64 FR 54732; October 7, 1999) specify that a vessel intending to fish for or catch monkfish under a monkfish DAS only in the NFMA must declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area. However, the FMP also requires vessels fishing under a multispecies or scallop DAS to declare into the NFMA in order to fish under the less restrictive measures of this area. Because NMFS inadvertently referenced only limited access monkfish DAS vessels in the regulations implementing the FMP, Framework 2 proposes to correct the area declaration provision by requiring vessels with limited access multispecies and scallop DAS permits, in addition to vessels possessing limited access monkfish DAS permits, to declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area.

#### **Revisions to Prohibitions**

Since they are ambiguous and do not contain the appropriate cross-references

to the monkfish regulations specified under 50 CFR Part 648 Subpart F, this action also proposes to clarify the monkfish prohibitions found at § 648.14(y).

#### **Classification**

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 because it does not have an annual effect on the economy of 100 million dollars or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. The proposed action also does not raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA prepared for this action by the NEFMC follows NMFS' "Guidelines for Economic Analysis of Fishery Management Actions" (NMFS' guidelines). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows:

There are approximately 714 limited access monkfish permit holders, of which about 85 percent record some monkfish activity. Of the approximately 1,900 open-access Category E permits, only about 25 percent have recorded landing monkfish. Vessels range in size from less than 30 ft (9.14 m) to over 90 ft (27.43 m), with the median being less than 50 ft (15.24 m) in overall length. Most of the inactive vessels (those not landing monkfish or not landing any species) are in the smaller size classes, while 70 percent of the limited access vessels over 50 ft (15.24 m) have recorded monkfish landings. In achieving OY from the fishery on an annual basis while rebuilding the resource to levels that will sustain MSY, the proposed action strikes a reasonable balance between biological requirements and uncertainties, and the financial requirements of small entities.

NMFS' guidelines specify two criteria to be used for evaluating whether a proposed action is significant: Disproportionality and profitability. Disproportionality relates to the effect on small entities compared to large entities. Since all entities engaged in the fishery fall under the Small Business

Administration approved definition of "small entity," this evaluation standard is not relevant to the fishery. According to the analysis of the impact on vessels in the SFMA, relative to performance during calendar years 1998–2000, net return on monkfish-only trips would improve by 23 percent for the median and range from no change to an improvement of 78 percent at the proposed FY 2003 quota level. Given these levels of expected change in profitability, the proposed trip limits may have a significant positive impact on limited access monkfish vessels that fish in the SFMA. At other quota levels, median vessel performance would be reduced by 63 percent at a 5,000–mt quota, but would increase by 29 percent at a 13,000–mt quota. In either of these two scenarios, the change in profitability would be significant; negative for the former, and positive for the latter.

In the NFMA, the only change in management measures would be an increase in the incidental catch limit for open access Category E monkfish vessels. During FY 2001 (May 1, 2001 – April 30, 2002), 255 Category E vessels caught monkfish in the NFMA. Average monkfish catch by these vessels (62 lb (28.1 kg) per NE multispecies DAS) is well below the current and proposed incidental catch limits. Therefore, in terms of improvements to participating vessels' annual profit, the proposed change is not likely to have a significant impact. While the current trip limit does not constrain the majority of the 255 Category E vessels catching monkfish in the NFMA, the proposed increase could allow those vessels that are constrained by the current trip limit to increase their monkfish landings by as much as 33 percent without jeopardizing the stock rebuilding program.

NMFS' guidelines state that "a rule may be determined to affect a substantial number of small entities if the rule is controversial, impacts more than just a few entities, or affects the structure of the regulated industry even though only a small number of entities may be impacted." The proposed action may affect a substantial number of small entities because it will impact approximately 700 limited access monkfish permit holders, although not in an adverse way, by means of an increase to the trip limits for the SFMA. An analysis of projected change in fishing performance under the proposed TACs and trip limits for FY 2003, as compared to FY 2002, indicates that the median vessel will realize a 23-percent increase in net returns on monkfish-only trips. According to this analysis, the change in net returns resulting from

the proposed trip limit increase ranged from no change to an improvement of 78 percent. A vessel would realize no change in net revenues under the proposed trip limit increase if the vessel was not constrained by the 2002 trip limits; in other words, the vessel did not fish at a level exceeding the trip limits established for FY 2002. Under future TACs that could range from 5,000 mt to 13,000 mt, the median vessel would realize gross revenue impacts ranging from a loss of 49 percent to a gain of 17 percent in net income. In the NFMA, approximately 255 vessels out of approximately 1,500 limited access multispecies permit holders landed monkfish under the open-access Category E (incidental catch) permit. These vessels will mostly be unaffected by the proposed incidental catch limit increase since they land, on average, only about 20 percent of the current limit.

Combining the two evaluation criteria, the proposed regulations would likely have a considerable positive impact on a substantial number of vessels that participate in the SFMA on monkfish-only DAS. The incidental catch trip limit change in the NFMA would impact a substantial number of participating small entities, but the overall impact on vessel profitability is not expected to be significant.

A copy of this analysis is available from the NEFMC (see **ADDRESSES**).

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements. However this action makes a correction to the regulatory language referencing area declaration procedures. This collection-of-information requirement that is subject to the Paperwork Reduction Act (PRA) has previously been approved by OMB under control number 0648–0202. Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraphs (y) introductory text, (y)(1), (y)(4), (y)(6), (y)(9) through (y)(11), (y)(13), and (y)(17) through (y)(21) are revised to read as follows:

##### § 648.14 Prohibitions.

\* \* \* \* \*

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9); or

(ii) The monkfish were harvested by a vessel not issued a Federal monkfish permit that fishes for or possesses monkfish exclusively in state waters; or

(iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing.

\* \* \* \* \*

(4) Operate or act as an operator of a vessel fishing for, possessing, retaining, or landing monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

\* \* \* \* \*

(6) Violate any provision of the monkfish incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) or 648.94(c).

\* \* \* \* \*

(9) Fail to comply with the monkfish size limit restrictions of § 648.93 when

issued a valid monkfish permit under § 648.4(a)(9).

(10) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94 when issued a valid monkfish permit under § 648.4(a)(9).

(11) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit, and fishing for, possessing, or landing monkfish in excess of the incidental catch limits specified at § 648.94 (c).

(13) Combine, transfer, or consolidate monkfish DAS allocations.

(17) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) Fail to produce gillnet tags when requested by an authorized officer.

(19) Tagging a gillnet with or otherwise using or possessing a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or using or possessing a false gillnet tag.

(20) Selling, transferring, or giving away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(21) Fail to comply with the area declaration requirements specified at §§ 648.93(b)(2) and 648.94(f) when fishing under a scallop, multispecies or monkfish DAS exclusively in the NFMA under the less restrictive monkfish size and possession limits of that area.

3. In § 648.92, paragraph (b)(1) is revised to read as follows:

**§ 648.92 Effort control program for monkfish limited access vessels.**

(b) *Limited access monkfish permit holders.* All limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year, unless modified according to the provisions specified at § 648.96(b)(3). Limited access multispecies and limited access scallop permit holders who also possess a valid limited access monkfish permit must use a multispecies or scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section.

4. In § 648.93, the introductory heading for paragraph (a), and paragraphs (a)(1) and (b) are revised to read as follows:

**§ 648.93 Monkfish minimum fish sizes.**

(a) *General provisions.* (1) All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

(b) *Minimum fish sizes.* (1) The minimum fish size for vessels fishing in the SFMA, or for vessels not declared into the NFMA as specified in paragraph (b)(2) of this section, is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(2) *Vessels fishing exclusively in the NFMA.* The minimum fish size for vessels fishing exclusively in the NFMA is 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length. In order for this size limit to be applicable, a vessel intending to fish for monkfish under a scallop, multispecies, or monkfish DAS exclusively in the NFMA must declare into the NFMA for a period of not less than 30 days pursuant to the provisions specified at § 648.94(f). A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA providing that it complies with the transiting and gear storage provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

5. In § 648.94, paragraph (b)(7) is removed and reserved; and paragraphs (b)(1), (b)(2), introductory heading of paragraph (b)(3), (b)(4) through (b)(6), (c)(1)(i), (c)(2), (c)(3)(i) and (f) are revised to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

(1) *Vessels fishing under the monkfish DAS program in the NFMA.* There is no monkfish trip limit for vessels issued a limited access Category A, B, C, or D permit that are fishing under a monkfish DAS exclusively in the NFMA.

(2) *Vessels fishing under the monkfish DAS program in the SFMA—(i) Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 1,250 lb (567 kg) tail-weight or 4,150 lb (1,882 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the

monkfish DAS program in the SFMA may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(iii) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) and (ii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C and D vessels fishing under the multispecies DAS program.*

(4) *Category C and D vessels fishing under the scallop DAS program.* A Category C or D vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32). All monkfish permitted vessels are prohibited from fishing for, landing, or possessing monkfish while in possession of dredge gear unless fishing under a scallop DAS.

(5) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(6) *Vessels not fishing under a multispecies, scallop or monkfish DAS.* The possession limits for all limited access monkfish vessels when not fishing under a multispecies, scallop, or monkfish DAS are the same as the possession limits for a vessel issued a monkfish incidental catch permit specified under paragraph (c)(3) of this section.

(c) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 400 lb (181 kg) tail weight or 1,328 lb (602 kg) whole

weight of monkfish per DAS, or 50 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

\* \* \* \* \*

(2) *Scallop dredge vessels fishing under a scallop DAS.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(3) \* \* \*

(i) *Vessels fishing with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM, GB, SNE, or MA RMAs with mesh no smaller than specified at § 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i), and § 648.104(a)(1), respectively, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

\* \* \* \* \*

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies,

scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 30 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA providing that it complies with the transiting and gear storage provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

\* \* \* \* \*

6. In § 648.96, the section heading and paragraphs (a), (b) and (c) are revised to read as follows:

**§ 648.96 Monkfish annual adjustment process and framework specifications.**

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year in accordance with § 648.96(b)(1), and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and

landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(b) *Annual adjustment procedures—*  
 (1) *Setting annual target TACs.* (i) The MFMC shall submit to the Councils and Regional Administrator the target monkfish TACs for the upcoming fishing year by December 1 based on the control rule formula described in paragraph (b)(1)(ii) of this section. The Regional Administrator shall then promulgate any changes to existing management measures, pursuant to the methods specified in paragraphs (b)(2) and (3) of this section, resulting from the updated target TAC through rulemaking consistent with the Administrative Procedures Act. If the annual target TAC generated through the control rule formula described in paragraph (b)(1)(ii) of this section does not require any changes to existing management measures, then no action is required by the Regional Administrator.

(ii) *Control rule method for setting annual targets TACs.* The current 3-year running average of the NMFS fall trawl survey index of monkfish biomass will be compared to the established annual biomass index target, and target annual TACs will be set in accordance with paragraphs (b)(1)(ii)(A) through (F) of this section. The annual biomass index targets established in Framework Adjustment 2 to the FMP are provided in the following table (kg/tow).

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2007	FY 2008	FY 2009
NFMA	1.33	1.49	1.66	1.83	2.00	2.16	2.33	2.50
SFMA	0.88	1.02	1.15	1.29	1.43	1.57	1.71	1.85

(A) Unless the provisions of paragraphs (b)(1)(ii)(C) or (D) of this section apply, if the current 3-year running average of the NMFS fall trawl survey biomass index is below the annual index target, the target TAC for the subsequent fishing year will be set equivalent to the monkfish landings for the previous fishing year minus the percentage difference between the 3-year average biomass index and the annual index target.

(B) If the 3-year running average of the NMFS fall trawl survey biomass index is above the annual index target, and the current estimate of F is below  $F_{\text{threshold}}=F_{\text{max}}=0.2$ , the target TAC for the subsequent fishing year shall be set equivalent to the previous year's landings plus one-half the percentage difference between the 3-year average biomass index and the annual index

target, but not to exceed an amount calculated to generate an F in excess of  $F_{\text{threshold}}$ . If current F cannot be determined, the target TAC shall be set at not more than 20 percent above the previous year's landings.

(C) If the current estimate of F exceeds  $F_{\text{threshold}}$ , the target TAC shall be reduced proportionally to stop overfishing, even if a reduction is not called for based on biomass index status as described in paragraph (b)(1)(ii)(A) of this section. For example, if  $F=0.24$ , and  $F_{\text{threshold}}=0.2$ , then the target TAC shall be reduced to 20 percent below the previous year's landings.

(D) If the 3-year average biomass index is below the annual index target, and F is above  $F_{\text{threshold}}$ , the method (F-based or biomass index based) that shall result in the greater reduction from the previous year's landings will determine

the target TAC for the subsequent fishing year.

(E) If the observed index is above the 2009 index targets, the target TAC for the subsequent fishing year shall be based on the ratio of current F to  $F=0.2$  applied to the previous year's landings. If current F cannot be determined, the target TAC shall be set at not more than 20 percent above previous year's landings.

(F) If landings decline from the previous year and the current 3-year average biomass index is above the annual index target, whether or not F can be determined, the MFMC shall include in its report, prepared under paragraph (a) of this section, after taking into account circumstances surrounding the landings decline, a recommendation to the Councils on whether the target TAC should be set at the previous year's

landings or previous year's target TAC. The Councils shall consider the MFMC recommendation, and then recommend to the Regional Administrator whether the target TAC should be set at the previous year's landings or previous year's target TAC. If such a recommendation is made, the Regional Administrator must decide whether to promulgate measures consistent with the recommendation as provided for in paragraph (b)(4) of this section.

(2) *Setting trip limits for the SFMA.* (i) Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set at 8,000 mt or higher, the Regional Administrator shall adjust the trip limits according to the method described in paragraph (b)(2)(ii) of this section.

(ii) *Trip limit analysis procedures.* Trip limits shall be determined annually using information from the mandatory fishing vessel trip reports (FVTR). The 1999 fishing year shall be used as the baseline year for this analysis. The most recent fishing year for which there is complete FVTR information shall be utilized to establish the level of landings and fishing effort under current regulations. For example, the determination of trip limits for the 2004 fishing year would be based on the ratio of landings and effort obtained from the FVTRs for the 2002 fishing year, the most recent fishing year for which complete FVTR information would be available. Using the relationship between the fishing patterns for these two years, ratios shall be calculated for each permit category. These ratios shall be used to determine landings goals for each permit category based on the proposed TAC for the SFMA. A simulation process will then be used to estimate the landings per DAS for each permit category that would achieve the established landings goals.

(3) *Setting DAS allocations for the SFMA.* Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set below 8,000 mt, the Regional Administrator shall set the trip limits as specified in paragraphs (b)(3)(i) and (ii) of this section, and adjust the DAS allocations according to the method described in paragraph (b)(3)(iii) of this section.

(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (249 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(iii) *DAS analysis.* This procedure involves setting a maximum DAS usage for all permit holders of 40 DAS; proportionally adjusting the landings to a given DAS value based on the trip limits specified under paragraphs (b)(3)(i) and (ii) of this section; and adjusting the landings according to the same methodology used in the trip limit analysis described in paragraph (b)(2)(ii) of this section.

(A) Limited access monkfish permit holders are allowed to carry over up to 10 DAS from the previous fishing year to the current fishing year. For this procedure, adjustments to DAS usage are made by first reducing the landings for all permit holders who used more than 40 DAS by the proportion of DAS exceeding 40, and then resetting the upperlimit of DAS usage to 40.

(B) The expected landings at the adjusted DAS are calculated by adding the landings of all permit holders who used less than the proposed DAS limit to the landings of those who used more than the proposed DAS limit, where landings are reduced by the proportion of the proposed DAS limit to the actual DAS used by vessels during the baseline fishing year, 1999.

(C) Landings are prorated between permit categories in the same manner used in the trip limit analysis procedures described under paragraph (b)(2)(iii) of this section.

(4) *Council TAC recommendations.* As described in paragraph (b)(1)(ii)(F) of this section, if the Councils recommend a target TAC to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall then promulgate the target TAC and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Annual and in-season framework adjustments to management measures—*  
(1) *Annual framework process.* (i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, options necessary to

achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in §§ 648.55 and 648.90.

(ii) The Councils shall review the options developed by the MFMC and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils do not submit a recommendation that meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC unless rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(iii) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action shall provide a 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c)(3) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's goals and objectives, is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(iv) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the **Federal Register** prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(2) *In-season action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Recommended adjustments to management measures must come from the categories specified under paragraph (c)(1)(i) of this section. In addition, the procedures for framework adjustments specified under paragraph (c)(3) of this section must be followed.

(3) *Framework adjustment procedures.* Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(i) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(A) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(B) Whether there has been adequate notice and opportunity for participation

by the public and members of the affected industry in the development of the Councils' recommended management measures;

(C) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(D) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(ii) *Action by NMFS.* (A) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(B) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(C) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(iii) Adjustments for gear conflicts. The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

\* \* \* \* \*

[FR Doc. 03-5172 Filed 3-3-03; 3:17 pm]

BILLING CODE 3510-22-S

# Notices

Federal Register

Vol. 68, No. 45

Friday, March 7, 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 AGRICULTURE

### Submission for OMB Review; Comment Request

March 4, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

### Office of the Secretary, Faith-Based and Community Initiatives

*Title:* Survey on Ensuring Equal Opportunity for Applicants.

*OMB Control Number:* 0503-NEW.

*Summary of Collection:* The responsibility of the Office of Faith-based and Community Initiatives is to fulfill the mandate of Executive Orders 13198 and 13199 which prescribe agency responsibilities related to Faith-based and Community Initiatives. Specifically, the office is working to remove all barriers to the full participation of faith-based and community organizations in federal social service programs. The Department of Education has initiated a government-wide survey to gauge the number and quality of applications from faith-based and community organizations. USDA is requesting approval from OMB to implement this survey in conjunction with the application process for the grant programs it administers.

*Need and Use of the Information:* USDA's Office of Faith-based and Community Initiatives plans to collect information from faith-based and community organizations through a brief survey. The information will be used to judge the effectiveness of the technical assistance and outreach efforts of the faith-based and community initiative. The data collected through the survey will be kept from the decision-makers who oversee the award of grant funds.

*Description of Respondents:* Not-for-profit institutions.

*Number of Respondents:* 7,377.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 590.

### Cooperative State Research, Education, and Extension Service

*Title:* Application for Authorization to Use the 4-H Name and/or Emblem.

*OMB Control Number:* 0524-0034.

*Summary of Collection:* Use of the 4-H Name and/or Emblem is authorized by an Act of Congress, (Pub. L. 772, 80th Congress, 645, 2nd Session). Use of the 4-H Name and/or Emblem by anyone other than the 4-H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities,

and person authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary has delegated authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) to authorize others to use the 4-H Name and/or Emblem. Therefore, anyone requesting authorization from the Administrator to use the 4-H Name and Emblem is asked to describe the proposed use in a formal application. CSREES will collect information using form CSREES-01 "Application for Authorization to Use the 4-H Club Name and Emblem

*Need and Use of the Information:* CSREES will collect information on the name of individual, partnership, corporation, or association; organizational address, name of authorized representative; telephone number; proposed use of the 4-H Name or Emblem, and plan for sale or distribution of product. The information collected by CSREES will be used to determine if those applying to use the 4-H Name and Emblem are meeting the requirements and quality of materials, products and/or services provided to the public. If the information were not collected, it would not be possible to ensure that the products, services, and materials meet the high standards of 4-H, its educational goals and objectives.

*Description of Respondents:* Not-for-profit institutions; Individuals or households; Business or other for-profit.

*Number of Respondents:* 60.

*Frequency of Responses:* Reporting: Other (every 3 years).

*Total Burden Hours:* 30.

### Foreign Agricultural Service

*Title:* Technical Assistance for Specialty Crops Program.

*OMB Control Number:* 0551-0038.

*Summary of Collection:* The Technical Assistance for Specialty Crops (TASC) program is authorized by Section 3205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171). This section provides that the Secretary of Agriculture shall establish a program to address unique barriers that prohibit or threaten the export of U.S. specialty crops. The Foreign Agricultural Service (FAS) administers the program for the Commodity Credit Corporation. The TASC is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, and technical

barriers that prohibit or threaten the export of U.S. speciality crops.

*Need and Use of the Information:* FAS collects data for fund allocation, program management, planning and evaluation. FAS will collect information from applicant desiring to receive grants under the program to determine the viability of requests for funds. The program could not be implemented without the submission of project proposals, which provide the necessary information upon which funding decisions are based.

*Description of Respondents:* Not-for-profit; Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 20.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Annually.

*Total Burden Hours:* 640.

#### **Farm Service Agency**

*Title:* Horse Breeder Loan Program.

*OMB Control Number:* 0560-0221.

*Summary of Collection:* The Farm Service Agency (FSA) makes direct and guaranteed loans to family farmers who cannot obtain loans from commercial sources at reasonable rates and terms. The Horse Breeder Loans Program will assist horse breeder who have suffered economic loss as a result of Mare Reproductive Loss Syndrome (MRLS). To determine whether an applicant is eligible for a loan FSA must document the severity of the horse breeder's loss. A veterinary certification is used to document the losses. MRLS is a veterinary medical condition, which requires a trained expert to determine the number and type of loss. The Horse Breeder Loan Program is authorized under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (The Act), enacted November 28, 2001. FSA will collect information using several forms.

*Need and Use of the Information:* FSA will collect information to evaluate an applicant's eligibility and feasibility for loan assistance. If the information is not collected from each applicant, or collected less frequently, FSA would be unable to make eligibility and feasibility determinations.

*Description of Respondents:* Farms; Individuals or households; Business or other for-profit; Federal Government.

*Number of Respondents:* 267.

*Frequency of Responses:* Reporting: Other (Eligibility).

*Total Burden Hours:* 414.

#### **Natural Resources and Conservation Service**

*Title:* Volunteer Program—Earth Team.

*OMB Control Number:* 0578-0024.

*Summary of Collection:* Volunteers have been a human resource to the Natural Resources Conservation Service (NRCS) since 1985. NRCS is authorized by the Federal Personnel Manual (FPM) Supplement 296-33, Subchapter 22, to recruit, train and accept, with regard to Civil Service classification law, rules, or regulations, the service of individuals to serve without compensation. Volunteers may assist in any agency program/project and may perform any activities which agency employees are allowed to do. Volunteers must be 14 years of age. NRCS will collect information using several NRCS forms.

*Need and Use of the Information:* NRCS will collect information on the type of skills and type of work the volunteers are interested in doing. NRCS will also collect information to implement and evaluate the effectiveness of the volunteer program. Without the information, NRCS would not know which individuals are interested in volunteering.

*Description of Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 30,320.

*Frequency of Responses:* Reporting: Semi-annually.

*Total Burden Hours:* 916.

#### **Animal and Plant Health Inspection Service**

*Title:* Low Pathogenic AI Payment of Indemnity.

*OMB Control Number:* 0579-0208.

*Summary of Collection:* In accordance with 21 U.S.C. 111-113, 114, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Disease prevention is the most effective method of maintaining a healthy animal population and enhancing the ability of the United States to compete in the global market of animal and animal products. The Animal and Plant Health Inspection Service (APHIS) is charged with carrying out this disease prevention mission. Highly pathogenic avian influenza (AI) is an extremely infectious and deadly form of AI and can cause sudden death in poultry

without any warning signs of infection. Low pathogenic AI, however, causes few clinical sign infected birds. APHIS will collect information using several of APHIS' forms.

*Need and Use of the Information:* APHIS will collect the name, address, the number, type and age of poultry for which the claimant is seeking payment; and the appraised value of the poultry. APHIS will also collect information to document the loss of poultry from diagnostic testing of backyard flocks. Information provided will be used to reimburse poultry owners for poultry dying as a result of the test. Failure to collect the information would make it impossible for APHIS to launch a control program in Virginia, possibly leading to outbreaks in other States.

*Description of Respondents:* Farms; Individuals or households; Federal Government; State, Local, or Tribal Government.

*Number of Respondents:* 800.

*Frequency of Responses:* Reporting: On occasion.

*Total burden Hours:* 1,600.

#### **Food and Nutrition Service**

*Title:* Status of Claims Against Households.

*OMB Control Number:* 0584-0069.

*Summary of Collection:* Section 11, 13, and 16 of the Food Stamp Act of 1977, as amended (the Act) and appropriate Food Stamp Program Regulation are the bases for the information collected on FNS-209. Food Stamp Program regulations require that State agencies submit quarterly form NFS-209, Status of Claims Against Households, reports. The required information provided on this report must be obtained from a State accountable system responsible for establishing claims, sending demand letters, collecting claims, and managing other claim activity.

*Need and use of the Information:* The Food and Nutrition Service (FNS) will collect information on the outstanding aggregate claim balance; claims established; collections; any balance and collection adjustments; and the amount to be retained for collecting non-agency error claims. The information will be used by State agencies to ascertain aggregate claim balance and collections for determining overall performance, the collection amounts to return to FNS, and claim retention amounts. FNS will receive collections and report collection activity to Treasury.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Recordkeeping; Reporting: Quarterly.  
*Total Burden Hours:* 42.

#### **Forest Service**

*Title:* Special Use Administration.  
*OMB Control Number:* 0596-0082.  
*Summary of Collection:* Title 5 of the Federal Land Policy and Management Act of 1976 (FLPMA, P.L. 94-579), the Organic Administration Act of 1897, (30 Stat. 34) and the Secretary's Regulations at Title 36, Code of Federal Regulations, Section 251, Subpart B (36 CFR 251, Subpart B), provides for authorities and requirements for the application, issuance, and administration of special uses on National Forest System Lands. There is a basic obligation of the agency to ensure that the use of Federal lands is in the public interest; is compatible with the mission of the Forest Service (FS); and that environmental and social impacts are identified and mitigated and that a fee based on fair market value is received. The evaluation can only be accomplished with the cooperation and information furnished by the applicant or permit holder. The information is needed from those parties who seek special-use authorizations to conduct private or commercial operations or National Forest System land, or from those who are currently utilizing National Forest System lands for private or public use. FS will collect information using several forms.

*Need and Use of the Information:* FS will collect information on: (1) the identity of the applicant; (2) the nature of the request and project description; (3) location of National Forest System lands requested for use; (4) technical and financial capability of the requester; (5) alternatives considered, including use of nonfederal lands and; (6) anticipated environmental impacts and proposed mitigation of those impacts. The authorized forest officer evaluates this information and makes a decision to approve or disapprove the requested use. The information required to evaluate the merits of the applicant's request to use National Forest System lands that is not available elsewhere. The use of the forms helps reduce the burden on the applicant by providing a listing of the information that is required by law and tailored to the intended use proposed by the respondent. Use of the forms is of extreme benefit to applicants in that they do not have to refer to the regulations or policy manuals to determine what information is needed by the agency. Without the forms, the cost to the applicant would be increased.

*Description of Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 60,750.  
*Frequency of Responses:* Reporting: On occasion; Quarterly; Annually.  
*Total Burden Hours:* 82,775.

#### **Forest Service**

*Title:* National Visitor Use Monitoring, and Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

*OMB Control Numbers:* 0596-0110.  
*Summary of Collection:* The National Forest Management Act (NFMA) of 1976 and the Forest and Rangeland Renewable Resources Act (RPA) of 1974 require a comprehensive assessment of present and anticipated uses, demand for and supply of renewable resources from the nation's public and private forests and rangelands. The Forest Service (FS) is required to report to Congress and others in conjunction with these legislated requirements as well as the use of appropriated funds. An important element in the reporting is the number of visits to National Forests and Grasslands, as well as to Wilderness Areas that the agency manages. The Customer and Use Survey Techniques for Operations, Management, Evaluation and Research (CUSTOMER) study combines several different survey approaches to gather data describing visitors to and users of public recreation lands, including their trip activities, satisfaction levels, evaluations, demographic profiles, trip characteristics, spending, and annual visitation patterns. FS will use face-to-face interviewing for collecting information on-site as well as written survey instruments to be mailed back by respondents.

*Need and Use of the Information:* FS plans to collect information from a variety of National Forests and other recreation areas. Information gathered through the various Customer modules has been and will continue to be used by planners, researchers, managers, policy analysts, and legislators in resource management areas, regional offices, regional research stations, agency headquarters, and legislative offices.

*Description of Respondents:* Individuals or households.  
*Number of Respondents:* 66,000.  
*Frequency of Responses:* Reporting: Quarterly; Annually.  
*Total Burden Hours:* 9,000.

#### **Food and Nutrition Service**

*Title:* Child Nutrition Labeling Program.

*OMB Control Number:* 0584-0320.  
*Summary of Collection:* The Child Nutrition Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS). The program is designed to aid schools and institutions participating in the National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Service Program in determining the contribution a commercial product makes towards the meal pattern requirements. By requiring that companies that sell food to the government for use in nutrition program to identify the contribution of a product to the established meal pattern requirements. The Child Nutrition Labeling Program is implemented in conjunction with existing label approval programs administered by the Food Safety and Inspection Service (FSIS), the Agricultural Marketing Service (AMS), and the U.S. Department of Commerce. In addition to an application for approval of a Child Nutrition label, companies must include a separate statement on how the product satisfies meal pattern requirements. All information is submitted to FSIS on form FSIS 7234-1, Application for Approval of Labels, Marking or Device.

*Need and Use of the Information:* FNS uses the information collected by FSIS to aid school food authorities and other institutions participating in child nutrition programs in determining the contribution a commercial product makes towards the established meal pattern requirements.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 946.  
*Frequency of Responses:* Reporting: Other (as needed).  
*Total Burden Hours:* 1,938.

#### **Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 03-5433 Filed 3-6-03; 8:45 am]

**BILLING CODE 3410-01-M**

#### **DEPARTMENT OF AGRICULTURE**

#### **Elk and Forest Counties, PA; Notice of Intent To Prepare an Environmental Impact Statement**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Allegheny National Forest (ANF), Marienville Ranger District will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Brush Creek Project. The purpose of this project is to move the ANF from the existing condition towards the desired condition, as detailed in the Allegheny National Forest Land and Resource Management Plan (Forest Plan).

The Forest Plan provides for management of forest resources. Management objectives include producing a sustainable supply of high-quality saw timber and wood products, developing and maintaining a wide array of wildlife habitats, and providing a range of recreation settings and experiences. The Allegheny National Forest is divided into specific zones or Management Areas. Specific objectives are defined for each Management Area, and the Brush Creek Project Area contains Management Areas 1.0, 3.0, 6.1, and 6.3. MA 3.0 emphasizes timber harvest as a means for making desired changes to forest vegetation and satisfying the public demand for timber products. Management Area 1.0 emphasizes habitat conditions in early successional forest stages and those wildlife species dependent on such habitat. Management Area 6.1 emphasizes management of forest vegetation as mature or over mature forest. Management Area 6.3 is a special management area designated for waterfowl and associated riparian habitat management.

In order to move toward the Desired Condition proposed activities include: (1) Regeneration harvests consisting of shelterwood seed/removal cuts, overstory removal cuts, clearcuts, and two-age harvests; (2) Intermediate harvest consisting of thinning/improvement cuts, single tree and group selection, salvage harvests, and release cuts (pre-commercial timber stand improvement); (3) Reforestation treatment consisting of herbicide application, site preparation, fertilization, fencing, release, and, planting; (4) Wildlife habitat improvement consisting of (a) restoring/improving aquatic habitat through planting and controlling aquatic, shrub, and conifer and streamside vegetation species and rehabilitating erosion prone areas and placing aquatic structures and coarse woody debris, (b) restoring/reestablishing/improving terrestrial habitat vegetation through planting and releasing native trees and shrubs, prescribed burning, and opening

management through planting and seeding of native herbaceous vegetation, (c) restoring/improving terrestrial habitat structure through aspen management, creating snag and providing coarse woody debris, and placing nest structures; (5) Transportation activities consisting of road construction, reconstruction, eliminating unnecessary roads, limestone surfacing, maintaining roads to high standards, and pit expansion/construction; (6) Recreation activities including trail realignment, construction of parking areas, and efforts to curb illegal Off-Highway Vehicle (OHV) use.

During project analysis issues will be identified that focus on the management of the area. Alternatives will be developed to show various ways to address the issues. This process is driven by comments received from the public, other agencies, and internal Forest Service concerns. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties.

**DATES:** The public comment period will be for 30 days from the date this notice is published in the **Federal Register**. Comments and suggestions concerning the scope of the analysis should be submitted within this timeframe to ensure consideration.

**ADDRESSES:** Submit written, oral, or e-mail comments by:

- (1) Mail—Brush Creek Project, ID Team Leader, Marienville Ranger District, Ridgway Office, 1537 Montmorenci Road, Ridgway, PA 15953;
- (2) Phone—814-776-6172;
- (3) E-mail—[r9\\_allegheny\\_nf@fs.fed.us](mailto:r9_allegheny_nf@fs.fed.us) (please note: when commenting by e-mail be sure to list *Brush Creek EIS* in the subject line and include a U.S. Postal Service address so we may add you to our mailing list).

**FOR FURTHER INFORMATION CONTACT:** Kevin Treese or Chris Thornton, Marienville Ranger District, at 814-776-6172.

**SUPPLEMENTARY INFORMATION:** Preliminary Issues were developed based on past projects in the area (environmental analysis), issues developed for similar projects, and Forest Service concerns and opportunities identified in the Project Area. These issues are listed below:

1. *Road Management*—The Forest Service will complete a Roads Analysis, which includes evaluating all roads in the Roads Analysis Area for effects to the ecosystem. This effort is being undertaken within the Brush Creek project area. The proposed action

requires examining the road system to determine if the existing road system is adequate (or if improvements are needed), and if any roads need to be closed for resource protection or other reasons (e.g., water quality, wildlife, or recreation opportunities).

2. *Even-Aged/Uneven-Aged Management*—The Forest Plan provides direction regarding the primary silvicultural system to be used in each management area; for Management Area 3.0 it is even-aged management. However, uneven-aged management is an option considered for inclusions such as riparian areas, wet soils, or visually sensitive areas.

These issues may be modified as additional issues are identified during scoping. A range of alternatives will be considered after public comments are received and analyzed. One of these will consider No Action for the Project Area. Another alternative will be the proposed action. Management actions within the alternatives will respond to the issues in different ways by varying the size and intensity of the treatments and projects proposed. The amount of even and uneven-aged management, wildlife, recreation development, road management, watershed rehabilitation and other activities may differ within the alternatives. The combinations of proposed activities are likely to be adjusted after all comments are reviewed.

Comments that are site-specific in nature are most helpful to resource professionals when trying to narrow and address the public's issues and concerns.

*Commenting:* Comments received, including names and addresses of those who comment, will be considered part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

The Draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by October 2003. At that time the Environmental Protection Agency will publish a Notice of Availability of the document in the **Federal Register** (this will begin the 45-day comment period on the Draft EIS). After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The Final EIS is scheduled for release in April 2004.

The Forest Service believes it is important to give reviewers notice at

this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 553 [1978]). Also, environmental objection that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon v. Hodel*, 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. To assist the Forest Service in identifying and consider issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality *Regulations for implementing the procedural provisions of the National Environmental Policy Act* at CFR 1503.3 in addressing these points.

This decision will be subject to appeal under 36 CFR 215. The responsible official is Leon F. Blashock, Marienville Ranger District, Ridgway Office, 1537 Montmorenci Road, Ridgway, PA 15853 at (814) 776-6172.

Dated: February 28, 2003.

**Kevin B. Elliott,**  
Forest Supervisor.

[FR Doc. 03-5253 Filed 3-6-03; 8:45 am]

BILLING CODE 3410-11-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this meeting is to review submitted project proposals and consider recommending projects for funding. Project proposals are due by March 17, 2003 to be considered at this meeting.

**DATES:** The meeting will be held April 4, 2003 from 6-9 p.m. and will continue on April 5, 2003 from 9-12 a.m., if necessary.

**ADDRESSES:** The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, PO Box 327, Yakutat, AK 99689, (907) 784-3359 or electronically to [poconnor@fs.fed.us](mailto:poconnor@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784-3359.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 28, 2003 will have the opportunity to address the Council at those sessions.

Dated: February 28, 2003.

**Patricia M. O'Connor,**  
District Ranger, Yakutat Ranger District,  
Tongass National Forest.

[FR Doc. 03-5436 Filed 3-6-03; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

**ACTION:** Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, Section IV, for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standards Contour Farming (Code 330) and Conservation Crop Rotation (Code 328) to account for improved technology. These practice standards can be used in systems that treat highly erodible cropland.

**DATES:** Comments will be received for a 30-day period commencing with the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203, telephone number (615) 277-2531. Copies of the practice standards will be made available upon written request.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standards.

Dated: February 28, 2003.

**James W. Ford,**  
State Conservationist.

[FR Doc. 03-5428 Filed 3-6-03; 8:45 am]

BILLING CODE 3410-16-P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

*Comments Must Be Received On or Before:* April 6, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:**  
Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:**

This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Services**

*Service Type/Location:* Base Supply Center & Individual Equipment Element, Buckley Air Force Base, Colorado.

*NPA:* Envision, Inc., Wichita, Kansas.

*Contract Activity:* 460th Air Base Wing, Buckley AFB, Colorado.

*Service Type/Location:* Janitorial/Grounds Maintenance, Bureau of Alcohol, Tobacco and Firearms National Laboratory, Beltsville, Maryland.

*NPA:* Northwestern Workshop, Inc., Winchester, Virginia.

*Contract Activity:* Department of the Treasury, Bureau of ATF, Washington, DC.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-5451 Filed 3-6-03; 8:45 am]

**BILLING CODE 6353-01-P**

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Addition**

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** April 6, 2003.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:**  
Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:**

On December 27, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 79045) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

**Service**

*Service Type/Location:* Rehabilitation Support Services, Central Arkansas Veterans Healthcare System, North Little Rock, Arkansas.

*NPA:* Pathfinder, Inc., Jacksonville, Arkansas.

*Contract Activity:* Central Arkansas Veterans Healthcare System, North Little Rock, Arkansas. This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 03-5452 Filed 3-6-03; 8:45 am]

**BILLING CODE 6353-01-P**

**BROADCASTING BOARD OF GOVERNORS**

**Sunshine Act; Meeting**

**DATE AND TIME:** March 11, 2003; 1 p.m.-4:30 p.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B).) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6).)

**FOR FURTHER INFORMATION CONTACT:** Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401-3736.

Dated: March 4, 2003.

**Carol Booker,**

*Legal Counsel.*

[FR Doc. 03-5614 Filed 3-5-03; 1:05 pm]

**BILLING CODE 8230-01-M**

**DEPARTMENT OF COMMERCE****Submission for OMB Review;  
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Office of the Secretary.

*Title:* Postsecondary Internship Program Intern Evaluation Survey.

*Form Number(s):* CD-577.

*OMB Approval Number:* 0690-0021.

*Type of Request:* Regular submission.

*Burden Hours:* 55 hours.

*Number of Respondents:* 110.

*Average Hours Per Response:* 30 minutes.

*Needs and Uses:* The Office of Executive Budgeting and Assistance Management (OEBAM) manages the U.S. Department of Commerce (DOC) Postsecondary Internship Program. The program is competitively awarded and funded by cooperative agreements with the purpose of providing experiential training opportunities for post secondary students at DOC and other partner federal agencies. The program is administered through a partnership between DOC and non-profit and/or educational institutions. We intend to use the information collected from the intern evaluations to make program improvements and implement performance measures for strategic planning.

*Affected Public:* Individuals or households, and Federal government.

*Frequency:* Three times per year (summer, fall and spring sessions).

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days after publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 3, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-5361 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-BV-P**

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

**[Docket 10-2003]**

**Proposed Foreign-Trade Zone—Bowie County, TX; Application and Public Hearing**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Red River Redevelopment Authority, to establish a general-purpose foreign-trade zone at sites in Bowie County, Texas, adjacent to the Shreveport-Bossier City Customs port of entry. The FTZ application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 25, 2003. The applicant is authorized to make the proposal under Senate Bill 691 of the 70th Legislature of the State of Texas (Regular Session, 1987), codified as Tex. Rev. Civ. Stat. Ann. Art. 144601.

The proposed zone would be the third general-purpose zone in the Shreveport Customs port of entry area. The existing zones are FTZ 145 in Shreveport, Louisiana (Grantee: Caddo-Bossier Parishes Port Commission, Board Order 370, 53 FR 1503, 1/20/88) and FTZ 234 in Gregg County, Texas (Grantee: Gregg County, Texas, Board Order 1003, 63 FR 63671, 11/16/98).

The proposed zone would consist of two sites covering 684 acres in the Greater Texarkana area of northeastern Texas: *Site 1* (524 acres)—Red River Commerce Park (the former Red River Army Depot), Bowie County, Texas, approximately 18 miles west of Texarkana and the Texas-Arkansas border, and, *Site 2* (160 acres)—City of Nash Industrial Park, Bowie County, Texas, approximately 15 miles west of Texarkana and the Texas-Arkansas border. Site 1 is owned by the applicant and Site 2 is owned by the Nash Industrial Development Corporation and Bodega Bay Limited.

The application indicates a need for zone services in the Greater Texarkana area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests

would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 1, 2003, at 9 a.m., at the Bowie County Court House, Commissioners Court Room, 710 James Bowie Drive, New Boston, Texas 75570.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is May 6, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 21, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Red River Redevelopment Authority, 107 Chapel Lane, New Boston, Texas 75570.

Dated: February 28, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03-5498 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**[A-201-805]**

**Circular Welded Non-Alloy Steel Pipe From Mexico: Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** On December 26, 2002, the Department of Commerce (“the Department”) published in the Federal Register (67 FR 78772) a notice announcing the initiation of an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico. This administrative review covered two Mexican manufacturers of circular welded non-alloy steel pipe, Niples Del Norte S.A. de C.V. (“NDN”) and Hylsa S.A. de C.V. (“Hylsa”), for the period of November 1, 2001, through October 31, 2002. The Department has now rescinded this review as a result of requests by both parties to withdraw from the review.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** John Drury or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482-0195 or (202) 482-1374, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Review**

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple

certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

**Background**

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of “Opportunity to Request an Administrative Review” of the antidumping duty order for the 2001/2002 review period on November 1, 2002 (67 FR 66612). Respondents NDN and Hylsa requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico.

The Department received timely requests for withdrawal from the administrative review from NDN on December 20, 2002, and from Hylsa on December 19, 2002. The applicable regulation, 19 CFR 351.213(d)(1), states that the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In light of the fact that all of the parties who initially requested an administrative review have withdrawn their requests in a timely manner, we are rescinding this review.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: February 28, 2003.

**Faryar Shrizad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5497 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-337-803]

**Fresh Atlantic Salmon from Chile: Amended Final Results of 2000-2001 Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 7, 2003.

**SUMMARY:** On February 11, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on fresh Atlantic salmon from Chile for the period July 1, 2000, through June 30, 2001. See *Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile*, 68 FR 6878 (February 11, 2003) (Final Results).

In those results the Department inadvertently omitted the effective date of revocation for those companies that were revoked from the order. This information is provided in the section entitled “Effective Date of Revocation.”

**FOR FURTHER INFORMATION CONTACT:** Vicki Schepker or Constance Handley, at (202) 482-1756 or (202) 482-0631, respectively, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 11, 2003, the Department published the final results in this administrative review. In those results, the Department revoked the antidumping duty order as to Cultivos Marinos Chiloe, Ltda. (Cultivos Marinos), Marine Harvest (Chile) S.A. (Marine Harvest), Salmenes Mainstream S.A. (Mainstream), and Salmenes Pacifico Sur S.A. (Pacifico Sur). However, the Department inadvertently failed to indicate the effective date of revocation.

**Scope of Review**

The product covered by this review is fresh, farmed Atlantic salmon, whether imported “dressed” or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. “Dressed” Atlantic salmon refers to

salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this review is classifiable under item numbers 0302.12.0003 and 0304.10.4093, 0304.90.1009, 0304.90.1089, and 0304.90.9091 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Effective Date of Revocation

The revocation of the order applies to all entries of subject merchandise that are produced and exported by Cultivos Marinos, Mainstream, Marine Harvest, and Pacifico Sur, entered, or withdrawn from warehouse, for consumption on or after July 1, 2001. The Department will order the suspension of liquidation ended for all such entries and will instruct the U.S. Customs Service (Customs) to release any cash deposits or bonds. The Department will further instruct Customs to refund with interest any cash deposits on entries made after June 30, 2001.

Therefore, we are amending the Final Results to reflect the above noted effective date of revocation.

#### Assessment Rates

Absent an injunction from the U.S. Court of International Trade, the Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance

with sections 751(a)(1) and 777(i) of the Act.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5493 Filed 3-6-02; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-810]

#### Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan in response to a request by Hitachi Zosen Corp. (HZC), and its subsidiary, Hitachi Zosen Fukui Corporation, doing business as H&F Corporation (H&F). This review covers shipments of this merchandise to the United States during the period of February 1, 2001, through January 31, 2002. We have preliminarily determined that U.S. sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate entries without regard to antidumping duties. Interested parties are invited to comment on these preliminary results. See Preliminary Results of Review section of this notice.

**EFFECTIVE DATE:** MARCH 7, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Jacqueline Arrowsmith or Doug Campau, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-5255 or (202) 482-1395, respectively.

#### Background

The Department published an antidumping duty order on MTPs from Japan on February 16, 1990 (55 FR 5642). On February 19, 2002, the Department received a timely request for an administrative review of the antidumping duty order on MTPs from HZC and its subsidiary, H&F. On February 28, 2002, the Department

received a timely request from the petitioner, IHI-Verson Press Technology, LLC, for an administrative review of HZC, H&F, Komatsu Corporation, Ltd. (Komatsu) and Komatsu American Industries, LLC. On March 27, 2002, we published a notice initiating an administrative review of MTPs (67 FR 14696) for HZC, and HZC's subsidiary, H&F, and Komatsu. On May 22, 2002, we published *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review and Revocation, in-Part*, in which we revoked the antidumping order with respect to Komatsu. The revocation was effective for subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2001. See 67 FR 35958.

Due to complicated issues in this case, on October 25, 2002, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until no later than February 28, 2003. See *Mechanical Transfer Presses From Japan: Extension of Time Limit for Preliminary Results and Preliminary Rescission, in Part, of Antidumping Administrative Review* 67 FR 14696 (November 1, 2002).

#### Scope of the Antidumping Duty Order

Imports covered by this order include mechanical transfer presses (MTPs) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8462.99.8035, 8462.21.8085, and 8466.94.5040. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive. The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

The Department published in the **Federal Register** several notices of scope rulings with respect to MTPs from Japan, determining that (1) spare and replacement parts are outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 19602 (May 7, 1992)); (2) a destack sheet feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (*see Notice of Scope Rulings*, 57 FR 32973 (July 24, 1992)); (3) the FMX cold forging press is

within the scope of the order (*see Notice of Scope Rulings*, 59 FR 8910 (February 24, 1994); and (4) certain mechanical transfer press parts exported from Japan are outside the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1997).)

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified the sales and cost information provided by H&F using standard verification procedures, on-site inspection of the manufacturer's facilities and the examination of relevant sales, financial, and cost accounting records. Our verification results are outlined in the public and proprietary versions of the verification report, which are on file in the Central Records Unit of the Department.

#### Affiliation of HZC and H&F

HZC owns significantly more than 50 percent of H&F. Accordingly, we preliminarily find HZC and H&F to be affiliated pursuant to sections 771(33)(E) and (G) of the Act.

#### Collapsing HZC and H&F

Section 351.401(f) of the Department's regulations outlines the criteria for collapsing (*i.e.*, treating as a single entity) affiliated producers. Pursuant to section 351.401(f), the Department will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production. Pursuant to section 351.401(f)(2), in identifying a significant potential for the manipulation of price or production, the Department may consider the following factors:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and,
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

To establish the first prong of the collapsing test, pursuant to section 351.401(f)(1), the producers must have production facilities equipped to manufacture similar or identical products that would not require

substantial retooling of either facility to restructure manufacturing priorities. H&F maintains a production facility that produces MTPs in Fukui Prefecture and another facility at Kanazu Town that produces press accessories. HZC owns two subsidiaries that sometimes fabricate significant MTP components: Hitachi Zosen Diesel and Engineering Co., Ltd. (HZD&E) and IMEX Corporation. HZD&E, which is wholly owned by HZC, is capable of manufacturing complete MTPs, according to the H&F's response.

With regard to common ownership, which is one of the factors to be considered under 19 CFR 351.401(f)(2)(i), HZC owns significantly more than 50 percent of H&F's voting stock.

Finally, with regard to 19 CFR 351.401(f)(2)(iii), there are intertwined operations between companies. According to section A of the July 2, 2001 response for the 2000–2001 administrative review, HZC's and H&F's press businesses were integrated in July 1999. The former HZC engineers moved to a newly created Large Presses Department. *See* "Memorandum from Jacqueline Arrowsmith to the File: Mechanical Transfer Presses from Japan," dated February 25, 2003, placing this information on the record of this review. Moreover, HZC sometimes acts as the nominal 'reseller' for H&F's MTPs; for these 'resales,' HZC does not perform any selling functions; it merely allows H&F to use its name for consideration in order to inspire the customer's confidence.

Based upon our review of the level of common ownership and the intertwined operations, we preliminarily find that collapsing of these two entities under 19 CFR 351.401(f) is appropriate in this case.

#### Normal Value Comparisons

To determine whether respondents' exports of the subject merchandise to the United States were made at less than NV, we compared export price (EP) to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

#### Export Price

In accordance with section 772(a) of the Act, EP is the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser for export to the United States. For purposes of this administrative review, HZC/H&F has classified its sales as EP. Based on the fact that HZC/H&F sold the subject

merchandise to unaffiliated trading companies in Japan prior to importation into the United States, we preliminarily determine that HZC/H&F's sales were EP sales. Furthermore, we found no evidence that treating these sales as constructed export price sales is warranted. We calculated EP for HZC/H&F based on the packed, freight prepaid price to the U.S. customer. We made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. inland brokerage and handling, and supervision installation expenses, in accordance with section 772(c)(2) of the Act.

#### Normal Value

While the home market is viable, in accordance with precedent in this proceeding, we have determined that constructed value (CV) should be used to calculate NV. MTPs are made-to-order, and there are significant physical differences among these machines. For example, when discussing two MTPs with similar ton capacities, H&F officials explained that two particular subject presses had fundamentally different designs because of the number of strikes, even when these MTPs have similar capacities. *See* "Memorandum from Jacqueline Arrowsmith and Doug Campau to the File: Sales and Cost Verification of Hitachi Zosen Corporation & Hitachi Zosen Fukui Corporation in the Antidumping Administrative Review of Mechanical Transfer Presses from Japan," dated January 31, 2003. *See also Mechanical Transfer Presses From Japan; Preliminary Results of Antidumping Duty Administrative Review, and Intent To Revoke, In-Part*, 63 FR 10363 (March 7, 2002); *Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review and Revocation, in-Part*, 67 FR 35958 (May 22, 2002).

Accordingly, we are using CV as the basis for NV for HZC/H&F, in accordance with section 773(a)(4) of the Act. CV consists of direct materials, direct labor, variable overhead, fixed overhead (yielding total cost of manufacturing), plus selling, general and administrative expenses, net interest expense, profit, and U.S. packing expenses. We subtracted home market direct selling expenses (warranties and credit). We added to CV amounts for direct selling expenses (warranties and credit) for merchandise exported to the United States.

**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/Exporter	Time period	Margin (percent)
Hitachi Zosen Corp./Hitachi Zosen Fukui Corp .....	02/01/01–01/31/02	0.00

**Duty Assessments and Cash Deposit Requirements**

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions directly to the U.S. Customs Service within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respects to all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(C) of the Act: (1) For HZC and H&F, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 14.51 percent. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Mechanical Transfer Presses from Japan*, 55 FR 5642 (February 16, 1990). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this

notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. § 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5496 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-501]

**Notice of Preliminary Results of Administrative Review: Natural Bristle Paintbrushes and Brush Heads 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 an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads (natural paintbrushes) from the People's Republic of China (PRC) in response to a request from the Paint Applicator Division of the American Brush Manufacturers Association ("Paint Applicator Division"), the petitioner, for the company Hunan Provincial Produce & Animal By-Products Import & Export Corporation ("Hunan"). Hunan's period of review (POR) is February 1, 2001, through January 31, 2002.

We preliminarily determine that sales by Hunan have not been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Reviews." If these preliminary results are adopted in our final results, for entries made by Hunan, we will instruct the U.S. Customs Service to not assess antidumping duties on the exports subject to this review. Interested parties are invited to comment on these preliminary results. (*See* the "Preliminary Results of Review" section of this notice.)

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Douglas Kirby or Sean Carey, AD/CVD Enforcement, 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) 482-3964, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural paintbrushes from the People's Republic of China (PRC) (67 FR 4945). On February 28, 2002, the Department received a timely request from the Paint Applicator Division of the American Brush Manufacturers Association, the petitioner, for administrative reviews of Hunan and Hebei Founder Import and Export Company (Hebei). On March 27, 2002, the Department initiated an administrative review of the antidumping duty order on natural paintbrushes, for the period from February 1, 2001, through January 31, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these two companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002).

On May 1, 2002, the Department issued antidumping questionnaires to Hunan and Hebei. In its reply to section A of the questionnaire, Hebei stated that it had made no sales or shipments of subject merchandise to the United States during the POR. The Department also performed a U.S. Customs Service (Customs) data query for entries of paintbrushes from the PRC classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 9603.40.40.40 during the POR. We found no entries or shipments from Hebei during the POR. Thus, the Department rescinded the review with respect to Hebei. See *Natural Bristle Paintbrushes From the People's Republic of China; Notice of Rescission, In Part, of Antidumping Administrative Review*, 67 FR 58018 (September 13, 2002). On November 1, the Department extended the deadline for the preliminary results of review of Hunan until January 23, 2003 (67 FR 66614). This deadline was then fully extended, in accordance with 751(a)(3)(A) of the Tariff Act of 1930 ("The Act") by another 36 days (68 FR 4761).

## Scope of the Antidumping Duty Order

The products covered by the order are natural paintbrushes from the PRC. Excluded from the order are paintbrushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the

United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

## Separate Rates

The Department's standard policy is to assign to all exporters of the merchandise subject to review in non-market economy ("NME") countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. Hunan stated in its questionnaire response that it is an autonomous legal entity that is completely independent of any government control. In order to establish whether a company operating in a non-market economy ("NME") country is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

Evidence supporting, though not requiring, a finding of *de jure* absence of government control 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; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to 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 and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

### 1. Absence of 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 Hunan that its export activities are not controlled by the government. Hunan submitted evidence

of its legal right to set prices independently of all government oversight. In its questionnaire response, Hunan submitted several legislative enactments that have decentralized control of business enterprises and their business activities. Hunan's business license also indicates that the company is permitted to engage in the exportation of natural bristle paintbrushes. We have not found any evidence of *de jure* government control that either restricts Hunan's exportation of natural bristle paintbrushes, or limits its ability to enter contracts and account for its own profits and losses. Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to Hunan.

### 2. Absence of De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record indicates that the general manager of Hunan is elected by company personnel and has the authority to appoint Hunan's senior management. Our analysis indicates that there is no government involvement in Hunan's daily operations or the selection of its management. In addition, Hunan's questionnaire response states that the company sets its own export prices, determines its own use of export revenues, and independently negotiates sales contracts free from government interference. Finally, decisions made by Hunan concerning its choice of suppliers and customers 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 its export activities, we preliminarily determine that a separate rate should be applied to Hunan. 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 28, 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 prices below NV, we compared its U.S. prices to NV, as described below in the "United States Price" and "Normal Value" sections of this notice.

### United States Price

For Hunan, 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 from the starting price (gross unit price) in accordance with section 772(c) of the Act. According to the questionnaire response, the U.S. customer was responsible for all other movement expenses incurred in both the PRC and the United States and therefore, we made no other deductions for movement expenses.

### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine 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. Hunan 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 Administrative Review of Natural Bristle Paintbrushes from the People's Republic of China*, February 28, 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 Indonesia (1) Is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. See *Memorandum to Dana Mermelstein from Jeffrey May: Natural Bristle Paintbrushes from the People's Republic of China: Non-market Economy Status and Surrogate Country Selection*, dated

October 22, 2002. We valued the factors of production using publicly available information from Indonesia. We adjusted the Indonesian import prices by adding freight expenses to make them delivered prices.

We valued the factors of productions for material inputs and packing materials as follows. For brush handles, bristles, epoxy, nails, ferrules, plastic bags, cartons and plastic strips, we used per kilogram Indonesian import values reported in U.S. dollars and obtained from Indonesia's *Foreign Trade Statistical Bulletin* (Biro Pusat Statistik). For wooden core, we used the same information source based on a U.S. dollar per cubic meter value that was subsequently converted to kilograms. Since all these statistics were contemporaneous with the POR, we did not need to make any adjustments for inflation. We calculated surrogate freight costs for these factors using the shorter of (a) the distance 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*).

For electricity rates, we used a published Indonesian value for the average cost of electricity supplied to industries in 1999. This value is reported by the International Energy Agency on a rupiahs per kilowatt hour basis in its publication, *Energy Prices and Taxes, First Quarter 2000*. We converted the rupiah to U.S. dollars using the average exchange rate during the POR. We adjusted this value for inflation using the Consumer Price Indices for Indonesia as published in selected issues of the *IFS*.

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. Because of the variability of wage rates in countries with similar per capita gross domestic products, § 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 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

We valued movement expenses as follows: To value truck freight expenses, we used a USD price quote from August 1999 listed by an Indonesian trucking company on a kilogram per-kilometer basis, that was used in the antidumping

investigation of certain small diameter carbon and alloy seamless standard line and pressure pipe from Romania. See *Factors of Production Valuation Memorandum for Preliminary Determination* from David Goodman, Case Analyst, through Charles Riggle, Program Manager, to Gary Taverman, Director, Office 5 (January 28, 2000). To value inland rail freight expenses, we used a USD rate provided in a December 1994 cable from the American Embassy in Jakarta, Indonesia, which was likewise, used in the antidumping investigation of certain small diameter carbon and alloy seamless standard line and pressure pipe from Romania noted above. We adjusted both rates to reflect inflation using the Producer Price Indices ("PPI") for the United States from the *IFS*.

For factory overhead, selling, general and administrative expenses (SG&A), and profit, we used data from the *Large and Medium Manufacturing Statistics: 1995, Vol. III*, published by the Government of Indonesia. This source provides a cost breakdown for large and medium sized manufacturers in Indonesia of 122 products, including paintbrushes, that are classified under Indonesia's industrial code 390390. We calculated factory overhead as a percentage of total fixed and variable overhead over total materials, labor, and energy (cost of manufacture). We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Lastly, we calculated a profit rate by dividing profit by the cost of production. For more information, see *Memorandum to Dana S. Mermelstein, Program Manager, from Douglas Kirby and Sean Carey, Case Analysts; 2001-2002 Antidumping Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Factors Values Memorandum*, dated February 28, 2003.

### Preliminary Results of Review

We preliminarily determine the weighted average dumping margin for Hunan for the period February 1, 2001, through January 31, 2002, to be 0.00 percent.

### Duty Assessments and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective

with respect to all shipments of paintbrushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 351.92 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days, unless extended, after publication of these preliminary results.

#### Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under § 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5494 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

#### Certain Pasta from Italy: Notice of Initiation of New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("the Department") has received a request for a new shipper review of the antidumping duty order on certain pasta from Italy. The request fulfilled all regulatory requirements. Therefore, in accordance with our regulations, we are initiating this new shipper review.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Mark Young at (202) 482-3965 or 482-6397, respectively; AD/CVD Enforcement, Group II, Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 17, 2002, the Department received a request from a pasta producer, Pastificio Carmine Russo S.p.A. ("Russo"), to conduct a new shipper review of the antidumping duty order on certain pasta from Italy, issued July 24, 1996 (61 FR 38547). This request was made pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(b) (2002). On February 24, 2003, the Department received an additional submission from Russo in which Russo provided information to the Department describing how Russo was formed as a new corporate entity through a corporate buy-out of its predecessor, Carmine Russo, S.p.A. Because Russo's claim to new shipper status is based, in part, on this information, we will further review this change-in-ownership as part of the new shipper review of the antidumping duty order.

#### Initiation of Review

Pursuant to 19 CFR 351.214(b), in its request of December 17, 2002, Russo certified that it did not export the subject merchandise to the United States during the period of investigation ("POI") (May 1, 1994 through April 30, 1995) and that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Russo submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume of that first shipment, the date of its first sale to an unaffiliated customer in the United States, and the date and volume of all subsequent shipments.

In accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we are initiating a new shipper review of the antidumping duty order on certain pasta from Italy. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. The standard period of review in a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month.

Antidumping Duty Proceeding	Period to be Reviewed
Italy: Certain Pasta, A-475-818: Pastificio Carmine Russo S.p.A. ....	07/01/02 - 12/31/02

Concurrent with the publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: February 28, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03-5495 Filed 3-6-03; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-813]

#### Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to timely requests by three manufacturer/exporters and the petitioner,<sup>1</sup> the Department of Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to three companies. The period of review is February 1, 2001, through January 31, 2002.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If

these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:**

David J. Goldberger or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4929, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311).

On February 1, 2002, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 4945). In response to timely requests by three manufacturers/exporters, Agro Dutch Foods Ltd. (Agro Dutch), Himalya International Ltd. (Himalya), and Weikfield Agro Products, Ltd. (Weikfield), and the petitioner, the Department published a notice of initiation of an administrative review with respect to three companies: Agro Dutch, Himalya, and Weikfield (67 FR 14696, March 27, 2002). The period of review (POR) is February 1, 2001, through January 31, 2002.

On April 12, 2002, the Department issued antidumping duty questionnaires to the above-mentioned companies. We received responses to the original questionnaire during the period May through July 2002. We issued supplemental questionnaires in July, October, and November 2002, and received responses during the period August through December 2002. For Weikfield and Himalya, Section D questionnaire response data was removed from the record in December 2002 and January 2003, respectively (*see* December 30, 2002, Letter to Matthew P. Jaffe, counsel to Weikfield regarding the removal of Weikfield's Section D responses from the record, and January 16, 2003, Memorandum to the File concerning the removal of Himalya's

Section D responses from the record). As a result of the initiation of sales below the cost of production (COP) investigations, discussed below, these Section D responses were re-submitted for the record in January (Weikfield) and February (Himalya) 2003.

In October 2003, we conducted an on-site verification of Agro Dutch's questionnaire responses. The results of this verification are described in *Sales and Cost of Production Verification in Chandigarh, India of Agro Dutch Industries, Ltd.*, Memorandum to the File dated December 10, 2002 (*Agro Dutch Verification Report*).

On January 3, 2003, the Department received an allegation from the petitioner that Weikfield sold certain preserved mushrooms in India at prices below the COP. This allegation was timely because the Department had extended the deadline for such an allegation. On January 21, 2003, the Department initiated a cost investigation of Weikfield's home-market sales of this merchandise. *See Petitioner's Allegation of Sales Below the Cost of Production for Weikfield Agro Products Ltd.*, Memorandum to Louis Apple from Mark J. Todd dated January 21, 2003.

On January 15, 2003, the Department received an allegation from the petitioner that Himalya sold certain preserved mushrooms in India at prices below the COP. This allegation was timely because the Department had extended the deadline for such an allegation. On January 29, 2003, the Department initiated a cost investigation of Himalya's home-market sales of this merchandise. *See Petitioner's Allegation of Sales Below the Cost of Production for Himalya International Limited*, Memorandum to Louis Apple from Aleta Habeeb dated January 29, 2003.

#### Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water,

<sup>1</sup> The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States<sup>2</sup> (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

#### Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than normal value (NV), we compared constructed export price (CEP) or export price (EP), as appropriate, to the NV, as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930 (the Act), we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

In this review, Agro Dutch did not have a viable home or third country market. Therefore, as the basis for NV, we used constructed value (CV) when making comparisons in accordance with section 773(a)(4) of the Act.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining

appropriate product comparisons to U.S. sales. With respect to Himalya and Weikfield, we compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. For Agro Dutch, where there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market or a third country to compare to U.S. sales, we compared U.S. sales to CV. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution, and label type.

#### Export Price/Constructed Export Price

For Agro Dutch and Weikfield, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in India to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated. With respect to Himalya, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by Him Infotech dba Transatlantic Marketing, Himalya's affiliated importer in the United States, after importation into the United States. We based EP and CEP on packed prices to unaffiliated purchasers in the United States.

#### Agro Dutch

Agro Dutch reported its U.S. sales as sold on an FOB, C&F, or CIF basis. We made deductions from the starting price, where appropriate, for foreign inland freight, freight document charges, insurance, foreign brokerage and handling, Indian export duty (CESS), and international freight in accordance with section 772(c)(1) of the Act and 19 CFR 351.402.

As discussed at page 20 of the *Agro Dutch Verification Report*, Agro Dutch incurred brokerage and handling expenses on all of its U.S. sales, but did not report this expense for certain sales due to an unspecified error that was discovered at verification. Because Agro Dutch did not provide the Department with all of the requested expense data,

use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. Furthermore, because Agro Dutch withheld this information and was unable to provide any explanation regarding this omission, we find that Agro Dutch failed to cooperate by not acting to the best of its ability to comply with a request for information, within the meaning of section 776(b) of the Act. Under such circumstances, section 776(b) of the Act permits the Department to use an inference which is adverse to the party. Accordingly, we have applied the highest reported brokerage and handling expense amount to those sales where brokerage and handling was not reported, as adverse facts available. *See Agro Dutch Sales Data Adjustments for the Preliminary Results*, Memorandum to the File dated February 28, 2003 (*Agro Dutch Sales Memo*), for the identification of this amount.

#### Himalya

Himalya reported its U.S. sales as sold on an ex dock/FOB U.S. warehouse, ex-factory or delivered basis. We made deductions from the CEP starting price, where appropriate, for foreign inland freight, brokerage and handling expenses, international freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. warehousing expenses in accordance with section 772(c)(1) of the Act and 19 CFR 351.402. We also deducted indirect selling expenses, credit expenses, and inventory carrying costs pursuant to section 772(d)(1) of the Act and 19 CFR 351.402. We recalculated credit expenses and inventory carrying costs using a public-source U.S. interest rate. *See February 28, 2002 Memorandum to the File Preliminary Results Calculation Memorandum for Himalya International Ltd. (Himalya)* for specifics as to why Himalya's reported U.S. interest rate data was insufficient. We made an adjustment for CEP profit in accordance with section 773(d)(3) of the Act.

#### Weikfield

Weikfield reported its U.S. sales as sold on a FOB port Mumbai, delivered duty paid, or C&F basis. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign inland and marine insurance, foreign brokerage and handling expenses, CESS, international freight, and U.S. duty (including U.S. brokerage and handling expenses) in accordance with section 772(c)(1) of the Act and 19 CFR 351.402.

For certain sales, Weikfield reported that it arranged export financing through its affiliate, Weikfield Products

<sup>2</sup>Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

Co. Ltd. (WPCL), under which WPCL paid Weikfield in advance for the shipment, less a fee, and WPCL assumed the financial risk of the sale. As the credit expense for these sales, Weikfield reported the amount of the fee paid to WPCL. However, as Weikfield and WPCL are affiliated parties, we believe it is appropriate to calculate imputed credit based on the period from shipment to the date that a member of the Weikfield Group first receives payment from an unaffiliated party (*i.e.*, the unaffiliated bank used by the Weikfield Group). Accordingly, we have recalculated imputed credit to reflect the period from shipment to bank payment, and made a further circumstance-of-sale adjustment for the bank fee paid by Weikfield or WPCL, based on the information in the December 4, 2002, submission.

#### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

With regard to Himalya and Weikfield, the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for Himalya and Weikfield.

Agro Dutch reported that during the POR it made no home market or third country sales. Therefore, we determined that neither the home market nor any third country market was a viable basis for calculating NV for Agro Dutch. As a result, we used CV as the basis for calculating NV for this respondent, in accordance with section 773(a)(4) of the Act.

#### Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing (*id.*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length*

*Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices<sup>3</sup>), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from the respondents regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

#### Agro Dutch

We compared all U.S. sales to CV, as noted above. Because Agro Dutch has no viable comparison market, we derived the selling expenses and profit from the above-cost home market sales of

Himalya and Weikfield, as discussed below under "Calculation of Constructed Value." Consistent with our normal practice where NV is based on CV, we must consider the NV LOT based on the LOT of both sets of sales used to derive the weighted-average selling expenses and profit in this case. These sales (and the resulting weighted averages) are based on the different customer bases, channels of distribution, and selling functions of Himalya and Weikfield, as described below. As we cannot determine a specific LOT from the two sets of sales from which we derived the selling expenses and profit for CV, we cannot determine whether there is a difference in LOT between U.S. sales and CV. Therefore, we made no LOT adjustment to NV.

#### Himalya

Himalya sold directly to institutional customers/wholesalers/distributors, and consumers in the home market. We examined Himalya's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Himalya offers the same support and assistance to all its home market customers. Accordingly, all of Himalya's home market sales are made through the same channel of distribution and constitute one LOT.

With regard to sales to the United States, Himalya had only CEP sales, through its affiliated importer, Him InfoTech dba Transatlantic Marketing, to wholesalers/distributors/trading companies. We examined Himalya's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Himalya offers the same support and assistance to all its U.S. customers. Accordingly, all of Himalya's U.S. sales are made through the same channel of distribution and constitute one LOT.

To determine whether sales in the comparison market were at a different LOT than CEP sales, we examined the selling functions performed at the CEP level, after making the appropriate deductions under section 772(d) of the Act, and compared those selling functions to the selling functions performed in the home market LOT.

In the comparison market, Himalya sold subject merchandise directly to institutional customers/wholesalers/distributors and consumers. In the United States, Himalya sold subject merchandise to its affiliate, Him InfoTech dba Transatlantic Marketing, which then resold the subject merchandise directly to unaffiliated purchasers. Therefore, we compared the

<sup>3</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

CEP LOT to the home market LOT and concluded that most of the functions performed by Himalya in making the starting-price sale in the comparison market (e.g., order solicitation, price negotiation, payment, transportation arrangements) were not performed in connection with CEP sales (e.g., order solicitation, price negotiation, payment). Accordingly, different LOTs exist between comparison-market and CEP sales, and the comparison-market sales are made at a more advanced LOT than are the CEP sales.

Because there is only one LOT in the home market, it is not possible to determine if there is a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction. Accordingly, because the data available do not form an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of:

1. The indirect selling expenses on the comparison-market sale, or
2. The indirect selling expenses deducted from the starting price in calculating CEP.

#### **Weikfield**

Weikfield's home market sales are made via one of two channels of distribution: a) direct sales to distributors in the Indian states of Maharashtra and Goa (Channel 1), and b) sales to "carrying and forwarding" (C&F) agents, which perform a role similar to that of distributors, in the rest of India (Channel 2). We examined Weikfield's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its home market customers except with respect to sales promotion activities.

In Channel 1, Weikfield's affiliate WPCL engages in market development activities to promote Weikfield's sales of preserved mushrooms and further develop its market. Weikfield reports that WPCL participates in sales exhibitions and consumer shows, and it creates and supplies in-store promotions and displays (see August 23, 2002, supplemental questionnaire response at page S-12). For sales in Maharashtra, Weikfield also pays a commission to a logistics agent. In Channel 2, Weikfield does not undertake any sales promotion activities to support its sales to C&F agents. Weikfield pays its unaffiliated

C&F agents a commission for providing logistics and distribution services to the ultimate customer (i.e., the C&F agent's customer).

Although Weikfield's sales through Channel 1 involve a set of selling activities not performed for Channel 2 sales, we have not considered these sales promotion activities to be extensive enough by themselves to classify Channel 1 as a separate LOT from Channel 2. In all other areas of our analysis, including sales negotiation, freight and distribution services, inventory maintenance, and customer class, the two channels involve the same services performed by Weikfield. Accordingly, we consider all of Weikfield's home market sales to constitute one LOT. This determination is consistent with our finding in the 1998-2000 administrative review, in which Weikfield had a viable home market and a similar fact pattern with respect to its two home market channels of distribution, which we found to constitute the same LOT.

With regard to sales to the United States, Weikfield made only EP sales to importers/traders. We examined Weikfield's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its U.S. customers. Accordingly, all of Weikfield's U.S. sales are made through the same channel of distribution and constitute one LOT.

We compared the EP LOT to the home market LOT and concluded that the selling functions performed for home market customers are sufficiently similar to those performed for U.S. customers because the same services are offered in both markets. Apart from the promotion activities conducted by WPCL in the home market, Weikfield does not perform different selling activities in either the U.S. or home markets. Weikfield's selling activities undertaken in both markets are limited to responding to infrequent product complaints and, in the home market, arranging for domestic freight on certain sales. Accordingly, we consider the EP and home market LOTs to be the same. Consequently, we are comparing EP sales to sales at the same LOT in the home market.

#### **Cost of Production Analysis**

As stated in the "Background" section of this notice, based on timely allegations filed by the petitioner, the Department initiated investigations to determine whether Himalya's and Weikfield's home market sales were

made at prices less than the COP within the meaning of section 773(b) of the Act.

#### *A. Calculation of Cost of Production*

We calculated the COP on a product-specific basis, based on the sum of Himalya's and Weikfield's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

For these preliminary results, we have implemented a change in practice regarding the treatment of foreign exchange gains and losses. The Department's previous practice was to have respondents identify the source of all foreign exchange gains and losses (e.g., debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the current portion of foreign exchange gains and losses generated by debt or cash deposits were included in the interest expense computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the COP and CV calculations.

Instead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the interest expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (i.e., consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for these preliminary results, we included all foreign exchange gains or losses in the interest expense rate computation. We note that there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice. We

will address exceptions on a case-by-case basis.

As this is a change in practice, we invite the parties to the proceeding to comment on this issue.

We relied on the COP information submitted by Himalya and Weikfield, except for the following adjustments:

#### Himalya

- We revised Himalya's fixed overhead (FOH) per-unit amounts to exclude certain products from both "mushroom growing" and "mushroom canning and IQF only" asset categories in allocating the depreciation expense to subject merchandise.

- We revised Himalya's G&A expense ratio calculation to exclude expenses related to Him Infotech dba Transatlantic Marketing, a separate subsidiary, and to include amortized expenses.

- We revised the interest expense ratio calculation to include net foreign exchange gains.

See *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination* Memorandum to Neal Halper dated February 28, 2003, for a further discussion of these adjustments.

#### Weikfield

- We revised the reported direct labor and variable overhead costs to reflect changes in the allocation of manufacturing costs to the mushroom division (PMD) during the POR.

- We revised the reported FOH costs to include all depreciation costs experienced during the POR.

- We revised the G&A expense rate calculation to include all depreciation costs in the costs of goods sold amount used as the denominator in the calculation of the rate.

- We revised the financial expenses to exclude long-term financial income and the gain on debt restructuring. In addition, we included all depreciation costs in the costs of goods sold amount used as the denominator in calculating the financial expense ratio.

See *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination*, Memorandum to Neal Halper dated February 28, 2003, for a further discussion of these adjustments.

#### B. Test of Home Market Prices

For Himalya and Weikfield, on a product-specific basis, we compared the weighted-average COP to the prices of home market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below

the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses and packing expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time, (2) in substantial quantities; and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

#### C. Results of COP Test

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that they represented "substantial quantities" within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost test for Himalya indicated all sales were at prices above COP. We therefore retained all sales in our analysis and used them as the basis for determining NV.

The results of our cost test for Weikfield indicated that for certain products more than twenty percent of home market sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. See 773(b)(2) of the Act. In accordance, with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

#### Price-to-Price Comparisons

For both Himalya and Weikfield, we based NV on the price at which the foreign like product is first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as EP or CEP, as defined by section 773(a)(1)(B)(i) of the Act.

Home market prices were based on either ex-factory or delivered prices. We reduced the starting price for discounts (Himalya and Weikfield) and movement

expenses (Weikfield only as Himalya's sales are ex-factory), where appropriate, in accordance with section 773(a)(6) of the Act and 19 CFR 351.401. We also reduced the starting price for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We made circumstance-of-sale adjustments for credit expenses and commissions, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. For Weikfield, we made an adjustment to NV to account for commissions paid in the home market but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for home market commissions, we applied the lesser of home market commissions or U.S. indirect selling expenses. See below for a discussion of the calculation of U.S. indirect selling expenses. Finally, for comparisons to CEP sales (Himalya only), we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Weikfield reported home market commissions paid to its affiliate, WPCL, and to unaffiliated parties. In its supplemental questionnaire response, Weikfield claims that the commissions paid to WPCL are actual payments resulting from specific sales and not intracompany transfers. Weikfield states that the commissions paid to WPCL are at a different rate than those commissions paid to unaffiliated parties because of the services provided by WPCL in procuring business for Weikfield.

With respect to commissions paid to affiliated parties, the Department's practice is to treat payments to affiliated parties providing services that relate to the sale of merchandise as commissions if they are actual expenditures resulting from specific sales and are not intracompany transfers. The Department allows these expenses as direct deductions to price if they are at arm's length and tie directly to sales (see, e.g., *Final Results of Antidumping Duty Administrative Review, Large Newspaper Printing Presses and Components Thereof, Whether*

*Assembled or Unassembled, from Germany*, 66 FR 11557, (February 26, 2001), accompanying Issues and Decision Memorandum at Comment 5).

Based on our analysis of Weikfield's questionnaire responses in this review, and WPCL's sales and marketing activities in support of its sister company, we have rejected Weikfield's claim that the payments made to WPCL are arm's-length commissions. We are not persuaded based on the information in the questionnaire responses comparing the payments to WPCL to those made to unaffiliated C&F agents that the payments to WPCL are at arm's length. Moreover, WPCL's activities to promote Weikfield's preserved mushroom sales appear integrated with WPCL's own sales promotion efforts for its product line. The expenses incurred in support of these sales promotion activities would be incurred whether or not a specific sale is made. Accordingly, we have not deducted the reported commissions to WPCL from the home market price.

However, we are accounting for the costs incurred in support of the sales promotion activities by treating them as indirect selling expenses. Weikfield did not report a separate amount for indirect selling expenses; therefore, we have calculated these expenses based on the consolidated Weikfield Group Financial Statement submitted as Exhibit S-3 to the supplemental questionnaire response (see *Weikfield Sales Data Adjustments for the Preliminary Results*, Memorandum to the File dated February 28, 2003). Accordingly, we made an adjustment to the home market price for commissions paid only to unaffiliated parties for home market sales.

#### Calculation of Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which indicates that CV shall be based on the sum of each respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A expenses, profit and U.S. packing costs. We relied on the submitted CV information except for the following adjustments:

#### Agro Dutch

We adjusted the submitted total cost of manufacturing to include a recalculation of the work-in-process offset. We recalculated work in process by applying a ratio to total manufacturing costs that includes the number of days remaining in the year after all theoretically possible mushroom growing cycles have been completed rather than using a ratio, as

Agro Dutch did, that includes the total number of days in the mushrooms cycle.

Because Agro Dutch had no viable home or third country market, we derived selling expenses and profit for Agro Dutch in accordance with section 773(e)(2)(B)(ii) of the Act and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316, Vol.1 at 169-171 (SAA). See 19 CFR 351.405(b)(2) (clarifying that under section 773(e)(2)(B) of the Act, "foreign country" means the country in which the merchandise is produced). Under this provision, we may use an amount which reflects selling expenses and profit based on actual amounts incurred or realized by other investigated companies on home market sales in the ordinary course of trade of the foreign like product. See section 773(e)(2)(B)(ii) of the Act. As a result, we calculated Agro Dutch's selling expenses and profit as a weighted average of the selling expense and profit amounts incurred on home market sales by Himalya and Weikfield during the cost reporting period. For further details see *Agro Dutch Sales Memo*.

#### Price-to-Constructed Value Comparisons

For Agro Dutch, we based NV on CV, in accordance with section 773(a)(4) of the Act. For comparisons to Agro Dutch's EP sales, we made circumstance-of-sale adjustments by deducting from CV the weighted-average direct selling expenses derived from Himalya's and Weikfield's home market data, as noted above, and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 19 CFR 351.410.

At verification, Agro Dutch was unable to fully reconcile the expenses incurred for packing materials. As described at page 24 of the *Agro Dutch Verification Report*, we found an unreconciled difference equal to 14.36 percent of the total cost of packing material reported in the questionnaire response. Pursuant to section 782(e)(2) of the Act, because we could not verify the reported packing material cost, we cannot accept the reported amount. Furthermore, in providing unverifiable information, Agro Dutch failed to cooperate to the best of its ability with respect to this expense. Because Agro Dutch provided the Department with information that could not be verified, use of facts available is appropriate pursuant to section 776(a)(2)(D) of the Act. Under such circumstances, section 776(b) of the Act further permits the Department to use an inference which is adverse to the party. Thus, to account for this unreconciled difference, we

increased the reported packing material amounts by 14.36 percent. See *Agro Dutch Sales Memo* for an explanation of the methodology used to revise the packing material expense.

#### Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2001, through January 31, 2002, are as follows:

Manufacturer/exporter	Percent margin
Agro Dutch Foods, Ltd .....	2.85
Himalya International, Ltd	0.08 ( <i>de minimis</i> )
Weikfield Agro Products, Ltd.	45.21

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. See 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

### Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered values for Agro Dutch or Weikfield because these respondents are not the importers of record for the subject merchandise. Accordingly, we intend to calculate customer-specific assessment rates by aggregating the dumping margins calculated for all of Agro Dutch's and Weikfield's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. With respect to Himalya, we intend to calculate importer-specific assessment rates for the subject merchandise from Himalya by aggregating the dumping margins calculated for all of Himalya's U.S. sales examined and dividing this amount by the total entered value of the sales examined. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer- or importer-specific *ad valorem* ratios based on export prices.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be

the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the "All Others" rate made effective by the LTFV investigation (see *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India*, 64 FR 8311 (February 19, 1999)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5490 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-560-802]

#### **Certain Preserved Mushrooms From Indonesia: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review and notice of intent to revoke order in part.

**SUMMARY:** In response to timely requests by three manufacturers/exporters, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia. The respondents in this proceeding are PT Indo Evergreen Agro Business Corp. ("Indo Evergreen"), and PT Zeta Agro Corporation ("Zeta").<sup>1</sup> The petitioner, the Coalition for Fair Preserved Mushroom Trade,<sup>2</sup> did not comment. The period of review is February 1, 2001, through January 31, 2002.

The Department preliminarily determines that, during the period of review ("POR"), Zeta and Indo Evergreen did not make sales of the subject merchandise at less than normal value ("NV") (i.e., they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties.

In addition, we preliminarily intend to revoke the order with respect to Zeta, because we find that Zeta has met all of the requirements for revocation, as set forth in section 351.222(b) of the Department's regulations.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Sophie Castro or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone : (202) 482-0588 or (202) 482-4007, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72268), the final

<sup>1</sup> PT Dieng Djaya ("Dieng") and PT Surya Jaya Abadi Perkasa ("Dieng/Surya") also requested an administrative review but timely withdrew their request (see *Certain Preserved Mushrooms from Indonesia: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR1177 (January 9, 2003)).

<sup>2</sup> The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

affirmative antidumping duty determination of sales at less than fair value ("LTFV") on certain preserved mushrooms from Indonesia. We published an antidumping duty order on February 19, 1999 (64 FR 8310).

On February 1, 2002, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period February 1, 2001, through January 31, 2002 (67 FR 4945). On February 28, 2002, in accordance with 19 CFR 351.213(b), we received timely requests from Indo Evergreen, Zeta and Dieng/Surya that the Department conduct an administrative review of their exports to the United States. In addition, Dieng/Surya and Zeta requested that the Department revoke the antidumping duty order with respect to them. We published a notice of initiation of the review on March 27, 2002 (67 FR 14696).

On April 15, 2002, we issued antidumping questionnaires to Dieng/Surya, Indo Evergreen, and Zeta. On May 20, 2002, Dieng/Surya timely withdrew their request for an administrative review. We issued Sections A through D supplemental questionnaires to Indo Evergreen and Zeta in July 2002; additional Section D supplemental questionnaires were issued to Indo Evergreen and Zeta in August 2002. We received timely responses to our original and supplemental questionnaires from Indo Evergreen and Zeta in June, August and September 2002.

On August 16, 2002, due to the reasons set forth in the *Certain Preserved Mushrooms from India, Indonesia, and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews*, 67 FR 53565 (August 16, 2002), we extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, we extended the due date for the preliminary results by the maximum 120 days allowable or until February 28, 2003.

On January 9, 2003, we published a notice of rescission with respect to Dieng/Surya. See *Certain Preserved Mushrooms from Indonesia: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR1177 (January 9, 2003).

#### Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are

the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States<sup>3</sup> (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

#### Fair Value Comparisons

To determine whether sales to the United States of certain preserved mushrooms by Indo Evergreen and Zeta were made at less than NV, we compared export price to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade at prices above the cost of production ("COP"), as discussed in the "Cost of Production Analysis" section below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Indo Evergreen and Zeta, covered by the description in the

<sup>3</sup> Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

"Scope of the Order" section, above, and sold by the respondents in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution and label type. See "Normal Value" section below for further discussion.

#### Export Price

For both respondents we used the export price calculation methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in Indonesia to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") treatment was not otherwise indicated.

We calculated export price based on the packed FOB seaport prices charged to the first unaffiliated customer in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and brokerage and handling, in accordance with section 772(c)(2)(A) of the Act. As a result of verification, we made adjustments to the companies' data where applicable, with respect to discounts, packing and shipment dates. See the Memorandum to the File: Preliminary Results of Third Administrative Review for Zeta ("Zeta's Preliminary Calculation Memorandum") and Memorandum to the File: Preliminary Results of Third Administrative Review for Indo Evergreen, both dated February 28, 2003, on file in the Central Records Unit (CRU), Room B099 of the Main Commerce building.

#### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market

sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act.

Indo Evergreen's and Zeta's aggregate volumes of home market sales of the foreign like product were greater than five percent of their aggregate volumes of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for both Indo Evergreen and Zeta, in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

#### Arm's-Length Sales

Indo Evergreen and Zeta each reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. See *Antidumping Duties; Contervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). Consistent with 19 CFR 351.403(c), we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.<sup>4</sup>

#### Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Indo Evergreen and Zeta. Because of the political instability in Indonesia, verification took place in Singapore. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the CRU.

#### Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2).

Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Cut-to-Length Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses incurred for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for export price and comparison market sales (*i.e.*, NV based on either home market or third country prices<sup>5</sup>), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing export price or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Cut-to-Length Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Indo Evergreen and Zeta regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Indo Evergreen and Zeta for each channel of distribution. Company-specific LOT findings are summarized below.

*Indo Evergreen:* All of Indo Evergreen's sales in the home market are through distributors who resell the merchandise to wholesalers for distribution, with the exception of a small amount of sales to its employees for consumption. We examined those two channels of distribution and the selling activities associated with home market sales through these channels of distribution, and determined that there was little difference in the relevant selling functions provided by Indo Evergreen. Specifically, Indo Evergreen does not provide inventory maintenance, after-sale services, technical advice, advertising, or sales support for any of its home market customers. Indo Evergreen does perform some sales activity related to pre-delivery inspection. Indo Evergreen stated that these services are provided to all home market customers regardless of the channels of distribution or customer categories. Because Indo Evergreen has the same selling functions for both channels of distribution (*i.e.*, pre-delivery inspections), we find that both channels of distribution constitute one LOT.

In the U.S. market, Indo Evergreen made only export price sales through two channels of distribution: (1) Through trading companies, and (2) through distributors who resold the merchandise to wholesalers for distribution either to supermarket chains or food service distributors. Similar to the home market LOT, Indo Evergreen does not provide inventory maintenance, after-sale services, technical advice, advertising, or sales support in selling to its U.S. customers. In addition, Indo Evergreen does perform some sales activity related to pre-delivery inspection. Indo Evergreen stated that these services are provided equally to all customers regardless of the channels of distribution or customer categories. Accordingly, there is only one LOT for U.S. sales.

We compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers are the same as those performed for U.S. customers (*i.e.*, pre-delivery inspection). Accordingly, we consider the export price and home market LOTs to be the same. Consequently, we are comparing export price sales to sales at the same LOT in the home market.

*Zeta:* Zeta reported sales in the home market through two channels of distribution: (1) Unaffiliated distributors, and (2) unaffiliated end-users. We examined the chain of distribution and the selling activities associated with home market sales through these

<sup>4</sup> We have not applied the new calculation methodology for the arm's-length test, as set out in *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, as this review was initiated prior to the November 23, 2002, date stipulated in that notice.

<sup>5</sup> Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sale from which we derive selling, general and administrative ("SG&A") expenses and profit for constructed value, where possible.

channels of distribution, and determined that there was little difference in the relevant selling functions provided by Zeta. Specifically, Zeta made only delivery arrangements for distributors and trading companies. Zeta does not maintain inventory or provide technical advice, warranty service or advertising for home market sales. Zeta did not indicate that there are any differences with respect to freight and delivery services between these channels of distribution or customer categories. Therefore, we find that the home market channels of distribution do not differ significantly from each other with respect to selling activities and, therefore, constitute one LOT.

In the U.S. market, Zeta made only export price sales through one channel of distribution: sales to distributors shipped directly to the United States. Zeta incurred freight costs in delivering the product to the port. Zeta provided no technical advice or warranty services in the U.S. market, nor did it provide inventory maintenance, advertising, or sales support in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

We compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers are the same as those performed for U.S. customers (*i.e.*, freight/delivery services). Accordingly, we consider the export price and home market LOTs to be the same. Consequently, we are comparing export price sales to sales at the same LOT in the home market.

#### Cost of Production Analysis

Because we disregarded sales that failed the cost test for Indo Evergreen and Zeta in the last completed segment of the proceeding (*see Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review*, 67 FR 32014 (May 13, 2002)), we had reasonable grounds to believe or suspect that the respondents' sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the cost of production (COP), as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of home market sales made by Indo Evergreen and Zeta.

#### A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Indo Evergreen's and Zeta's cost of materials and fabrication for the

foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses).

For these preliminary results, we have implemented a change in practice regarding the treatment of foreign exchange gains and losses. The Department's previous practice was to have respondents identify the source of all foreign exchange gains and losses (*e.g.*, debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the portion of foreign exchange gains and losses generated by debt or cash deposits was included in the interest expense rate computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the COP and CV calculations.

Instead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the financial expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (*i.e.*, consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for these preliminary results, we included all foreign exchange gains or losses in the financial expense rate computation. We note that there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice. We will address exceptions on a case by case basis.

As this is a change in practice, we invite the parties to the proceeding to comment on this issue. We will address such comments in the final results of this review.

We relied on the COP information the respondents provided in their

questionnaire responses, except for the following adjustments:

*Indo Evergreen:* We revised the reported costs to allocate the change in work-in-progress, the used compost offset and additional plantation costs to all fresh mushroom production rather than only fresh mushrooms sent to the cannery. We disallowed Indo Evergreen's claimed offset for refunded import duties that were paid on the raw materials used in the manufacture of cans used for export sales. We revised direct materials, direct labor, variable overhead and fixed overhead to account for the cost of manufacturing of fresh mushrooms sold as fresh, as Indo Evergreen had incorrectly reduced direct materials for the entire cost of manufacturing of fresh mushrooms sold as fresh. We reclassified a portion of utilities and gas and oil expenses as variable overhead costs, rather than fixed overhead costs as reported. We revised general and administrative expenses to exclude an offset for sales revenue adjustments and to exclude the double-counting of the used compost revenue offset. We also revised both the financial and general and administrative expense rates to include the additional plantation expense in the denominator of the calculations. Finally, we revised the reported costs to account for all foreign exchange gains and losses in the financial expense rate. For further details, *see* Preliminary Calculation Memorandum from Heidi Schriefer, Senior Accountant, to Neal Halper, Director, Office of Accounting, Import Administration, dated February 28, 2003.

*Zeta:* We disallowed Zeta's claimed offset for refunded import duties paid on the raw materials used in the manufacture of cans used for export sales. We increased Zeta's G&A expenses to include all the G&A expenses incurred by Zeta's parent company. We included the total amount of the parent's G&A because Zeta was unable to demonstrate which G&A expenses had been incurred by the parent on Zeta's behalf. For further details, *see* Preliminary Calculation Memorandum from LaVonne Jackson, Senior Accountant, to Neal Halper, Director, Office of Accounting, Import Administration, dated February 28, 2003.

#### B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP to the prices of home market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. The

prices were exclusive of any applicable movement charges, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time, (2) in substantial quantities, and (3) at prices which did not permit the recovery of all costs within a reasonable period of time. We adjusted Zeta's reported home market indirect selling expenses to exclude certain misclassified expenses. For further details, see Zeta's Preliminary Calculation Memorandum.

### 3. Results of COP Test

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that they represented "substantial quantities" within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost tests for Indo Evergreen and Zeta indicated for certain home market products that less than 20 percent of Indo Evergreen's and Zeta's home market sales were at prices less than the COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV.

Our cost tests also indicated, for Zeta, that for certain other home market products, more than twenty percent of home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

### Price-to-Price Comparisons

For Indo Evergreen and Zeta, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as

defined by section 773(a)(1)(B)(i) of the Act.

Home market prices were based on either ex-factory or delivered prices. We reduced NV for home market movement expenses, where appropriate, in accordance with section 773(a)(6)(B)(ii). We also reduced NV for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We also made adjustments for differences in circumstances of sale (COS) in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting home market direct selling expenses (*i.e.*, imputed credit) and adding U.S. direct selling expenses (*i.e.*, imputed credit and bank charges), where applicable.

Finally, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

### Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(e)(1). Upon receipt of such a request, the

Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(b)(2); see also *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

On February 28, 2002, Zeta submitted a request that the Department revoke the order covering certain preserved mushrooms from Indonesia with respect to its sales of subject merchandise in accordance with 19 CFR 351.222. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from Zeta that, for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. Zeta also agreed to its immediate reinstatement in this antidumping order, as long as any company is subject to the order, if the Department concludes that, subsequent to revocation, Zeta sold the subject merchandise at less than NV. We received no comments from the petitioner on Zeta's request for revocation.

Based on the preliminary results of this review and the final results of the two preceding reviews, Zeta has preliminarily demonstrated three consecutive years of sales at not less than NV. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. See 19 CFR 351.222(d)(1), which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject

merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). Sales during the POR which, in the aggregate, are of an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

We preliminarily find that Zeta's aggregate sales to the United States were made in commercial quantities during the past three consecutive years. *See* Zeta's Preliminary Calculation Memorandum. Therefore, we can reasonably conclude that the zero and *de minimis* margins calculated for Zeta in each of the last three administrative reviews are reflective of the company's normal commercial experience.

Zeta also agreed in writing that it will not sell subject merchandise at less than NV in the future and to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, Zeta has sold the subject merchandise at less than NV. Thus, in light of the above and pursuant to 19 CFR 351.222, we preliminarily find that the subject merchandise produced and exported by Zeta was sold at not less than NV for a period of at least three consecutive years and that dumping is not likely to resume in the future. Consequently, the continuing imposition of an antidumping duty is not necessary to offset dumping.

Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by Zeta. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such

merchandise entered, or withdrawn from warehouse, for consumption on the first day after the period under review, and will instruct the Customs Service to refund any cash deposits.

#### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2001, through January 31, 2002, are as follows:

Manufacture/exporter	Margin (percent)
PT Indo Evergreen Agro Business Corp.	0.30 ( <i>de minimis</i> )
PT Zeta Agro Corporation .....	0.00

We will disclose calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate

entries. For assessment purposes, we do not have the actual entered values for Indo Evergreen and Zeta because these respondents are not the importers of record for the subject merchandise. Accordingly, we intend to calculate importer-specific assessment rates by aggregating the dumping margins calculated for all of Indo Evergreen's and Zeta's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on export prices.

The Department will issue appropriate appraisal instructions directly to the Customs Service upon completion of this review. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Indo Evergreen (Zeta is exempted due to revocation) will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the "All Others" rate made

effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5492 Filed 3-6-03; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-806]

#### **Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** In response to timely requests from respondent, China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp. (Lin Fen), the Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC), covering the period of June 1, 2001 through November 30, 2001, and an administrative review covering the period of June 1, 2001 through May 31, 2002. *See Silicon Metal from the People's Republic of China (PRC): Initiation of Antidumping Duty New Shipper Review*, 67 FR 5966 (February 8, 2002), and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002). Since Lin Fen has withdrawn its requests for

a new shipper review and an administrative review, and there was no request for review from any other interested party, the Department is rescinding these reviews in accordance with section 351.302(b) and section 351.213 (d)(1) of the Department's regulations, respectively.

**EFFECTIVE DATE:** March 7, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

Christian Hughes or Matthew Renkey, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-0190 and (202)482-2312.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 30, 2001, Lin Fen requested that the Department initiate a new shipper review of its sales of silicon metal from PRC to the United States pursuant to section 351.214 of the Department's regulations. On December 26, 2001, the Department sent a letter informing Lin Fen that its request was deficient. On December 31, 2001, Lin Fen submitted a revised request for the Department to initiate a new shipper review (December is the semi-annual anniversary month of this order). On January 31, 2002, the Department found that Lin Fen's new shipper review request met all of the regulatory requirements in accordance with section 351.214 (b) of the Department's regulations and, therefore, initiated this new shipper review. *See Silicon Metal from the People's Republic of China (PRC): Initiation of Antidumping Duty New Shipper Review*, 67 FR 5966 (February 8, 2002).

On June 28, 2002, Lin Fen submitted a timely request for the Department to conduct an administrative review covering the period June 1, 2001 through May 31, 2002, in accordance with section 351.213 (b)(2) of the Department's regulations. In the request, Lin Fen stated that it had one sale to the United States of the subject merchandise during this period of review. In furtherance of the request, Lin Fen stated that this sale was already subject to the ongoing new shipper review of Lin Fen and stated that Lin Fen had no other sales of subject merchandise to the United States during this period of review. On July 18, 2002, the Department initiated Lin Fen's administrative review request. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002).

On October 2, 2002, Lin Fen requested an expansion of the six-month period of review in the new shipper review in order to include both a sale to an unaffiliated customer and an entry of subject merchandise into the United States in the new shipper review. In furtherance of the request, and in accordance with section 351.214 (j)(3) of the Department's regulations, Lin Fen also agreed to waive the time limits of 351.214 (i) so that the Department might conduct the new shipper review concurrently with the administrative review for the period June 1, 2001 through May 31, 2002. The Department granted this request and extended the review period for the new shipper review from June 1, 2001 through November 30, 2001 to June 1, 2001 through January 14, 2002, and it also postponed the time limit for the preliminary results of the new shipper review in conjunction with the administrative review. *See Silicon Metal From the People's Republic of China (PRC): Postponement of Time Limit for Preliminary Results of New Shipper Antidumping Review in Conjunction with Administrative Review*, 67 FR 70403 (November 22, 2002).

On December 31, 2002, Lin Fen submitted a letter withdrawing its request for the new shipper review and administrative review. On February 4, 2003, the Department issued a memorandum to the parties analyzing these withdrawals and stating that it intended to rescind these reviews (*see Memorandum to File through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes, Analyst: Silicon Metal from the People's Republic of China: Release of Intent to Rescind Memorandum for New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.*, dated February 4, 2003). We received no comments from any parties on this memorandum.

#### **Rescission of Antidumping Duty New Shipper Review and Rescission, in Part, of Administrative Review**

The Department is rescinding the antidumping duty new shipper review of Lin Fen covering the period June 1, 2001 through January 14, 2002, and the administrative review covering the period June 1, 2001 through May 31, 2002, in accordance with section 351.302(b) and section 351.213(d)(1) of the Department's regulations, respectively. Although Lin Fen's withdrawals from these reviews were not within the normal time limits prescribed in section 351.214(f) and

section 351.213(d)(1) of the Department's regulations, we find that, under the circumstances of these reviews, it is appropriate to accept the withdrawals and rescind the reviews.

First, with respect to the administrative review, the Department has confirmed through a U.S. Customs query that there were no entries of silicon metal during the period of review except for those covered by the new shipper review. As such, although the withdrawal request was untimely, it is reasonable to accept it since the Department would have rescinded the administrative review due to no shipments in accordance with section 351.213(d)(3) of the Department's regulations. Thus, the result is the same: if any shipments are made by Lin Fen, such shipments will be subject to the PRC-wide rate until another review is requested.

With respect to the new shipper review, a rescission will not provide any advantage to Lin Fen. The assessment rate for the new shipper sales will be the PRC-wide rate, which is the only rate, as well as the highest rate, from any segment of this proceeding. Moreover, continuing the new shipper review would result in an inefficient use of the Department's resources since the Department would have to issue multiple determinations, and request and analyze comments from the interested parties. Based on the foregoing reasons, we find it appropriate to rescind the new shipper and administrative reviews of Lin Fen.

#### Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Lin Fen of silicon metal from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. The following cash deposit requirements will be effective upon publication of this notice for all shipments of silicon metal by Lin Fen entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act. For silicon metal exported by Lin Fen, the cash deposit rate will be the PRC-wide rate, which is currently 139.49 percent. There are no changes to the rates applicable to any other company under this order. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of this notice.

#### Notification of Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice is issued and published in accordance with section 351.214(f)(3) and section 351.213(d)(4) of the Department's regulations and sections 751(a)(1), and 751(a)(2)(B) of the Act.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5489 Filed 3-6-02; 8:45 am]

**BILLING CODE 3510-DS-S**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-533-810]

#### Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to Isibars Limited; Mukand, Ltd.; Venus Wire Industries Limited; and the Viraj Group, Ltd. (Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; and Viraj Impoexpo, Ltd.). This review covers sales of stainless steel bar to the United States

during the period February 1, 2001, through January 31, 2002.

We preliminarily find that, during the period of review, sales of stainless steel bar from India were made below normal value. If the preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Cole Kyle or Ryan Langan, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-1503 or (202) 482-2613 respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 1, 2002, the Department published a notice in the **Federal Register** (67 FR 4945) of the opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel bar from India. In February 2001, the Department received timely requests for an administrative review from Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC) (collectively, "petitioners") and Viraj Group Ltd., an Indian producer of the subject merchandise. On March 11, 2002, the Department received a review request from Ferro Alloys Corp. Ltd. ("Facor"), an Indian exporter/producer of the subject merchandise. However, since Facor's review request was not timely filed in accordance with 19 CFR 351.213(b)(2) (April 2001), we did not consider it when initiating this administrative review.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on March 27, 2002 (67 FR 14696) with respect to the following exporter/producers of the subject merchandise: Isibars Limited ("Isibars"); Mukand, Ltd. ("Mukand"); Venus Wire Industries Limited ("Venus"); and the Viraj Group, Ltd. ("Viraj"). The period of review ("POR") is February 1, 2001 through January 31, 2002.

On March 27, 2002, the petitioners requested the Department to conduct verification in this review. On May 22,

2002, the Department issued antidumping duty questionnaires to Isibars, Venus, Viraj and Mukand. We received timely responses from Isibars, Venus and Viraj (collectively, "respondents"). Mukand did not file a timely response to our questionnaire (see "Facts Available" section below for further details). We issued supplemental questionnaires to the respondents and received responses from September 2002 to February 2003.

On October 11, 2002, the petitioners submitted a timely allegation that Viraj made sales below the cost of production ("COP"). We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales in the home market by Viraj had been made at prices below the COP. On November 6, 2002, pursuant to section 773(b) of the Tariff Act of 1930, as amended effective January 1, 1995 ("the Act") by the Uruguay Round Agreements Act ("URAA"), we initiated an investigation to determine whether Viraj made home market sales during the POR at prices below the COP, within the meaning of section 773(b) of the Act (see Memorandum from Team to Susan Kuhbach, Director, AD/CVD Enforcement Office 1, "Allegation of Sales Below the Cost of Production for Viraj Impoexpo Ltd.," dated November 6, 2002). Accordingly, we notified Viraj that it must respond to Section D of the antidumping duty questionnaire.

On October 16, 2002, the Department found that because several of the respondents in this proceeding had outstanding supplemental questionnaires and the Department required time to review and analyze the responses once they were received, it was not practicable to complete this review within the time allotted. Accordingly, we published an extension of time limit for the completion of the preliminary results of this review to no later than February 28, 2003, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). See *Stainless Steel Bar from India; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 67 FR 64870 (October 22, 2002).

#### Scope of the Order

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares),

triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

#### Facts Otherwise Available

Section 776(a)(2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, a respondent (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified.

Section 782(e) of the Act further provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but does not meet all the applicable requirements established by the Department if (1) the information is submitted by the deadline established for its submission; (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 in providing the information and meeting the requirements established by the Department with respect to the

information; and (5) the information can be used without undue difficulties.

On May 22, 2002, the Department issued the antidumping duty questionnaire to Mukand. The first page of the questionnaire established a due date of June 28, 2002, for Mukand's response. In addition, the cover letter to the questionnaire instructed Mukand to formally request an extension of time in writing before the due date if it was unable to respond to the questionnaire within the specified time limit. On August 2, 2002, Mukand submitted a letter to the Department stating that it did not believe it was required to respond to the Department's questionnaire. Mukand's letter also stated that Mukand had made no shipments of the subject merchandise to the United States during the POR. However, the Department examined shipment data furnished by the Customs Service and found that there were U.S. shipments of subject merchandise from Mukand during the POR.

Mukand's August 2, 2002 letter was the first and only communication the Department received from Mukand relating to this administrative review. Mukand did not request an extension of time to respond to the Department's questionnaires prior to the June 28, 2002 response deadline nor did Mukand, at any time, inform the Department that it was having difficulties submitting the requested information. (See section 782(c) of the Act.) Lastly, Mukand's statement that it had no shipments of subject merchandise to the United States during the POR appears inconsistent with U.S. customs data; in addition, Mukand's letter was submitted well after the June 28, 2002 questionnaire response due date. Therefore, on August 21, 2002, the Department sent Mukand a letter explaining that its August 2, 2002 submission was being returned, that all other copies had been destroyed in accordance with 19 CFR 351.302(d)(2), and that none of the information in the August 2, 2002 submission would be considered in this administrative review (see Letter to Mukand Ltd., "Administrative Review of Stainless Steel Bar from India," which is available in the Department's Central Records Unit, Room B-099).

Because Mukand did not respond to the Department's antidumping duty questionnaire within the deadline for submission of such information, the use of facts otherwise available is appropriate and in accordance with section 776(a)(2)(B) of the Act. The Department applies adverse facts available "to ensure that the party does not obtain a more favorable result by

failing to cooperate than if it had cooperated fully." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc No. 103-316, vol. 1, at 870 (1994) ("SAA"). In determining the appropriate facts available to apply to Mukand, we preliminarily find that an adverse inference is warranted because Mukand failed to cooperate by not acting to the best of its ability to reply to a request for information from the Department under section 776(b) of the Act.

As adverse facts available, we have assigned Mukand a margin of 21.02 percent, the highest margin alleged in the petition, in accordance with section 776(b)(1). (This margin was also assigned to Mukand in the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994) ("*LTFV Final*") as adverse facts available because it failed to respond to the Department's questionnaire.) Section 776(b) of the Act notes that an adverse facts available rate may include reliance on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. Thus, the statute does not limit the specific sources from which the Department may obtain information for use as facts available. The SAA recognizes the importance of facts available as an investigative tool in antidumping proceedings. The Department's potential use of facts available provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires. See SAA at 868.

Section 776(c) of the Act mandates that the Department, to the extent practicable, shall corroborate secondary information (such as petition data) using independent sources reasonably at its disposal. In accordance with the law, the Department, to the extent practicable, will examine the reliability and relevance of the information used.

To corroborate the selected margin, we compared it to individual transaction margins for companies in this administrative review with weighted-average margins above *de minimis*. We found that the selected margin falls within the range of individual transaction margins and that there was a significant number of sales, made in the ordinary course of trade, in commercial quantities, with margins near or exceeding 21.02 percent. This evidence supports the reliability of this margin and an inference that the selected rate might reflect Mukand's actual dumping margin.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)). Therefore, we also examined whether any information on the record would discredit the selected rate as reasonable facts available for Mukand. No such information exists. In particular, there is no information, such as reliable evidence of Mukand's export prices, that might lead to a conclusion that a different rate would be more appropriate.

Accordingly, we have assigned Mukand, in this administrative review, the rate of 21.02 percent as total adverse facts available. This is consistent with section 776(b) of the Act which states that adverse inferences may include reliance on information derived from the petition.

Finally, we note that Mukand, Parek Bright Bars Pvt. Ltd. ("Parek") and Shah Alloys, Ltd. ("Shah"), are currently subject to the 21.02 percent rate because they failed to respond to the Department's request for information in the *LTFV Final* or in prior administrative reviews. See *LTFV Final, Stainless Steel Bar from India; Final Results of Antidumping Duty New Shipper Review*, 65 FR 3662 (January 24, 2000) and *Stainless Steel Bar from India; Final Results of Antidumping Duty Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000).

### Collapsing

#### Viraj

In this administrative review, in past administrative reviews of stainless steel bar from India, and in other antidumping proceedings before the Department, the Viraj Group Ltd. has responded to the Department's questionnaires on behalf of the affiliated companies comprising the Viraj Group, Ltd. (i.e., VAL, VIL, and VFL). See *Stainless Steel Bar from India; Final Results of Antidumping Duty*

*Administrative Review*, 67 FR 45956 (July 11, 2002) ("*2001 AR Final*"). See also *Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 67 FR 37391 (May 29, 2002); *Stainless Steel Wire Rod From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 1040 (January 8, 2003); and *Certain Forged Stainless Steel Flanges From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 10358 (March 7, 2002), affirmed in *Certain Stainless Steel Flanges From India; Final Results of Antidumping Duty Administrative Review*, 67 FR 62439 (October 7, 2002). In the *2001 AR Final*, the Department collapsed VAL, VIL and VFL because the record evidence demonstrated that VAL and VIL were able to produce similar or identical merchandise (i.e., the merchandise under review) during the POR and could continue to do so, independently or under existing agreements, without substantial retooling of their production facilities. The Department also found that there was a significant potential for the manipulation of price and production among VAL, VIL and VFL. Because the record evidence in this review is consistent with the facts upon which the Department relied in past administrative reviews, we continue to find that VAL, VIL and VFL are affiliated and should be treated as one entity for the purposes of this administrative review (i.e., collapsed) pursuant to section 771(33) of the Act and 19 CFR 351.401(f).

#### Isibars

Isibars Limited responded to the Department's questionnaire in this administrative review on behalf of Isibars Limited and its affiliates, Zenstar Impex ("Zenstar") and Isinox Steel, Ltd. ("Isinox") (collectively, "Isibars"). In the *LTFV Final* and in *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000), the Department determined that Isibars Limited, Zenstar, and Isinox were affiliated, and should be collapsed and considered one entity pursuant to section 771(33) of the Act and 19 CFR 351.401(f). Because Isibars and Zenstar share a common director and are dependent upon each other for procurement, production and sales purposes, we find that Isibars and Zenstar are affiliated persons in accordance with 771(33)(F) & (G) of the

Act. The record evidence in this administrative review demonstrates that Isibars and Isinox were able to produce similar or identical merchandise (*i.e.*, the merchandise under review) during the POR and could continue to do so without substantial retooling of their production facilities. In addition, record indicates that there was a significant potential for the manipulation of price and production among Isibars, Isinox and Zenstar during the POR. Therefore, we find that Isibars, Isinox and Zenstar are affiliated and should be treated as one entity for the purposes of this administrative review (*i.e.*, collapsed) pursuant to section 771(33) of the Act and 19 CFR 351.401(f).

#### Fair Value Comparisons

To determine whether sales of SSB from India to the United States were made at less than normal value, we compared export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with 19 CFR 351.414(c)(2), we compared individual EPs and CEPs to weighted-average NVs, which were calculated in accordance with section 777A(d)(2) of the Act.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market during the POR that fit the description in the "Scope of the Order" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the home market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we considered the following physical characteristics of the products in order of importance: type, grade, remelting, type of final finishing operation, shape, and size.

#### Export Price and Constructed Export Price

We calculated EP in accordance with Section 772(a) of the Act for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the

exporter or producer outside the United States and the constructed export price methodology was not otherwise indicated. We based EP on packed ex-factory, CIF, and delivered prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting the reported gross unit price, where applicable, for interest revenue, taxes, and billing adjustments (*see below*). We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, domestic inland freight, brokerage and handling, international freight, marine insurance, U.S. customs duties, U.S. inland freight, and other U.S. transportation expenses.

In accordance with Section 772(b) of the Act, we calculated CEP for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed CIF and C&F duty-paid prices to unaffiliated purchasers in the United States. We identified the starting price and made deductions for movement expenses, including domestic inland freight, international freight, marine insurance, brokerage and handling, U.S. customs duties, and other transportation expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses. Lastly, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

To calculate the EP and CEP, we relied upon the data submitted by the respondents, except where noted below:

#### Isibars

Isibars reported that it paid, upon shipment, excise taxes on subject merchandise exported to the United States. Isibars has not reported these taxes separately, as it claims they are subsequently rebated upon demonstration that the merchandise was exported. However, Isibars has failed to provide sufficient documentation showing that the tax was refunded upon export. Based on a review of Isibars, U.S. sales invoices provided in its October 28, 2002 submission, it appears that Isibars' reported gross unit prices include the excise tax. Therefore, pursuant to section 772(c)(2)(B), we used the tax rate reported by Isibars to calculate the transaction-specific tax and have deducted that amount from the starting price. *See Memorandum to*

File "Isibars Limited Preliminary Results Calculation Memorandum" dated February 28, 2003 ("*Isibars Calculation Memorandum*").

#### Venus

Venus reported discounts in its sales databases. However, the information on the record indicates that the discounts are actually billing adjustments (*i.e.*, adjustments to price). Therefore, for the preliminary results, we have treated Venus' reported discounts as billing adjustments. *See Memorandum to File "Venus Wire Industries Limited Preliminary Results Calculation Memorandum" dated February 28, 2003 ("*Venus Calculation Memorandum*").*

#### Viraj

For two sales, we revised Viraj's control numbers to reflect the reported model matching characteristics. *See Memorandum to File "Viraj Group, Ltd. Preliminary Results Calculation Memorandum" dated February 28, 2003 ("*Viraj Calculation Memorandum*").*

#### Duty Drawback

Isibars, Venus and Viraj claimed a duty drawback adjustment based on their participation in the Indian government's Duty Entitlement Passbook Program. Such adjustments are permitted under section 772(c)(1)(B) of the Act.

The Department will grant a respondent's claim for a duty drawback adjustment where the respondent has demonstrated that there is (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipe Ltd. v. U.S.* ("*Rajinder Pipes*"), 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999). In *Rajinder Pipes*, the Court of International Trade upheld the Department's decision to deny a respondent's claim for duty drawback adjustments because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See also Viraj Group, Ltd. v. United States of America and Carpenter Technology, Corp., et al.*, Slip Op. 01-104 (CIT August 15, 2001).

In this administrative review, Isibars, Venus and Viraj have failed to demonstrate that there is a link between the import duty paid and the rebate received, and that imported raw materials are used in the production of the final exported product. Because they have failed to meet the Department's requirements, we are denying the respondents' requests for a duty

drawback adjustment. *See, Isibars Calculation Memorandum, Viraj Calculation Memorandum, and Venus Calculation Memorandum* for further details.

## Normal Value

### A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with 19 CFR 404(b)(2). Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

### B. Cost of Production

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), and interest expenses, and home market packing costs, where appropriate (*see* the "Test of Comparison Market Sales Prices" section below for treatment of home market selling expenses).

For each respondent, we have implemented a change in practice regarding the treatment of foreign exchange gains and losses. The Department's previous practice was to have respondents identify the source of all foreign exchange gains and losses (*e.g.*, debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the current portion of foreign exchange gains and losses generated by debt or cash deposits was included in the interest expense rate computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the COP and CV calculations.

Instead of splitting apart the foreign exchange gains and losses as reported in

an entity's financial statements, we will normally include in the interest expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (*i.e.*, consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss as opposed to how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for the preliminary results, we included all foreign exchange gains or losses in the interest expense rate computation. We note, however, that there may be unusual circumstances which may cause the Department to deviate from this general practice.

We relied on the COP data submitted by the respondents, except where noted below:

#### *Isibars*

Isibars claimed a startup adjustment for its new bar and rod mill.

Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for startup operations "only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production. For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles." Moreover, the SAA at 836 directs that attainment of peak production levels will not be the standard for identifying the end of the startup period because the startup period may end well before a company achieves optimum capacity utilization. In addition, the SAA notes that Commerce will not extend the startup period so as to cover improvements and cost reductions that may occur over the entire life cycle of the product. The SAA further instructs that a producer's projections of future volume or cost will be accorded little weight, as actual data regarding production are much more reliable than a producer's expectations.

The SAA also notes that the burden is on the respondent to demonstrate its entitlement to a startup adjustment; specifically, the respondent must demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems.

In this administrative review, Isibars stated that its new bar and rod mill started trial runs in June 1998. Isibars claims that it began initial commercial production on April 1, 2001, because it was required to do so by its lenders. Isibars notes that it complied with its lenders' requirement even though the plant had not been fully stabilized and it was not able to produce merchandise in commercially feasible quantities. Isibars submitted a startup adjustment based on the theoretical production capacity of the mill based on a 24-hour operation period. As noted above, the SAA directs that attainment of peak production levels will not be the standard for identifying the end of the startup period because the startup period may end well before a company achieves optimum capacity utilization. Based on the information submitted by Isibars, it appears that Isibars reached commercial levels of production prior to the start of the POR. For a more detailed discussion, *see* Memorandum from Nancy Decker through Michael Martin to Neal Halper, "Isibars Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" memorandum dated February 28, 2003.

In addition, we find that the problems reported by Isibars do not demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production. Rather, we find that these problems primarily appear to be chronic production problems rather than technical factors associated with startup. For a more detailed discussion, *see* Memorandum from Nancy Decker through Michael Martin to Neal Halper, "Isibars Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" memorandum dated February 28, 2003. Because section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the start-up test must be met before a startup adjustment is warranted, these findings demonstrate that Isibars has failed to meet the second prong of the test, which is sufficient to deny Isibars' claim for a startup adjustment.

As discussed above, we adjusted Isibars', Isinox's and Zenstar's interest expense, G&A expenses, and cost of

manufacturing (COM), where applicable, to account for our change in the treatment of foreign exchange gains and losses. We also revised Isibars' interest expense calculation methodology. We adjusted COM for Isibars to include certain lease and hire charges that were not included in reported costs. We adjusted G&A for Isinox to deduct certain selling expenses. We also adjusted COM for Zenstar to adjust for differences from the submitted reconciliation. As Isibars did not provide COP data for one product control number, we assigned that product control number the costs of a similar product. For a detailed discussion of the above-mentioned adjustments, see Memorandum from Nancy Decker through Michael Martin to Neal Halper, "Isibars Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results' memorandum dated February 28, 2003.

#### Venus

We made the following adjustments to Venus' reported costs: (1) We adjusted Venus' fixed overhead to account for the incorrect reporting period used for depreciation; (2) we adjusted direct material cost to eliminate the scrap realization amount because Venus could not explain the methodology behind the percentage used for the process loss calculation; (3) we adjusted Venus' interest expense ratio to include interest attributed to export invoices and our change in the treatment of foreign exchange gains and losses (as discussed above); (4) we adjusted G&A for Venus to include donations, prior year adjustments, and loss on sale of assets; and (5) we adjusted G&A for Venus to include all G&A costs after deduction of selling expenses. For a detailed discussion of the above-mentioned adjustments, see Memorandum from Margaret Pusey through Michael Martin to Neal Halper "Venus Wire Industries Limited Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results' dated February 28, 2003.

#### Viraj

We made the following adjustments to Viraj's reported costs: (1) VIL calculated its yield losses based on the quantity of scrap and wastage produced as a percentage of the quantity of bright bar output produced. We revised VIL's yield losses calculation to reflect the input quantity of raw material instead of the quantity of bright bar produced; (2) VAL excluded certain depreciation expense from the cost of sales ("COS") which is used as denominator of the G&A

expense rate calculation. We revised VAL's COS to include the depreciation expense. We then divided VAL's reported G&A expenses by the revised COS to calculate the revised G&A expense rate; (3) VIL excluded certain interest and bank charges from the reported financial expense rate calculation which it claims are reflective of the imputed finance charges used to adjust price. We revised VIL's financial expense to include the interest charges and bank charges. We then divided VIL's revised interest expense by the cost of sales to calculate the revised financial expense rate; (4) VAL calculated its financial expense rate to include all of the interest expenses and the COS of Viraj group companies. Because Viraj group companies do not prepare consolidated financial statements, we revised VAL's financial expense rate calculation to reflect only VAL's interest expense and the COS. In addition we revised VAL's interest expense to include waived interest expense. We then divided VIL's revised interest expense by the VAL's cost of sales to calculate the revised financial expense rate. For a detailed discussion of the above-mentioned adjustments, see Memorandum from Ji Young Oh through Michael Martin to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results' dated February 28, 2003. We also created temporary control numbers which include ranged sizes for cost matching purposes (see *Viraj Calculation Memorandum*).

#### 1. Test of Home Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, commissions, discounts and indirect selling expenses. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

#### 2. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product during the POR were at prices less than

the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product because we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for each of the respondents, for certain specific products, more than 20 percent of the comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

For U.S. sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade (e.g., sales that passed the cost test), we compared those sales to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

#### C. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with section 773(e)(1) and (e)(2)(A) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A, including interest, profit and U.S. packing costs. We made the same adjustments to the CV costs as described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like

product in the ordinary course of trade for consumption in the foreign country.

#### D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>1</sup> including selling functions,<sup>2</sup> class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, (*i.e.*, NV based on either home market or third country prices<sup>3</sup>) we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of

the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and we are unable to make a level of trade adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Viraj reported that it sells to manufacturers and trading companies in the home market, and to distributors in the United States. Viraj reported a single level of trade and a single channel of distribution in the home market and has not requested a LOT adjustment. We examined the information reported by Viraj and found that home market sales to both customer categories were identical with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Viraj had only one level of trade for its home market sales.

For CEP sales, Viraj reported the same single level of trade and channel of distribution reported for home market sales. The CEP selling activities differ from the home market selling activities only with respect to freight and delivery. Therefore, we find that the CEP level of trade is similar to the home market LOT and a level-of-trade adjustment is not necessary. See section 773(a)(7)(A) of the Act.

Isibars reported that it sells to end-users and trading companies in the home market, and to distributors in the United States. Venus reported that it sells to trading companies and end-users in the home market, and to distributors and end-users in the United States. Isibars and Venus reported the same level of trade and the same channel of distribution for sales in the United States and the home market, and neither company has requested a LOT adjustment.

We examined the information reported by Isibars and Venus, and found that home market sales to both customer categories were identical with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that each company had only one level of trade for its home market sales. Isibars' and Venus' EP selling activities differ from the home market selling activities only with respect to freight and delivery. Therefore, we find that the EP level of trade is similar to the home market LOT and a level-of-trade adjustment is not

necessary. See section 773(a)(7)(A) of the Act.

#### E. Calculation of Normal Value Based on Home Market Prices

We calculated NV based on ex-factory or delivered prices to unaffiliated customers in the home market. We identified the starting price and made adjustments for billing adjustments, where appropriate (*see below*). We also made deductions for early payment discounts. In accordance with section 773(a)(6)(B)(ii) of the Act, we made deductions for inland freight. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and commissions, where appropriate. We also made adjustments, where appropriate, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or United States where commissions were granted on sales in one market but not in the other (the commission offset).

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

To calculate NV, we relied upon the data submitted by the respondents. However, for Isibars, we adjusted the quantities reported for several sales to account for returned merchandise (*see Isibars Calculation Memorandum*). For Venus, we used the date of the preliminary results as the payment date in the credit calculation for those sales for which payment dates were not reported. Venus also reported discounts in its sales databases. However, the information on the record indicates that the discounts are actually billing adjustments (*i.e.*, adjustments to price). Therefore, for the preliminary results, we have treated Venus' reported discounts as billing adjustments. See, *Venus Calculation Memorandum* for further details.

#### F. Calculation of Normal Value Based on Constructed Value

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we added U.S. packing costs.

<sup>1</sup> The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

<sup>2</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section

773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

**Preliminary Results of Review**

We preliminarily find the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin percentage
Isibars Limited .....	11.26
Mukand, Ltd .....	21.02
Venus Wire Industries Limited .....	0.0 ( <i>de minimis</i> )
Viraj Group, Ltd .....	0.04 ( <i>de minimis</i> )

**Assessment Rates**

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisal instructions directly to the Customs Service to assess antidumping duties on appropriate entries. To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculate importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we calculate a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). We have calculated a per unit assessment rate for CEP sales because we did not have reliable entered values to calculate an assessment rate. See, *Viraj Calculation Memorandum* for further details.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of this review.

**Cash Deposit Rates**

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of SSB from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by

section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rate established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (see 59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding APOs**

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5491 Filed 3-6-03; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****National Institute of Standards and Technology****Proposed Information Collection; Comment Request; Program Evaluation Data Collections**

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506© (2)(A)).

**DATES:** Written comments must be submitted on or before May 6, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Phyllis Boyd, National Institute of Standards and Technology, 100 Bureau Drive, Stop 3220, Gaithersburg, MD, 20899-3220, (301) 975-4062.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys—both quantitative and qualitative—designed to evaluate our current programs from a customer perspective. NIST proposes to perform program evaluation data collections by means of, but not be limited to, focus groups, reply cards that accompany product distributions, and web-based surveys and dialogue boxes that offer customers the opportunity to express their views on the programs they are asked to evaluate. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

**II. Method of Collection**

NIST will collect this information by mail, fax, electronically, telephone, and person-to-person sessions.

**III. Data**

*OMB Number:* 0693-0033.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or for-profit organizations, not-for profit institutions, individuals or households.

*Estimated Number of Respondents:* 12,000.

*Estimated Time Per Response:* Varied, dependent upon the data collection. The response time may vary from two minutes for a response card to two hours for focus group participation. The average response time is expected to be 30 minutes.

*Estimated Total Annual Burden*

*Hours:* 3,022.

*Estimated Total Annual Cost:* \$0.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: March 3, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03-5362 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-13-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves**

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Chesapeake Bay-Virginia National Estuarine Research Reserve and the Guam Coastal Zone Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states and territories with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state or territory has met the national objectives, adhered to its

Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state, territory and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Chesapeake Bay-Virginia National Estuarine Research Reserve evaluation site visit will be held April 28-30, 2003. One public meeting will be held during the week. The public meeting will be on Wednesday, April 30, 2003, at 7 p.m., in the Wilson House Seminar Room, Virginia Institute of Marine Science, Gloucester Point, Virginia.

The Guam Coastal Zone Management Program evaluation site visit will be held April 15-26, 2003. One public meeting will be held during the site visit. The public meeting will be on Tuesday, April 22, 2003, at 6 p.m., in the Governor's Cabinet Conference Room, Adelup, Guam. Copies of states' and territories' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states and territories, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

**FOR FURTHER INFORMATION CONTACT:**

Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713-3155, Extension 118.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 3, 2003.

**Jamison S. Hawkins,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 03-5472 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-08-M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Romania

March 4, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward, carryforward used, swing, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57409, published on September 10, 2002.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

March 4, 2003.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC*

20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 7, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
315 .....	5,787,846 square meters.
410 .....	113,694 square meters.
435 .....	17,157 dozen.
442 .....	15,237 dozen.
443 .....	61,892 numbers.
444 .....	21,874 numbers.
447/448 .....	32,324 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
James C. Leonard III,  
*Chairman, Committee for the Implementation of Textile Agreements.*  
[FR Doc. 03-5421 Filed 3-6-03; 8:45 am]

**BILLING CODE 3510-DR-S**

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade (CBT) Proposed New Mini-Sized Corn, Soybean, and Wheat Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of terms and conditions of new contract specifications for mini-sized corn, soybean, and wheat futures.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has requested that the Commission approve the subject proposed new mini-sized corn, soybean, and wheat futures contracts, new CBT Regulation 332.11, and related amendments to existing CBT Regulations 425.01 and 1008.01. The proposals were submitted pursuant to Commission Regulations 40.3 and 40.5.

The Director of the Division of Market Oversight (Division) of the Commission,

acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposal for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

**DATES:** Comments must be received on or before March 24, 2003.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington 20581. In addition, comments may be sent by facsimile transmission to (202) 418-5521 or by electronic mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to "CBT mini-sized, corn, soybean and wheat futures contracts."

**FOR FURTHER INFORMATION CONTACT:** Please contact Frederick Linse of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington 20581, (202) 418-5273. Facsimile number: (202) 418-5527. Electronic mail: [flinse@cftc.gov](mailto:flinse@cftc.gov).

**SUPPLEMENTARY INFORMATION:** The proposed futures contracts would provide for the delivery of warehouse depository receipts and certificates representing 1,000 bushels of corn, soybeans and wheat, respectively. Except for certain terms noted below, the terms and conditions of the subject contracts would be identical to the terms and conditions of the existing 1,000-bushel corn, soybeans and wheat futures contracts traded on the MidAmerica Commodity Exchange (MACE). In this respect, prior to the first trading day of the subject new contracts, all of the open interest on the MACE corn, soybean and wheat futures contracts would be transferred to the corresponding new CBT mini-sized contracts. Trading of the MACE corn, soybean and wheat contracts on MACE would cease after the open interest in these contracts has been transferred to the CBT.

The primary differences between the CBT mini-sized and MACE contracts relate to the contracts' speculative position limits and certain terms concerning the taking of physical delivery against outstanding warehouse depository receipt and shipping certificates. Under proposed amendments to the CBT's Regulation 425.01, a trader's combined position in the mini-sized contracts and the corresponding CBT corn, soybean and wheat futures contracts would be subject to the CBT's existing speculative

position limits for these commodities. For purposes of combining positions, one mini-sized contract would be treated as equivalent to one-fifth of one CBT 5,000-bushel contract. Currently, traders' positions in MACE and CBT corn, soybean and wheat futures contracts are subject to speculative position limits that are specified separately for each exchange. The proposed rules also would specify that holders of outstanding 1,000-bushel warehouse depository receipts and certificates must present such receipts and certificates to issuers in multiples of 5 receipts or certificates in order to receive load-out of the underlying corn, soybeans or wheat.<sup>1</sup>

Trading of the new mini-sized contracts would be by open outcry. In this regard, the CBT is proposing to adopt new regulation 332.11 which specifies the CBT's requirements in relation to changers and changing transactions.

The CBT stated that it intends to commence trading of the new mini-sized corn, soybean and wheat futures contracts in the second calendar quarter of 2003.

The Division is requesting comment on the proposals. Copies of the Exchange's proposal will be available for inspection at the Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW., Washington 20581. Copies of the proposal can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the CBT in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (2002)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments pertaining to the proposal or with respect to other materials submitted by the CBT should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington 20581 by the specified date.

<sup>1</sup> The CBT indicated that the above proposed rules codify existing MACE practices.

Issued in Washington, DC on March 3, 2003.

**Michael Gorham,**

*Director.*

[FR Doc. 03-5358 Filed 3-6-03; 8:45 am]

**BILLING CODE 6351-01-M**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act; Meeting

**TIME AND DATE:** Monday, March 17, 2003, 10 a.m.

**LOCATION:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

#### MATTER TO BE CONSIDERED:

*Petition HP 01-3 to Ban Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment*

The staff will brief the Commission on Petition HP 01-3 submitted by the Environmental Working Group (EWG) and the Healthy Building Network (HBN), requesting that the Commission issue a ban on use of chromated copper arsenate (CCA)-treated wood in playground equipment.

Oral presentations by commenters will begin at 2 p.m. (see **Federal Register** notice published on Friday, February 14, 2003, Vol. 68, page 7510) The meeting may continue to the next day, March 18, 2003.

For a recorded message containing the latest agenda information, call (301) 504-7948.

#### FOR FURTHER INFORMATION CONTACT:

Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-7923.

Dated: March 4, 2003.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 03-5627 Filed 3-5-03; 2:29 pm]

**BILLING CODE 6355-01-M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Active Duty Service Determinations for Civilian or Contractual Groups Pursers of Transcontinental and Western Air, Inc. (WWII); Application Instructions for an Armed Forces Discharge Certificate

On February 21, 2003, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, amended the 1992 Secretarial determination concerning the group known as: "U.S.

Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract with the Air Transport Command During the Periods February 26, 1942 through August 14, 1945." The amendment determined that the service of "pursers," who were part of these flight crews, shall be considered "active duty" for purposes of all laws administered by the Department of Veterans Affairs (VA).

To be eligible for VA benefits, "pursers," who were part of the flight crews recognized by the Secretary in 1992, must establish each of the following:

1. He or she was employed by Transcontinental and Western Air, Inc., as part of its flight crew personnel (which now includes pursers); and
2. He or she served outside the continental United States in direct support of the Air Transport Command-directed flight operations during the period December 14, 1941, through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

#### Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate (Department of Defense Form 214) by filling out a Department of Defense (DD) Form 2168 and sending it to the U.S. Air Force Personnel Center at the following address:

AFPC/DPPRP, 550 C St. West, Suite 11, Randolph AFB, TX 78150-4713.

**Important:** Applicants must attach supporting documents to their DD Form 2168 application. Of primary importance will be any employment records from TWA and flight/log books. Other supporting documentation might include copies of passports with appropriate entries, military or civilian orders posting the applicant to an overseas assignment, reports signed by or mentioning the work of the applicant as part of the TWA-ATC contract flights overseas, Army Air Force (AAF) Identification Forms 133, any personal employment records such as commendations regarding performance, employee expense reports of charges to ATC contracts, medical certifications prior to departure from the U.S., Army Air Force (AAF) passes to leave the limits of an overseas base, miscellaneous AAF papers, etc.

Applicants having difficulty establishing all of the eligibility criteria

mentioned above should recognize the nature and character of documents addressing each criterion need not be the same. For example, an applicant may establish employment with TWA through official employment records, but find that proving assignment to an ATC contract crew outside the continental United States more difficult. In such a case, an applicant may be able to prove assignment and service at that location through other evidence, such as, dated, postmarked (or other sign of authenticity) correspondence (official or personal) to or from the applicant at that assignment outside the United States.

Upon confirmation of an applicant's eligibility, the DD Form 214 will be passed from AFPC/DPPRP to the Awards and Decorations office to determine which ribbons the applicant is eligible to receive (campaign ribbons, theater ribbons, victory medal, etc.). Specific awards (*i.e.*, Silver Star, Purple Heart, etc.) need separate justification detailing the act, achievement, or service believed to warrant the appropriate medal/ribbon.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice. An electronic version is also available in Adobe Acrobat (the reader is free) on the Internet at "DefenseLINK, publications."

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, EE Wing, 3d Fl., Andrews AFB, MD 20762-7002.

#### Benefit Information

A determination of "active duty" under Public Law 95-202 is "for the purposes of all laws administered by the Department of Veterans Affairs" (Sec. 106, 38 U.S.C.). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veteran's benefits varies and is governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Affairs Office and your state veterans service office after you have received your Armed Forces discharge documents.

#### Pamela D. Fitzgerald,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03-5440 Filed 3-6-03; 8:45 am]

BILLING CODE 5001-05-P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Active Duty Service Determinations for Civilian or Contractual Groups

On February 21, 2003, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as the "Uniformed Aviation Industry Contract Technical Specialists Assigned to Extended Duty at Ladd Field, Alaska, to Test Army Air Force Airplanes as Part of the Cold Weather Testing Detachment from February 1, 1942, through February 22, 1944" shall not be considered "active duty" for purposes of all laws administered by the Department of Veterans Affairs (VA).

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC); 1535 Command Drive, EE Wing, 3d Fl., Andrews AFB, MD 20762-7002.

#### Pamela D. Fitzgerald,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03-5439 Filed 3-6-03; 8:45 am]

BILLING CODE 5001-05-P

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Rough Terrain Cargo Parachute Assembly

AGENCY: Department of the Army, DoD.

ACTION: Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,520,453 B1 entitled "Rough Terrain Cargo Parachute Assembly" issued February 18, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233-4928 or E-mail: [Robert.Rosenkrans@natick.army.mil](mailto:Robert.Rosenkrans@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

#### Luz D. Ortiz,

*Army Federal Register Liaison Officer.*

[FR Doc. 03-5485 Filed 3-6-03; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Availability of the Final Supplemental Environmental Impact Statement for the Missouri River Fish and Wildlife Mitigation Project Located on the Missouri River from Sioux City, IA to the Mouth Near St. Louis, MO in the States of Iowa, Nebraska, Kansas, and Missouri

AGENCY: Department of the Army. U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

**SUMMARY:** This announces the availability of the Final Supplemental Environmental Impact Statement (FSEIS) for the Missouri River Fish and Wildlife Mitigation Project located on the Missouri River in the states of Iowa, Nebraska, Kansas, and Missouri. The Mitigation Project was first authorized by the Water Resources Development Act (WRDA) of 1986, which included the development of 48,100 acres of aquatic and terrestrial habitat for fish and wildlife along the 735 miles of the Missouri River between Sioux City, IA and St. Louis, MO. The WRDA of 1999 modified the Mitigation Project by increasing the amount of habitat development by 118,650 acres to a total of 166,750 acres. The FSEIS assesses the potential environmental impacts of the modified Mitigation Project, which includes the development, restoration, or enhancement of fish and wildlife habitat on an additional 118,650 acres on individual sites purchased from willing sellers and through easements. The purpose of the Mitigation Project is to restore fish and wildlife habitat losses resulting from the construction and development of the Missouri River Bank Stabilization and Navigation Project (BSNP). Seven alternatives are considered in the FSEIS and three alternatives are analyzed in detail including a Preferred Action, No Development alternative, and No Action alternative.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kelly Ryan, Civil Works Branch ATTN: CENWK-PM-CJ, U.S. Army Engineer District, Kansas City, 601 East 12th Street, Kansas City, MO, 64106-2896, Phone: 816-983-3324.

**SUPPLEMENTARY INFORMATION:** 1. The U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Iowa Department of Natural Resources, Kansas Department of Wildlife and Parks, Nebraska Game and Parks Commission, and the Missouri Department of Conservation are serving

as cooperating agencies on the preparation of the FSEIS.

2. Three alternatives are considered in detail in the FSEIS:

a. The Preferred Action alternative includes the development, restoration, or enhancement of fish and wildlife habitat on an additional 118,650 acres on individual sites purchased from willing sellers and through easements. Included in the 118,650 acres would be the construction or restoration of approximately 7,000 to 20,000 acres of shallow water habitat to achieve a goal of 20–30 acres per mile along the 735-mile BSNP.

b. The No Development alternative includes the acquisition of 118,650 acres on individual sites purchased from willing sellers or through easements, however, there would be no subsequent habitat development or construction activities.

c. The No Action alternative would not develop, restore, or enhance any additional acres for fish and wildlife habitat except for that previously authorized under WRDA of 1986 or that of other state or Federal programs.

3. Copies of the FSEIS are available for review in the following libraries:

a. Atchison Library, 401 Kansas Avenue, Atchison, KS 66002.

b. Atchison County Library, 200 S. Main St., Rock Port, MO 64482–1532.

c. Blair Public Library, 210 S. 17th Street, Blair, NE 68008.

d. Boonslick Regional Library, 618 Main Street, Boonville, MO 65233–1572.

e. Callaway County Public Library, 710 Court Street, Fulton, MO 65251.

f. Carrollton Public Library, 206 W. Washington, Carrollton, MO 64633.

g. Council Bluffs Public Library, 400 Willow Ave., Council Bluffs, IA 51503–4269.

h. Daniel Boone Regional Library, 100 W. Broadway, Columbia, MO 65201.

i. Dakota City Public Library, 1708 Broadway, Dakota City, NE 68731.

j. Fayette Public Library, 201 South Main Street, Fayette, MO 65248.

k. Keytesville Library, 406 W. Bridge Street, Keytesville, MO 65261–1016.

l. Leavenworth Public Library, 417 Spruce, Leavenworth, KS 66048.

m. Lewis Library of Glasgow, 315 Market Street, Glasgow, MO 65254–2395.

n. Lexington Library, 1008 Main Street, Lexington, MO 64067–1345.

o. Lydia Bruun Woods Memorial Library, 120 E. 18th Street, Falls City, NE 68355.

p. Mid-Continent Public Library, 100 Kent Street, Liberty, MO 64068–2256.

q. Morton-James Public Library, 923 First Corso, Nebraska City, NE 68410.

r. Onawa Public Library, 707 Iowa Avenue, Onawa, IA 51040.

s. Oregon Public Library, 103 S. Washington Street, Oregon, MO 64473.

t. Plattsmouth Public Library, 401 Avenue A, Plattsmouth, NE 68048.

u. River Bluffs Regional Library, 927 Felix St., St. Joseph, MO 64501.

v. St. Charles Library, 2323 Elm Street, St. Charles, MO 63301–1440.

w. St. Louis Public Library, 5850 N. Hanley Road, St. Louis, MO 63134.

x. Scenic Regional Library, 113 E. 4th Street, Hermann, MO 65041–1129.

y. Scenic Regional Library, 912 S. Highway 47, Warrenton, MO 63383–2004.

z. Sidney Public Library, 604 Clay Street, Sidney, IA 51652.

aa. Sioux City Public Library, 529 Pierce Street, Sioux City, IA 51101–1203.

bb. Thomas Jefferson Library, 214 Adams St., Jefferson City, MO 65101.

cc. Washington Public Library, 415 Jefferson Street, Washington, MO 63090–2607.

dd. Walthill Public Library, Main Street, Walthill, NE 68067.

ee. W. Dale Clark Library, 215 S. 15th Street, Omaha, NE 68102–1004.

4. The FSEIS is also available for review on the Missouri River Fish and Wildlife Mitigation Project Web site at: <http://www.nwk.usace.army.mil/projects/mitigation/supplemental-eis.htm>.

5. The Record of Decision (ROD) will be issued no sooner than 30 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–5484 Filed 3–6–03; 8:45 am]

**BILLING CODE 3710–KN–M**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement for the Biscayne Bay Coastal Wetlands Project

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps), Jacksonville District intends to prepare an integrated Project Implementation Report/Draft Environmental Impact Statement (PIR/DEIS) for the Biscayne Bay Coastal Wetlands Project. The study is a

cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the implementation of the Biscayne Bay Coastal Wetlands Project. The purpose of this project is to rehydrate wetlands and reduce point source discharge to Biscayne Bay. This study is intended to replace lost overland flow and partially compensate for the reduction in groundwater seepage by redistributing, through a spreader system, available surface water entering the area from regional canals. This project is a component of the Comprehensive Everglades Restoration Plan, a multi-year effort to restore the greater Everglades ecosystem while providing water supply and other water-related benefits to South Florida over many decades.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad Tarr, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019, by email [bradley.a.tarr@usace.army.mil](mailto:bradley.a.tarr@usace.army.mil), or by telephone at 904–232–3582.

#### **SUPPLEMENTARY INFORMATION:**

a. *Authorization:* The authority for this project is contained within the Water Resources Development Act (WRDA) 2000. The “Design Agreement between the Department of the Army and the SFWMD for the Design of Elements of the Comprehensive Plan for the Everglades and South Florida Ecosystem Restoration Project” contains additional guidance.

b. *Study Area:* The general geographical extent of the project is along the mainland coast of southern Biscayne Bay from the Deering Estate, south to the Florida Power and Light Turkey Point Power Plant, generally along the L–3E canal in Miami-Dade County, Florida. The study area will extend further west and south, as needed, to evaluate project effects.

c. *Project Scope:* The Biscayne Bay Coastal Wetlands project may include the installation or construction of pump stations, spreader swales, stormwater treatment areas, flowways, levees, culverts, and backfilling canals as part of an effort to rehydrate wetlands and reduce point source discharge to Biscayne Bay.

The purpose of these features is to replace lost overland flow and partially compensate for the reduction in groundwater seepage by redistributing, through a spreader system, available

surface water entering the area from regional canals. The proposed redistribution of freshwater flow across a broad front is expected to restore or enhance freshwater wetlands, tidal wetlands, and nearshore bay habitat.

The study will evaluate alternatives based on their ability to improve water deliveries to the natural system, protect and conserve water resources, protect or restore fish and wildlife and their associated habitat, restore and manage wetland and associated upland ecosystems, sustain economic and natural resources, improve water quality, and other performance criteria being developed by the Project Delivery Team.

*d. Preliminary Alternatives:* Additional alternatives will be drafted which may be revised pending model results and public feedback.

The Environmental Impact Statement (EIS) for the project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific performance measures.

*e. Issues:* The EIS will address the impacts concerning freshwater overland flow into Biscayne Bay; and water quality, particularly in the estuaries and receiving waters of Biscayne Bay and the reef tract.

The EIS will also address environmental issues, such as: Flood protection; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement, and interagency coordination.

*f. Scoping:* A scoping letter and public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

Public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers.

*g. DEIS Preparation:* The integrated draft PIR, which will include a draft EIS, is currently scheduled for publication in July 2005.

Dated: February 21, 2003.

**James C. Duck,**

*Chief, Planning Division.*

[FR Doc. 03-5486 Filed 3-6-03; 8:45 am]

BILLING CODE 3710-AJ-M

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### American Statistical Association Committee on Energy Statistics

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, April 3, 2003, 8:30 a.m.-4:30 p.m., Friday, April 4, 2003, 8:30 a.m.-12 noon.

**ADDRESSES:** U.S. Department of Energy, Room 8E-089, 1000 Independence Ave., SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Mr. William I. Weinig, EI-70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287-1709. Alternately, Mr. Weinig may be contacted by e-mail at [william.weinig@eia.doe.gov](mailto:william.weinig@eia.doe.gov) or by FAX at (202) 287-1705.

*Purpose of the Committee:* To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

#### Tentative Agenda

*Thursday, April 3, 2003*

- A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA, Room 8E-089.
  - B. Major Topics (Room 8E-089 unless otherwise noted)
    1. EIA's Survey Quality Effort: Where is EIA Going?
      - A. Overview of EIA's Survey Quality Initiatives
      - B. Survey Quality Efforts of the Office of Coal, Nuclear, Electric and Alternate Fuels
      - C. Survey Quality via Performance-Based Service Contracting
    2. New Confidentiality Law and EIA's Response
    3. An Alternative Natural Gas Production Estimation Procedure
    4. EIA's (Draft) Electricity Transmission Study (Room 5E-069)
    5. Public Questions and Comments
- Friday, April 4, 2003, Room 8E-089*

#### C. Major Topics

1. Redesign of the EIA-906
  2. Using Data from Combined Heat and Power Plants to Estimate Natural Gas Industrial Prices (Room 5E-069)
  3. ASA Committee Suggestions for the Fall, 2003 Meeting
  4. Public Questions and Comments
- D. Closing Remarks by the Chair

*Public Participation:* The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

*Minutes:* A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287-1709 or by e-mail at [william.weinig@eia.doe.gov](mailto:william.weinig@eia.doe.gov).

Issued at Washington, DC on March 3, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 03-5406 Filed 3-6-03; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, March 24, 2003, 1 p.m.-7 p.m., Tuesday, March 25, 2003, 8:30 a.m.-4 p.m.

**ADDRESSES:** Augusta Sheraton Hotel, 2651 Perimeter Parkway, Augusta, GA 30909.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 725-5374.

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Board:* The purpose of the Board is to make recommendations

to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

### Tentative Agenda

*Monday, March 24, 2003*

1 p.m. Combined Committee Session  
5:30 p.m. Executive Committee Meeting  
6:30 p.m. Public Comment Session  
7 p.m. Adjourn

*Tuesday, March 25, 2003*

8:30–9:30 a.m. Approval of Minutes; Agency Updates; Department of Energy Realignment; Public Comment Session; Facilitator Update; Transuranic Waste Workshop Recommendations  
9:30–10:30 a.m. Long-Term Stewardship Committee Report  
10:30–11:45 a.m. Strategic Initiatives Committee  
11:45–12 a.m. Public Comments  
12 noon Lunch Break  
1–2:00 p.m. Waste Management Committee Report  
2–2:30 p.m. Administrative Committee Report  
Bylaws Amendment Proposal  
Board Member Removal Consideration  
Special Membership Election  
2:30–3 p.m. Environmental Restoration Committee  
3–3:45 p.m. Nuclear Materials Committee Report  
3:45–4 p.m. Public Comments  
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, March 24, 2003.

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Fleming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

**Minutes:** The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through

Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC, 29802, or by calling her at (803) 725–5374.

Issued in Washington, DC on March 3, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–5407 Filed 3–6–03; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EL03–47–000, QF90–203–004, and QF89–251–008]

#### Investigation of Certain Enron-Affiliated QFs, Saguaro Power Company, Las Vegas Cogeneration Limited Partnership; Notice of Initiation of Proceeding and Comment Filing Date

February 28, 2003.

Take notice that on February 24, 2003, the Commission issued an Order Initiating Investigation and Establishing Hearing Procedures in Docket Nos. EL03–47–000, QF90–203–004 and QF89–251–008.

By this notice, the Commission establishes that the date for the filing of motions to intervene, comments, and protests is March 17, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–5375 Filed 3–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER03–119–000, ER03–120–000, ER03–121–000, ER03–122–000, ER03–123–000, ER03–124–000, ER03–125–000, ER03–126–000, ER03–127–000, ER03–128–000, ER03–129–000, ER03–130–000, ER03–131–000, ER03–135–000, ER03–136–000, and EL03–46–000]

#### Southern Company Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

February 28, 2003.

Take notice that on January 31, 2003, the Commission issued an order in the above-indicated dockets initiating a proceeding under section 206 of the Federal Power Act.

The refund effective date will be 60 days after publication of this notice in the **Federal Register**.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–5376 Filed 3–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000 and PF01–1–000]

#### Greenbrier Pipeline Company, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Greenbrier Pipeline Project

February 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final environmental impact statement (FEIS) on the natural gas pipeline facilities (the Greenbrier Pipeline Project) proposed by Greenbrier Pipeline Company, LLC (GPC) in the above-referenced dockets. The application and other supplemental filings in these dockets are available for viewing on the FERC Internet Web site (<http://www.ferc.gov>). Click on the “FERRIS” link, select “General Search,” then “Docket #” on the menu, and follow the instructions.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures, as recommended, would result in some adverse environmental impacts. The FEIS evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations.

The purpose of the project is to create gas supply diversity and to meet a portion of the growing energy market in the South Atlantic region. The project would be designed to meet a variety of anticipated loads, including the growth of two local distribution companies, four natural gas-fired electric generation plants, and a natural gas marketer. The project is fully subscribed and would transport up to 600,000 decatherms per day of natural gas.

The proposed pipeline would extend from east of Clendenin, Kanawha County, West Virginia, through West Virginia, southwestern Virginia, and North Carolina to its terminus near Stem, in Granville County, North Carolina. It would consist of 275.6 miles

of mainline and three laterals totaling 3.8 miles. The project would also construct 2 compressor stations, 3 meter stations, 18 stand alone block valves (additional block valves would be collocated at other aboveground facility sites), and appurtenant facilities, and about 212 access roads. Mainline DG-1 would extend from the proposed Elk River Compressor Station adjacent to Dominion Transmission, Inc.'s existing Cornwell Compressor Station to the proposed Public Service Company of North Carolina, Inc., a South Carolina Corporation's compressor station near Stem, North Carolina. DG-1 would include 20-, 24-, and 30-inch-diameter pipeline. Lateral DG-2 would consist of 12-inch-diameter pipeline that extends from DG-1 to the proposed Somerset Meter Station near Roxboro, North Carolina. Lateral DG-3 would consist of 10-inch-diameter pipeline that extends from the end of DG-1 to the proposed Mountain Creek Meter Station near Butner, North Carolina. Lateral DG-4 would consist of 30-inch-diameter pipeline that would interconnect the proposed Transco Meter Station and the proposed Eden Compressor Station in Rockingham County, North Carolina.

The FEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371. E-mail: [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the FEIS have been mailed to Federal, State, and local government agencies; elected officials, environmental and public interest groups; affected landowners who requested a copy of the FEIS; Native American tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries and newspapers; and the Commission's list of parties to this proceeding.

In accordance with the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of the FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process which allows other agencies or the public to make their views known. In such cases, the agency

decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1-866-208-3372 or on the FERC Internet Web site ([www.ferc.gov](http://www.ferc.gov)), using the "FERRIS" link to information in this docket number. Click on the "FERRIS" link, select "General Search" from the menu, and follow the instructions. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676 or for TYY contact 1-202-502-8659. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-5373 Filed 3-6-03; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP03-41-000 and CP03-43-000]

#### **Dominion Transmission, Inc., Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mid-Atlantic Expansion Project and Dominion Expansion Project and Request for Comments on Environmental Issues**

February 28, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Mid-Atlantic Expansion and Dominion Expansion Projects (collectively referred to as the Projects) involving construction and operation of facilities by Dominion Transmission, Inc. (Dominion) and Texas Eastern Transmission, LP (Texas Eastern). Dominion would construct facilities in Wetzel County, West Virginia; Greene and Franklin Counties, Pennsylvania; and Loudoun and Fauquier Counties, Virginia. The facilities that would be constructed by Texas Eastern would be in Greene, Fayette, Somerset, Fulton,

and Franklin Counties, Pennsylvania.<sup>1</sup> Dominion's facilities would consist of 39,200 horsepower (hp) of new compression. Texas Eastern's facilities would consist of about 34.64 miles of 36-inch-diameter pipeline looping. This EA will be used by the Commission in its decision-making process to determine whether the Projects are in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the Projects are approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the appropriate pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to each project's notice Dominion or Texas Eastern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

#### **Summary of the Proposed Projects**

Dominion wants to expand the capacity of its facilities in Virginia, West Virginia, and Pennsylvania to transport an additional 223,000 dekatherms per day (Dth/d) of gas to fulfill requests for service to end users in Virginia. To transport this gas to Dominion, Texas Eastern proposes to construct facilities in Pennsylvania.

Dominion seeks authority to construct and operate:

- The new Mockingbird Hill Compressor Station which would include one 5,000-hp gas-fired compressor and related facilities near Pine Grove, Wetzel County, West Virginia;
- Additional compression at the existing Crayne Compressor Station in Greene County, Pennsylvania, including replacement of a 5,500-hp unit with a 7,800-hp gas-fired compressor, and upgrading an existing 6,500-hp unit to

<sup>1</sup> Dominion's and Texas Eastern's applications were filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

7,800-hp resulting in an increase of 3,600-hp at the station;

- An upgrade of the existing Crayne Compressor Station measuring and regulating (M&R) station;
- Two additional 7,800-hp gas-fired compressors and a 1,200-hp upgrade of the existing electric-motor driven compressors at the existing Chambersburg Compressor Station in Franklin County, Pennsylvania, for a total increase of 16,800-hp;
- One 7,800-hp gas-fired compressor and related facilities at the existing Leesburg Compressor Station in Loudoun County, Virginia; and
- The new Quantico Compressor Station which would include one 6,000-hp gas-fired compressor and related facilities near Nokesville and Manassas, Fauquier County, Virginia.

Dominion proposes to have these facilities in service by November 30, 2004.

Texas Eastern seeks authority to construct and operate:

- About 10.5 miles of 36-inch-diameter pipeline in Greene County, Pennsylvania, the Waynesburg Discharge Segment 1;
- About 3.5 miles of 36-inch-diameter pipeline in Fayette County, Pennsylvania, the Waynesburg Discharge Segment 2;
- About 12.5 miles of 36-inch-diameter pipeline in Somerset County, Pennsylvania, the Uniontown Discharge Segment;
- About 8.1 miles of 36-inch-diameter pipeline in Fulton and Franklin Counties, Pennsylvania; and
- A change out of the aerodynamic assembly on the existing 11,000-hp electric-motor driven compressor at the Uniontown Compressor Station in Fayette County, Pennsylvania.

Texas Eastern proposes to have its facilities in service by November 1, 2004.

No nonjurisdictional facilities would be constructed.

The locations of the project facilities are shown in appendix 1.2

#### Land Requirements for Construction

Construction of Dominion's proposed facilities would require about 18.2 acres of land, all but 7.4 acres of this disturbance would be on land Dominion already owns. Construction of Texas Eastern's proposed facilities would require about 623.2 acres. No new permanent right-of-way would be required because all of Texas Eastern's new facilities would be located within an existing pipeline right-of-way. Pipeline construction would generally consist of removing an existing pipeline and relaying new pipeline in the same

footprint. However, about 0.03 acre would be required for access roads. Following construction, all of the affected land would be restored and allowed to revert to its former use.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us<sup>2</sup> to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice of intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

<sup>2</sup> "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

#### Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Dominion and Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- The addition of 39,200-hp at five compressor stations would have impacts on air and noise quality.
- Two new compressor stations would be constructed creating new visual impacts.
- About 623 acres of land would be temporarily disturbed for pipeline construction.
- Forty-nine waterbodies would be crossed by pipeline construction or by access roads.
- Pipeline construction would cross the watersheds of the Monongahela, Youghiogheny, Juniata, and Potomac Rivers in Pennsylvania.
- One public water supply intake, 12 public water supply wells, and seven public water supply springs would be located within 1 mile of the Projects.
- Ten private water supply wells have been identified within 150 feet of construction work areas.
- Pipeline construction would cross three Wild Trout Streams and six Approved Trout Waters as defined by the Pennsylvania Department of Environmental Protection.
- Cultural resources may be affected by the Projects.
- Blasting may be required for construction.
- Some areas with karst terrain would be crossed.
- About 1.9 acres of prime farmland soil would be permanently affected by construction of aboveground facilities.
- Fourteen residences would be within 50 feet of construction work areas.
- Pipeline construction would cross the Tuscarora Trail and Buchanan State Forest.
- About 1.66 acres of forested wetland and 0.71 acre of agricultural wetland would be permanently affected by construction of the Quantico Compressor Station.

#### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project.

By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP03-41-000 and CP03-43-000.
- Mail your comments so that they will be received in Washington, DC on or before March 31, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

#### Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "Intervener". Interveners play a more formal role in the process. Among other things, Interveners have the right to receive copies of case-related Commission documents and filings by other Interveners. Likewise, each Intervener must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an Intervener you must

file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).<sup>3</sup> Only Interveners have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted Intervener status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need Intervener status to have your environmental comments considered.

#### Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

#### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03-5374 Filed 3-6-03; 8:45 am]

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<sup>3</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 28, 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.:* 12313-000.

c. *Date filed:* July 23, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name and Location of Project:* The Newburgh L&D Hydroelectric Project would be located on the Ohio River in Henderson County, Kentucky. The project would occupy lands administered by the U.S. Army Corps of Engineers.

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:* Elizabeth Jones (202) 502-8246.

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 would utilize the Corps' existing Newburgh Lock and Dam and would consist of: (1) Eight proposed 120-inch steel penstocks approximately 50 feet long, (2) a proposed powerhouse containing eight turbines with a total installed capacity of 15 MW, (3) approximately 1.5 miles of proposed 14.7kV transmission line, and (4) appurtenant facilities.

The project would have an estimated annual generation of 92 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](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301 (330) 535-7115.

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", "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. 03-5377 Filed 3-6-03; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 28, 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.:* 12319-000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name and Location of Project:* The Salamonie Lake Dam Hydroelectric Project would be located on the Salamonie River in Wabash County, Indiana. The project would occupy lands administered by the U.S. Army Corps of Engineers.

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:* Elizabeth Jones (202) 502-8246.

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 would utilize the Corps' existing Salamonie Lake Dam and would consist of: (1) Two proposed 84-inch steel penstocks approximately 50 feet long, (2) a proposed powerhouse containing two turbines with a total installed capacity of 2 MW, (3) approximately five miles of proposed

14.7kV transmission line, and (4) appurtenant facilities.

The project would have an estimated annual generation of 12.5 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](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301 (330) 535-7115.

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", "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. 03-5378 Filed 3-6-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 28, 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.:* 12321-000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name and Location of Project:* The Cagles Mill Lake Dam Hydroelectric Project would be located on Mill Creek in Putnam County, Indiana. The project would occupy lands administered by the U.S. Army Corps of Engineers.

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:* Elizabeth Jones (202) 502-8246.

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 would utilize the Corps' existing Cagles Mill Lake Dam and would consist of: (1) One proposed 62-inch steel penstock approximately 50 feet long, (2) a proposed powerhouse containing one turbine with a total

installed capacity of 938 KW, (3) approximately 600 feet of proposed 14.7kV transmission line, and (4) appurtenant facilities.

The project would have an estimated annual generation of 5.8 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](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301 (330) 535-7115.

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", "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. 03-5379 Filed 3-6-03; 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 28, 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.:* 12410-000.

c. *Date filed:* November 12, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Wilson Dam Hydroelectric Project would be located on the Saline River in Russell County, Kansas. The project would utilize the U.S. Army Corps of Engineers' existing Wilson Dam and Reservoir.

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:* James Hunter, (202) 502-6086.

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 Wilson Dam and Reservoir, would consist of: (1) An 80-foot-long, 108-inch-diameter steel

penstock, (2) a powerhouse containing two generating units with a total installed capacity of 2.0 megawatts, (3) a 1,200-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 12.3 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](mailto: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. 03-5380 Filed 3-6-03; 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 28, 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.:* 12413-000.

c. *Date filed:* November 8, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Toad Suck Ferry L&D #8 Hydroelectric Project would be located on the Arkansas River in Perry County, Arkansas. The project would utilize the U.S. Army Corps of Engineers' existing Toad Suck Ferry Lock and Dam No. 8.

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:* James Hunter, (202) 502-6086.

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 Toad Suck Ferry Lock and Dam No. 8, would consist of: (1) Five 40-foot-long, 114-

inch-diameter steel penstocks, (2) a powerhouse containing five generating units with a total installed capacity of 9.0 megawatts, (3) a 4-mile-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 55 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](mailto: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. 03-5381 Filed 3-6-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2516-026.

c. *Date filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Shepherdstown, in Berkeley and Jefferson Counties, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858-1675.

i. *FERC Contact:* Peter Leitzke, (202) 502-6059 or [peter.leitzke@ferc.gov](mailto:peter.leitzke@ferc.gov).

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-2516-026) on any documents filed.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a

particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Dam No. 4 Hydro Station Project consists of: (1) A 200-foot-long, 80-foot-wide headrace; (2) a stone and concrete powerhouse containing three generating units with a total installed capacity of 1,900 kilowatts; (3) a 350-foot-long, 90-foot-wide tailrace; (4) a substation; (5) a 4.5-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,886 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland. The project dam and reservoir are owned by the United States and operated by the National Park Service.

m. A copy of the application 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, contact FERC Online Support at

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY

COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03-5382 Filed 3-6-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 28, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent minor license.

b. *Project No.:* 2517-012.

c. *Date filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 5 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Hedgesville, in Berkeley County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858-1675.

i. *FERC Contact:* Peter Leitzke, (202) 502-6059 or [peter.leitzke@ferc.gov](mailto:peter.leitzke@ferc.gov).

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-2517-012) on any documents filed.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Dam No. 5 Hydro Station Project consists of: (1) A 100-foot-long, 80-foot-wide headrace; (2) a brick and concrete powerhouse containing two generating units with a total installed capacity of 1,210 kilowatts; (3) a 250-foot-long, 90-foot-wide tailrace; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,945 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland. The project dam and reservoir are owned by the United States and operated by the National Park Service.

m. A copy of the application 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, contact FERC Online Support at

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and

conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,  
Secretary.

[FR Doc. 03-5383 Filed 3-6-03; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7460-4]

### Science Advisory Board; Request for Nominations for Experts for a Panel on Valuing the Protection of Ecological Systems and Services

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA's SAB is announcing the formation of a new SAB Panel and is soliciting nominations for members of the panel.

**DATES:** Nominations should be submitted on or before March 28, 2003.

**ADDRESSES:** Nominations should be submitted in electronic format through the Form for Nominating Individuals to

Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, <http://www.epa.gov/sab>. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Dr. Angela Nugent, Designated Federal Officer, U.S. EPA Science Advisory Board (1400A), by telephone/voice mail at (202) 564-4562, by fax at (202) 501-0323, or via e-mail at [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Request for Nomination may contact Dr. Angela Nugent at the address above.

**SUPPLEMENTARY INFORMATION:**

1. *Action:* Notice; request for nominations to a new "Panel on Valuing the Protection of Ecological Systems and Services" of the EPA's Science Advisory Board (SAB).

2. *Summary:* The EPA's SAB is announcing the formation of a new Panel to provide advice to strengthen the EPA's approaches for assessing the costs and benefits of environmental programs that protect ecological systems and services, to identify research needs to improve how ecological resources are valued, and to support decision making to protect ecological resources. The SAB is soliciting nominations to establish the members of the new Panel.

This Panel is being formed to provide advice to the Agency, as part of the EPA SAB's mission, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA regulations. The project it will undertake is a self-initiated project of the Board, intended as a multi-year effort; the background for the effort and the charge to the Panel is described below. The Board is a chartered Federal advisory Committee, which reports directly to the Administrator.

Members of the Panel will provide advice to the Agency, through the SAB's Executive Committee, over a two-to-three year period. Over that period, the Panel will comply with the provisions of FACA and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can be found on the SAB's Web site at: <http://www.epa.gov/sab/pdf/ec02010.pdf>.

3. *Background:* EPA's Strategic Plan (EPA-190-R-00-002) states as goals

one, two and four that a major part of the EPA's mission is to safeguard the natural environment, air, water, healthy communities and ecosystems, upon which life depends. The goals address ecosystem protection and restoration. Goal one, for example, specifies links between reductions in air pollution and protection of the environment, and such benefits as restoring life in damaged ecosystems. The Agency is seeking scientific guidance on measures to improve quantification and characterization of benefits of protecting ecosystems and restoring life in damaged ecosystems and to inform environmental protection decisions.

Goals two and four of the EPA Strategic Plan include "the restoration and protection of watersheds and their aquatic ecosystems to improve public health, enhance water quality, reduce flooding, and provide habitat for wildlife and the desire of "preventing pollution and reducing risk in communities, homes, workplaces, and ecosystems." Meeting these goals will require a scientifically rigorous method to quantify not only losses of commercially exploited ecosystem benefits (e.g., recreational fishing, impact of atmospheric sulfur and nitrogen oxides, lost commercial timber from ozone damage), but also to quantify and characterize the benefits of protecting ecological systems and services (emphasize more strongly) (e.g., carbon sequestration, water purification, water retention, biodiversity, existence values, aesthetic values, and habitat).

In short, the EPA needs a comprehensive effort that will improve the methods used to value the benefits of protecting ecological systems and services to facilitate Agency decisions concerning the protection and restoration of ecosystems. Developing and implementing such methods will assist the Agency in meeting the eighth Goal of the Strategic Plan, "to develop and apply the best available science for addressing current and future environmental hazards as well as new approaches toward improving environmental protection."

The SAB Executive Committee has determined that the issue of protection of ecological systems and services and valuing of their protection is an important, multi-dimensional issue where the scientific and technical advice of the Board is needed. It has acknowledged that valuing the protection of ecological systems and services has proved a challenging problem for the Agency and existing SAB Advisory committees to address.

In regard to this last point, the Board notes that in 2001, the independent

Advisory Council on Clean Air Compliance Analysis, whose chair sits on the SAB Executive Committee, identified that a "major effort" was needed "to develop credible methods to quantify and monetize the effects of marginal changes in air pollution on ecosystem processes" and to include non-market ecosystem services in future Section 812 reports (*Draft Analytical Plan for EPA's Second Prospective Analysis—Benefits and costs of the Clean Air Act, 1990–2020: An Advisory by the Advisory Council for Clean Air Compliance* EPA–SAB–COUNCIL–ADV–01–004). The Council advised the Agency to develop a major review of the economic literature focusing on the valuation of ecological systems and services, with the purpose of differentiating results more useful for the Agency's 812 analysis of ecological benefits from those less useful.

The SAB notes that the new Panel is likely to address many of the issues raised in a 2001 SAB report, *Toward Integrated Environmental Decision Making* (EPA–SAB–EC–00–011). That report noted the following impediments to the valuing of ecological systems and services: difficulty translating changes in ecological conditions into monetary units; difficulty measuring values placed on keeping ecosystems viable ("existence values") because the public often does not have knowledge about ecological impacts; difficulty finding ecological services reflected well in markets; and difficulty measuring values such as equity and sustainability. The report also cited the following needs: better methods to estimate value the public places on protecting ecological conditions; better methods to incorporate values and preferences into decision-making; and more open dialogue among scientists and between scientists and decision makers.

The Board notes that many of these issues were also discussed at a joint EPA/SAB workshop in 2001, and documented in the report: *Understanding Public Values and Attitudes Related to Ecological Risk Management: An SAB Workshop Report of an EPA/SAB Workshop* (EPA–SAB–EC–WKSP–01–001). The workshop was a public meeting designed to demonstrate how researchers using different kinds of analytical methods, tools, and approaches from the social sciences can mutually inform each other and risk managers in understanding: (a) Public values and attitudes related to specific threats to ecological resources, such as Tampa Bay Estuary, a body of water threatened with nitrogen deposition and (b) the significance of those values to decision makers. The

Report identified opportunities to improve consideration of values in environmental decision making in the following areas: environmental science; social, economic and behavioral sciences; actions to be taken by policy makers and their roles; roles and requirements of stakeholders; and research development and research needs.

4. *Proposed Charge to the Panel:* The Executive Committee notes that the panel will need to synthesize the existing serious work already invested on this issue and currently underway elsewhere and define and steer distinct activities where the SAB can add value to those efforts. Currently, the National Academy of Sciences is working on a project titled "Assessing and Valuing of Aquatic Ecosystem Services." This project, which is being co-sponsored by the EPA, is meant to "evaluate methods for assessing services and associated economic values of aquatic and related terrestrial ecosystems. The Executive Committee desires coordination with efforts such as this one, so that the panel builds on the information and advice developed. It envisions a multi-year effort to build upon and go beyond past guidance and efforts to support the Agency's valuation methods. The SAB's effort would identify research needs to improve valuing of ecological resources and identify scientifically appropriate methods and suite of tools to be used to assist decision making to protect ecological resources. The Executive Committee envisions that the Panel will plan and conduct a series of activities designed to accomplish the following:

(a) Enhance the ability of ecological, economic, social, and technological analysis to contribute useful assessment of the value of changes in and the protection of ecosystems and ecosystem services.

(b) Explore alternative approaches (e.g., benefit-cost analysis, ecological analysis, and the analysis of public concerns and values) in terms of the soundness and reliability of the methods involved, the current evidentiary base associated with each, data gaps, and potential contributions to decision making.

(c) Identify research needs and priorities for the further development of each of these approaches and to explore innovative strategies to encourage new research and new investigators to address the value of ecological systems and services.

(d) Compare the different approaches, identifying areas of convergence and divergence and the potential for developing more integrative and synthetic approaches.

(e) Make recommendations as to how these alternative approaches may inform and be incorporated in the Agency's valuing the protection of ecological systems and services and to contribute to the work of other SAB committees.

Specific activities to respond to this charge are to be defined by the new SAB Panel.

5. *SAB Request for Nominations:* Any interested person or organization may nominate qualified individuals for membership on the Subcommittee. Individuals should have expertise in one or more of the following areas:

- (a) Decision Science
- (b) Ecology
- (c) Economics
- (d) Engineering
- (e) Psychology
- (f) Social Sciences with emphasis in ecosystem protection

Prior experience that involved valuing of ecosystems and services according to a structured scientific method is desirable.

6. *Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals to add expertise in the above areas Panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, `MACROBUTTON HtmlResAnchor http://www.epa.gov/sab`. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form may contact Dr. Angela Nugent at the mailing address above. Nominations should be submitted in time to arrive no later than 21 days after the publication date of this **Federal Register** Notice. Any questions concerning either this process or any other aspects notice should be directed to Dr. Nugent.

The EPA Science Advisory Board will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: `http://www.epa.gov/sab`, and will include, for each candidate, the nominee's name and

their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for Panel.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: <http://www.epa.gov/sab/pdf/epaform3110-48.pdf>. Subcommittee members will likely be asked to attend at least one public face-to-face meeting and several public conference call meetings over the anticipated course of the advisory activity.

The approved policy under which the EPA SAB selects review panels is described in a recent SAB document, *EPA Science Advisory Board (SAB)*

*Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary* (EPA-SAB-EC-COM-002-003), which can be found on the SAB's Web site at: (<http://www.epa.gov/sab>) <http://www.epa.gov/sab/ecm02003.pdf> <http://www.epa.gov/sab/pdf/ecm02003.pdf>.

Additional information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: <http://www.epa.gov/sab>; and in the *EPA Science Advisory Board FY2001 Annual Staff Report*, which is available from the EPA SAB Publications Staff at phone: (202) 564-4533; via fax at: (202) 501-0256; or on the SAB Web site at: <http://www.epa.gov/sab/annreport01.pdf>.

7. *For Further Information Contact:* Any member of the public wishing further information regarding this Request for Nomination may contact Dr. Angela Nugent, Designated Federal Officer, U.S. EPA Science Advisory Board (1400A), Suite 6450C by telephone/voice mail at (202) 564-4562, by fax at (202) 501-0323; or via e-mail at [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov).

Dated: February 28, 2003.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 03-5474 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2003-0004; FRL-7293-1]

### Access to Confidential Business Information by ASRC Aerospace Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized ASRC Aerospace Corporation, of Greenbelt, MD, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data submitted to EPA under all sections of TSCA occurred as a result of an approved waiver dated January 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2003-0004. 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 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still

access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. What Action is the Agency Taking?

Under Contract Number 68-W-03-013, ASRC Aerospace Corporation, of 6301 Ivy Lane, Suite 300, Greenbelt, MD, will assist EPA in managing the Confidential Business Information Center (CBIC), which is the centralized point of contact for TSCA CBI records and serves as the repository for these records. ASRC Aerospace Corporation will also receive, data entry, copy, track, and distribute records in accordance with the TSCA Security Manual.

Under Contract Number 68-W-01-002, Delivery Order Number 235, ASRC Aerospace Corporation will assist EPA in managing the Non-confidential Information Center (NCIC). ASRC Aerospace Corporation will provide current and historical records on all TSCA non-CBI submissions received in compliance with TSCA; organize, distribute and prepare records for permanent storage; and handle all docket-related records for OPPT, in accordance with the TSCA Security Manual.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Numbers 68-W-03-013 and 68-W-01-002, ASRC Aerospace Corporation will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

ASRC Aerospace Corporation personnel were given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

ASRC Aerospace Corporation was granted a waiver on January 31, 2003. This waiver was necessary to allow ASRC Aerospace Corporation to assist OPPT in the activities listed above.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide ASRC Aerospace Corporation access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

ASRC Aerospace Corporation will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under Contract Numbers 68-W-03-013 and 68-W-01-002 may continue until December 31, 2009, and October 18, 2006, respectively.

ASRC Aerospace Corporation personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

## List of Subjects

Environmental protection,  
Confidential business information.

Dated: February 26, 2003.

**Allan S. Abramson,**

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 03-5317 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2003-0004; FRL-7294-7]

### Access to Confidential Business Information by TEK Systems, Incorporated

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized the Chemical Abstract Services (CAS) and its subcontractor TEK Systems, Incorporated of Dublin, OH access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data submitted to EPA under sections 5 and 8 of TSCA occurred as a result of an approved waiver dated December 18, 2002, which requested granting TEK Systems, Incorporated immediate access to sections 5 and 8 of TSCA CBI.

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the

Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### B. How Can I Get 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 OPPT-2003-0004. 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 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. What Action is the Agency Taking?

Under Contract Number 68-W-00-127, subcontractor TEK Systems, Incorporated of 5115 Parkcenter Avenue, Suite 170, Dublin, Ohio, will assist the Office of Pollution Prevention and Toxics (OPPT) by providing technical support, for enhancing the confidential Master Inventory File. TEK Systems, Incorporated will specifically

be making changes to coding in the Master Inventory File and testing these changes to ensure completeness of the work and integrity of the Master Inventory File.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number 68-W-00-127, TEK Systems, Incorporated will require access to CBI submitted to EPA under sections 5 and 8 of TSCA, to perform successfully the duties specified under the contract.

TEK Systems, Incorporated was granted a waiver on December 18, 2002. This waiver was necessary to allow TEK Systems, Incorporated to assist OPPT in the activities listed above.

TEK Systems, Incorporated personnel was given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that the Agency may provide TEK Systems, Incorporated access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at the Chemical Abstract Services site, located at 2540 Olentangy River Road, Columbus, Ohio.

TEK Systems, Incorporated will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under Contract Number 68-W-00-127 may continue until September 30, 2003.

TEK Systems, Incorporated personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

#### List of Subjects

Environmental protection,  
Confidential business information.

Dated: February 26, 2003.

Allan S. Abramson,

Director, Information Management Division,  
Office of Pollution Prevention and Toxics.

[FR Doc. 03-5318 Filed 3-6-03; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6638-2]

### Environmental Impact Statements; Notice of Availability

**AGENCY:** Office of Federal Activities,  
General Information (202) 564-7167 or  
<http://www.epa.gov/compliance/nepa/>  
Weekly receipt of Environmental Impact  
Statements

Filed February 24, 2003 Through

February 28, 2003

Pursuant to 40 CFR 1506.9.

*EIS No. 030076, Draft EIS*, AFS, WI,  
McCaslin Project, To Implement  
Vegetation Management Activities  
that are Consistent with Direction in  
the Nicolet Forest Plan, Lakewood/  
Laona Ranger District, Chequamegon-  
Nicolet National Forest, Oconto Forest  
Counties, WI, Comment Period Ends:  
April 21, 2003, Contact: John  
Lampereur (715) 276-6333.

*EIS No. 030077, Final EIS*, FSA,  
Programmatic EIS—Emergency  
Conservation Program (ECP),  
Improvement and Expansion, To  
Provide Emergency Funding to  
Farmers and Ranchers, In the  
Agricultural Lands of the United  
States, Wait Period Ends: April 7,  
2003, Contact: Don Steck (202) 609-  
0224. This document is available on  
the Internet at: [http://  
www.fsa.usda.gov/dafp/cepd/epb/  
nepa.htm](http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm).

*EIS No. 030078, Draft EIS*, NPS, AK,  
Denali National Park and Preserve  
Backcountry Management Plan and  
General Management Plan  
Amendment, Implementation, AK,  
Comment Period Ends: May 7, 2003,  
Contact: Mike Tranel (907) 257-2562.  
This document is available on the  
Internet at: <http://www.nps.gov/dena>.

*EIS No. 030079, Draft EIS*, UAF, AZ,  
Barry M. Goldwater Range (BMGR)  
Proposed Integrated Natural  
Resources Management Plan (INRMP),  
Implementation, Military Lands  
Withdrawal Act of 1999 (Public Law  
106-65) and Sike Act (16 U.S.C. 670),  
Yuma, Pima and Maricopa Counties,  
AZ, Comment Period Ends: May 7,  
2003, Contact: Capt. Stephanie  
Dawley, (623) 856-3823.

*EIS No. 030080, Draft EIS*, AFS, SC,  
Sumter National Forest Revised Land  
and Resource Management Plan,  
Implementation, Oconee, Chester,  
Fairfield, Laurens, Newberry, Union-  
Abbeville, Edgefield, Greenwood,  
McCormick and Saluda Counties, SC,  
Comment Period Ends: April 21,  
2003, Contact: Jerome Thomas (803)  
561-4000.

*EIS No. 030081, Final Supplement*,  
AFS, AK, Tongass Land Management  
Plan Revision for Roadless Area  
Evaluation for Wilderness  
Recommendations, Implementation,  
Tongas National Forest, AK, Wait  
Period Ends: April 7, 2003, Contact:  
Thomas Puchlerz (907) 228-6202.

*EIS No. 030082, Final Supplement*,  
COE, Missouri River Fish and  
Wildlife Mitigation Project to Restore  
Fish and Wildlife Habitat Losses  
Resulting from Construction,

Operation and Maintenance of the  
Missouri River Bank Stabilization and  
Navigation Project (BSNP), Missouri  
River, Sioux City, Iowa to the Mouth  
near St. Louis, NB, KS and MO, Wait  
Period Ends: April 7, 2003, Contact:  
Kelly Ryan (816) 983-3324. This  
document is available on the Internet  
at: [http://www.nwk.usace.army.mil/  
projects/mitigation/supplemental-  
eis.htm](http://www.nwk.usace.army.mil/projects/mitigation/supplemental-eis.htm).

*EIS No. 030083, Draft EIS*, NPS, NJ,  
Morristown National Historical Park  
General Management Plan,  
Implementation, Morris and Somerset  
Counties, NJ, Comment Period Ends:  
May 09, 2003, Contact: Michael D.  
Henderson Ext (973) 539-2016.

*EIS No. 030084, Draft EIS*, BLM, ID,  
North Rasmussen Ridge Mine, Agrium  
Conda Phosphate Operations,  
Proposal to Extend the Existing  
Mining Operations, Federal  
Phosphate Leases I-04375 and I-  
07619 within the Caribou-Targhee  
National Forest, and State Lease I-  
9313, Soda Springs, Caribou County,  
ID, Comment Period Ends: May 6,  
2003, Contact: Wendall Johnson (208)  
478-6353.

*EIS No. 030085, Draft EIS*, AFS, ID,  
Golden Hand No. 3 and No. 4 Lode  
Mining Claims Proposed Plan of  
Operations, Implementation, Frank  
Church-River of No Return, (FC-  
RONR) Wilderness, Payette National  
Forest, Krassel Ranger District, Valley  
County, ID, Comment Period Ends:  
April 21, 2003, Contact: Quinn Carver  
(208) 634-0600. This document is  
available on the Internet at: [http://  
www.fs.fed.us/r4/payette/main.html](http://www.fs.fed.us/r4/payette/main.html)

*EIS No. 030086, Final EIS*, FRC, WV,  
NC, VA, Greenbrier Pipeline Project,  
(Docket Nos. CPO 2-396-000 and PF  
01-1-000), Proposal to Construct and  
Operate a Natural Gas Pipeline and  
Associated Above Ground Facilities,  
Extending from east of Clendenin,  
Kanawha County, WV, VA and  
Granville County, NC, Wait Period  
Ends: April 7, 2003, Contact: Magalie  
R. Salas (202) 502-8659.

*EIS No. 030087, Draft Supplement*, AFS,  
MT, Keystone-Quartz Ecosystem  
Management Implementation,  
Updated Information on Alternatives,  
Beaverhead-Deerlodge National  
Forest, Wise River Ranger District,  
Beaverhead County, MT, Comment  
Period Ends: April 21, 2003, Contact:  
Cindy Tencick (406) 683-3930.

### Amended Notices

*EIS No. 030072, Draft EIS*, COE, IL,  
Programmatic EIS—East St. Louis and  
Vicinity, Illinois Ecosystem  
Restoration and Flood Damage  
Reduction Project, Implementation,

Madison and St. Clair Counties, IL, Comment Period Ends: May 7, 2003, Contact: Deborah Roush (314) 331-8033.

#### Revision of FR Notice Published FR 2-28-03

Correction to Website Address: This document is available on the Internet at: <http://www.mvs.usace.army.mil/pm/pmmain.htm>.

Dated: March 4, 2003

**Joseph C. Montgomery,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03-5482 Filed 3-7-03; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6638-3]

#### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

#### Draft EISs

*ERP No. D-COE-K35043-CA Rating EC2*, Port of Long Beach Pier J South Terminal Development, Port Terminals Dredging and Landfilling, Modernization and Expansion, US Army COE Section 10 and 404 Permits Issuance, City of Long Beach, CA.

*Summary:* EPA expressed environmental concerns and requested additional information on impacts to waters of the U.S. and air quality, as well as potential environmental justice impacts on communities surrounding the Port of Long Beach.

*ERP No. D-NPS-E65061-FL Rating LO*, Biscayne National Park General Management Plan Amendment, Evaluation of the Effects of Several Alternatives for the Long-Term Management Plan, Stillsville, Biscayne National Park, Homestead, Miami-Dade County, FL.

*Summary:* EPA's review has not identified any potential environmental impacts requiring substantive changes

in the proposal, therefore EPA has no objection to the action as proposed.

*ERP No. D-SFW-L64048-WA Rating EC2*, Nisqually National Wildlife Refuge (NWR) Comprehensive Conservation Plan, Adoption and Implementation, Puget Sound, Nisqually River Delta, Thurston and Pierce Counties, WA.

*Summary:* EPA expressed environmental concerns related to the Purpose and Need Statement, discussion of potential cooperative shareholders, ecological connectivity, wetlands, potential hazardous waste sites, and agricultural facilities decommissioning.

*ERP No. D-SFW-L99008-WA Rating EC2*, Daybreak Mine Expansion and Habitat Enhancement Project, Habitat Conservation Plan and Issuance of a Multiple Species Permit for Incidental Take, Implementation, Clark County, WA.

*Summary:* EPA expressed environmental concerns over the need for a more explicit demonstration that the action alternatives would fulfill the Endangered Species Act goal of recovering endangered species populations. EPA also expressed concerns over the need for additional information about impacts to fish habitat, as well as the limited scope of the analysis of indirect and cumulative effects.

#### Final EISs

*ERP No. F-AFS-L65392-ID*, Middle-Black Analysis Project, Vegetation Management, Watershed Restoration and Noxious Weed Activities Aimed at Ecosystem Restoration, Clearwater National Forest, North Fork Ranger District, Clearwater County, ID.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F-COE-H35005-KS*, KS-10, Highway (commonly known as South Lawrence Trafficway) Relocation, Issuance or Denial of U.S. Army COE Section 404 Permit Request, Lawrence City, Douglas County, KS.

*Summary:* The FEIS provided clarifying information to EPA's previous objections that were based upon the potential for roadway contaminants to degrade the Baker Wetlands. EPA recommended that any Clean Water Act 404 permit be issued with special conditions consistent with the U.S. Army Corps of Engineers recent Wetlands Mitigation Regulatory Guidance Letter (RGL No. 02-2).

*ERP No. F-NRC-E06021-NC*, Generic EIS—McGuire Nuclear Power Station Units 1 and 2, Supplement 8 to NUREG-1437, Located on the Shore of Lake Norman, Mecklenburg County, NC.

*Summary:* EPA previous issues have been resolved, therefore EPA has no objection to the action as proposed.

Dated: March 4, 2003.

**Joseph C. Montgomery,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03-5483 Filed 3-6-03; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7460-3]

#### Meeting of the Local Government Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Local Government Advisory Committee (LGAC) will meet on March 27-28, 2003, in Atlanta, GA. As part of its mission to advise the Environmental Protection Agency on matters impacting local governments' ability to effectively and efficiently manage environmental programs, the Committee will both meet in plenary sessions and as individual working groups for the purposes of fact finding and the development of recommendations for the Agency.

Topics scheduled to be considered include: the working relationship of local governments and regional offices, current air quality topics, solid waste and water issues in the Atlanta Metropolitan area, environmental management systems, using environmental indicators, and building coordination between local governments, states and EPA. In addition, the Committee will consider its plans for the next year and its organization, structure and charter.

The Committee will hear comments from the public between 2:30 p.m.-2:45 p.m., March 27. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first served basis, and the total period for comments may be extended, if the number of requests for appearances required it.

These are open meetings and all interested persons are invited to attend. LGAC meeting minutes and Subcommittee summary notes will be available after the meetings and can be obtained by written request from the

DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible, and to facilitate security clearance to the meeting. Seating will be on a first come, first served basis.

**DATES:** The Local Government Advisory Committee plenary session will begin at 8:30 a.m. Thursday, March 27 and conclude at 3 p.m. on March 28.

**ADDRESSES:** The meetings will be held at the EPA's Region 4 Office located at 61 Forsyth Street, SW., (Sam Nunn Federal Center), Atlanta, GA 30303. Plenary sessions will be held in the Atlanta/Augusta Rooms( 3B90) in the Third floor Bridge Conference center.

Additional information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW., (1306A), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for the Local Government Advisory Committee (LGAC) is Paul Guthrie (202) 564-3649.

Dated: February 25, 2003.

**Paul N. Guthrie,**

*Designated Federal Officer, Local Government Advisory Committee.*

[FR Doc. 03-5473 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2003-0031; FRL-7290-5]

### Spiroxamine; Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP-2003-0031, must be received on or before April 7, 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:** Mary Waller, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9354; e-mail address: waller.mary@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

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

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

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

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2003-0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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-2003-0031. 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](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2003-0031. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number OPP-2003-0031.

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-2003-0031. 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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

#### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 2003.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petitions

The petitioners summaries of the pesticide petitions are printed below as required by FFDCa section 408(d)(3). The summary of the petition was prepared by Bayer CropScience, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### Bayer CropScience

#### Interregional Research Project Number 4 (IR-4)

*PP OF6122, PP 3E6518, and PP 3E6538*

EPA has received pesticide petitions (OF6122 and 3E6538) from Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for residues of spiroxamine, 8-(1,1-dimethylethyl)-N-ethyl-N-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine in or on the raw agricultural commodities as follows:

1. PP OF6122 proposes tolerances for grape at 1.0 parts per million (ppm) and grape, raisin at 1.3 ppm.

2. PP 3E6538 proposes a tolerance for banana at 3.0 ppm.

In addition, EPA has received a pesticide petition (3E6518) from the Interregional Research Project Number 4 (IR-4), Technology Centre of New Jersey, the State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of FFDCa, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for residues of spiroxamine, 8-(1,1-dimethylethyl)-N-ethyl-N-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine in or on the raw agricultural commodity hop at 11.0 parts per million (ppm).

EPA has determined that the petitions contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCa; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

This notice includes a summary of all three petitions prepared by Bayer CropScience, the manufacturer of spiroxamine.

### A. Residue Chemistry

1. *Plant metabolism.* Banana and grape plant metabolism studies have been conducted, and the nature of the residue is adequately understood. Animal metabolism studies are not required since none of the proposed crops to be treated with spiroxamine are fed to livestock per EPA's Table 1. Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops.

2. *Analytical method.* A method to determine the total residues of spiroxamine using gas chromatography has been submitted to EPA. In addition, spiroxamine has been evaluated using the multi-residue methodologies as published in the Food and Drug Administration (FDA) Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues*—i. *Grape.* Field trials were conducted at 12 locations to evaluate the quantity of spiroxamine, 8-(1,1-dimethylethyl)-N-ethyl-N-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine, residues in grape (fruit) following treatment of grape vines with KWG 4168 300 CS. In the 11 harvest experiments conducted, duplicate treated and single control samples of grape (fruit) were collected at 26 to 29 days following the final application of KWG 4168 300 CS. In the single decline experiment, duplicate samples of treated grape (whole fruit) were collected at 21–28–, 34–, and 42–day pre-harvest intervals (PHIs). In all trials, the highest average field trial (HAFT) residue of spiroxamine observed in grape was 0.61 ppm.

A study to evaluate the quantity of the residues of spiroxamine in grape processed commodities following two foliar spray applications of KWG 4168 300 CS was conducted in which KWG 4168 300 CS was applied to the grape vines at 50% fruit maturity (56–day PHI), and at 80% fruit maturity (28–day PHI), using an airblast sprayer. Control and treated grapes were harvested at 28 days after the second application of KWG 4168 300 CS. The grape juice and raisins were evaluated for the residues. Total spiroxamine residues in the processed commodities were 0.434 ppm in grape juice and 0.831 ppm in raisins. The concentration factor for spiroxamine residues in raisins was 1.3X. No concentration of spiroxamine residues occurred in grape juice. Therefore, a tolerance of 1.3 ppm is being proposed for residues of

spiroxamine in raisin, and no tolerance is needed for grape juice.

ii. *Hops.* IR-4 has received a request from Washington State for the use of spiroxamine on hops. To support this request, three fields trials were performed in the states of Washington, Oregon and Idaho. In each trial, four foliar applications of KWG 4168 300 CS spaced 8–14 days apart were applied to mature hops, and collected 12–14 days following the last application. Spiroxamine residue levels ranged from 1.9 to 10.9 ppm.

iii. *Banana.* Twelve field trials were conducted in commercial banana plantations of the major production areas of Latin and South America to compare the quantity of residues of spiroxamine in/on bananas following foliar applications. In 11 trials, duplicate composite samples of bananas were collected at a 0–day PHI from each of two side-by-side or super-imposed plots in which the racemes (bunches) were bagged or unbagged. In one trial, duplicate composite samples of bananas were collected at a 0–, 7–, 14–, and 21–day PHI from each of the plots containing bagged and unbagged bananas. The highest total residue value of spiroxamine in unwashed, bagged, whole bananas was 0.46 ppm at a 0–day PHI. The highest total residue value of spiroxamine in unwashed, unbagged, whole bananas was 2.44 ppm at a 0–day PHI. The total spiroxamine residues in whole bananas appeared to decline with time.

### B. Toxicological Profile

1. *Acute toxicity*—i. *KWG 4168 (spiroxamine) Technical.* The acute oral LD<sub>50</sub> in male rats was 595 milligrams/kilogram (mg/kg) and in female rats was >500 but <560 mg/kg. The acute dermal LD<sub>50</sub> in rats was >1,600 and 1,068 mg/kg for males and females, respectively. The 4–hour inhalation LC<sub>50</sub> in rats was 2.772 and 1.982 milligrams/liter (mg/L) for males and females, respectively. Irritation studies in rabbits revealed spiroxamine was severely irritating to the skin while not irritating to the eye. Spiroxamine exhibited a skin-sensitizing potential in guinea pigs in both the Magnusson/Kligman maximization test and the Buehler patch test.

ii. *Prosper 300.* The acute oral LD<sub>50</sub> in rats was >2,036 and >2,028 mg/kg for males and females, respectively. The acute dermal LD<sub>50</sub> in rats was >5,000 mg/kg for males and females. The 4–hour inhalation LC<sub>50</sub> in rats was >2.730 mg/L for both sexes. In an eye irritation study in rabbits, minimal irritation to the iris and conjunctiva was observed with all irritation, resolving by 72 hours

post-treatment. In a dermal irritation study in rabbits, mild erythema and/or edema was observed at 72 hours post-treatment with all irritation resolving by 14 days post-treatment. Prosper 300 did not have the potential to induce dermal sensitization in guinea pigs under conditions of the Buehler patch test.

2. *Genotoxicity.* The genotoxic action of spiroxamine was studied in bacteria and mammalian cells with the aid of various *in vitro* test systems (Salmonella microsome test, forward mutation assay, cytogenetic study with Chinese hamster ovary cells and unscheduled DNA synthesis test), and in one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of spiroxamine. The compound did not induce point mutations, DNA damage or chromosome aberrations.

3. *Reproductive and developmental toxicity.* In a reproduction study using rats, spiroxamine was administered for 2 generations at dietary concentrations of 20, 80, or 300 ppm. Reproductive effects such as reduced litter size at birth and clinical signs of toxicity occurred at the high dose in conjunction with maternal toxicity. The parental and reproductive no observed effect levels (NOELs) were 20 ppm (equal to 2.13 mg/kg body weight/day (bwt/day) and 80 ppm (equal to 9.19 mg/kg bwt/day), respectively.

In a developmental toxicity study in rats, spiroxamine was administered by oral gavage at dose levels of 0, 10, and 25 mg/kg bwt/day and in a supplemental study at doses of 0 and 150 mg/kg bwt/day. Severe maternal toxicity occurred at 150 mg/kg bwt/day resulting in the deaths of 21 of 25 animals. Embryotoxicity (palatoschisis and omphalocele) was observed at the high dose in conjunction with the severe maternal toxicity. The two lower dose levels did not reveal any maternal or developmental toxicity. The results of these studies showed that the dose of 150 mg/kg bwt/day was too high to obtain unequivocal results with respect to embryotoxicity and teratogenicity.

In another oral developmental toxicity study in rats, spiroxamine was administered by gavage during gestation at doses of 0, 10, 30, or 100 mg/kg bwt/day. Developmental toxicity occurred in conjunction with distinct maternal toxicity at the highest dose tested. The maternal NOEL was 30 mg/kg bwt/day based on reduced body weight gain and feed intake at 100 mg/kg bwt/day. The NOEL for developmental toxicity was 30 mg/kg bwt/day based on delayed ossification, slightly reduced fetal weights and three cases of palatoschisis at 100 mg/kg bwt/day.

In oral developmental toxicity studies in rabbits, spiroxamine was administered by gavage during gestation at doses of 0, 5, 20, or 80 mg/kg bwt/day and in a supplemental study at doses of 0 and 80 mg/kg bwt/day. The maternal NOEL was 20 mg/kg bwt/day based on clinical findings, reduced body weight gain, reduced food intake and lethality at 80 mg/kg bwt/day. The NOEL for developmental toxicity was 20 mg/kg bwt/day based on marginal developmental toxicity (reduced fetal weight and a slight increased rate of spontaneous malformations) at the highest dose level.

In a dermal developmental toxicity study in rats, spiroxamine was administered for 6 hours/day during gestation at doses of 0, 5, 20, or 80 mg/kg. Reduced body weight gain occurred in dams at 20 mg/kg and greater. Dose-related skin reactions were observed at all treated doses. Developmental toxicity, such as wavy ribs, occurred in conjunction with maternal toxicity at the highest dose tested. The NOELs for systemic and local maternal toxicity were 5 and <5 mg/kg, respectively. The NOEL for developmental toxicity was 20 mg/kg. Spiroxamine did not reveal any teratogenic potential associated with dermal application.

4. *Subchronic toxicity.* In subacute dermal toxicity studies, rabbits were treated with spiroxamine at doses ranging from 0.05 to 5 mg/kg bwt/day for 6 hours/day over a period of 3 weeks. Systemic effects were not observed in these studies. Local irritation, increased skin fold thickness, and histopathological findings of the skin occurred in these studies. The overall NOELs for local and systemic effects were 0.2 and 5 mg/kg bwt/day, respectively.

In a 90-day feeding study, mice were administered spiroxamine at dietary concentrations of 0, 20, 80, 320, or 1,280 ppm. Effects observed included clinical signs of toxicity, decreased body weight and food consumption, changes in hematological parameters, hyperplastic changes in the epidermis of the auricles and/or tail, and effects on the liver, kidney, and urinary bladder. The NOEL was 20 ppm (equal to 6.2 mg/kg bwt/day) for male mice based on marginally reduced body weight development at 80 ppm. The NOEL for female mice was 80 ppm (equal to 28.5 mg/kg bwt/day) based on slight morphological findings in the liver at 320 ppm.

In another subchronic mouse study, spiroxamine was administered by oral gavage at doses of 0, 60, 180 or 240 mg/kg. Effects observed included clinical signs of toxicity, and effects of the liver, urinary bladder and hyperplastic

changes in the epidermis of the auricles and tails. Evidence of liver enzyme induction was seen in all treatment groups. The NOEL was <60 mg/kg bwt/day for both males and females.

Spiroxamine was administered to rats in a subchronic feeding study at dietary concentrations of 0, 25, 125, or 625 over a period of 13 weeks. Effects included clinical signs of toxicity, reduced body weight gains, changes in hematological parameters, and effects on the liver, urinary bladder, esophagus and forestomach. The NOEL both male and female was 25 ppm (equal to 1.9 and 2.7 mg/kg bw/day, respectively) based on histopathological findings in the esophagus and forestomach at 125 ppm administered at dietary concentrations of 0, 25, 750 or 1,500 ppm and at 0, 150, 250 or 500 ppm over a period of 13 weeks. Toxicological effects included changes in clinical chemistries, increased relative liver weights, and histopathological findings in the liver. The overall NOELs from these studies were 500 (equal to 16.9 mg/kg bw/day) and 750 ppm (equal to 21.29 mg/kg bw/day) for males and females, respectively, based on liver effects.

5. *Chronic toxicity.* In a chronic dog study, Spiroxamine was administered at dietary concentrations of 0, 25, 75, 1,000 or 2,000 ppm for a period of 52 weeks. Effects included ophthalmological findings, changes in clinical chemistries, mild anemia, and histopathological findings (eye and liver). The NOEL for both sexes was 75 ppm (equal to 2.47 and 2.48 mg/kg bw/day for males and females, respectively) based on eye and liver effects.

Rats were administered Spiroxamine for 2 years at dietary concentrations of 0, 10, 70 or 490 ppm. Effects included reduced body weight gains, a slight increase in mortality and histopathological findings in the esophagus and urinary bladder. The NOEL for both sexes was 70 ppm (equal to 4.22 and 5.67 mg/kg bw/day for males and females, respectively) based on esophagus and urinary bladder effects.

The carcinogenicity potential of Spiroxamine was investigated in rats and mice at maximum dietary concentrations of 490 ppm (equal to 32.81 mg/kg bw/day) and 600 ppm (equal to 149.8 mg/kg bw/day), respectively. No evidence of an oncogenic potential of Spiroxamine was found in the long-term studies in rats and mice.

6. *Animal metabolism.* Rats were gavaged with 1 or 100 mg/kg radio-labeled technical Spiroxamine. Seventy percent of the oral low dose was absorbed. Within 48 hours of dosing, over 97 percent of the dose was excreted

in urine and feces. At sacrifice (48 hours post dosing), the radioactivity remaining in the body was below 1 percent in the low dose groups and approximately 1 percent and 2 percent in the male and female rats, respectively, from the high dose group. Concentrations found in tissues and organs were relatively low: i.e., they do not exceed 0.04 µg/g. The highest concentrations were found in liver, thymus and adrenals. Slightly smaller concentrations were observed in the thyroid, spleen, fat, ovaries and uterus. The main metabolite in all dose groups is Spiroxamine oxidized to the carboxylic acid in the t-butyl-moiety. The identification rate was approximately 77 percent of the recovered radioactivity in all dose groups.

#### 7. Metabolite toxicology.

Toxicological studies have been conducted on KWG 4,168 N-oxide, a plant and animal metabolite of KWG 4168. In an acute oral toxicity study on KWG 4,168 N-oxide using female rats, the LD<sub>50</sub> was 707 mg/kg. In a subacute toxicity study, rats were administered KWG 4168 N-oxide at dietary concentrations of 0, 30, 150 and 1,000 ppm. The highest concentration resulted in treatment-related effects. The main targets were the epithelia of the digestive tract and the urinary bladder. A mild liver enzyme induction was observed without any correlating gross- or micropathological findings. In a subchronic study, rats were administered KWG 4168 N-oxide at dietary concentrations of 0, 25, 125 and 625 ppm, and KWG 4168 at 625 ppm. Toxic effects were observed at 625 ppm for both test substances. Similar effects included delayed body weight development, changes in clinical chemistries and micropathological findings of the esophagus and stomach. The effects were less pronounced for KWG 4168 N-oxide when compared to KWG 4168 (parent). Effects noted only in animals treated with KWG 4168 included changes in hematological parameters and micropathological findings of the urinary bladder (females). The mutagenic potential of KWG 4168 N-oxide was studied *in vitro* in bacteria and mammalian cells. It did not cause mutations *in vitro* in the Ames assay, the V-79-HPRT gene mutation assay, or produce clastogenicity in the chromosome aberration assay with or without metabolic activation.

8. Endocrine disruption. The toxicology database for Spiroxamine is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs

following short- or long-term exposure. These studies revealed no primary endocrine effects due to Spi primary endocrine effects due to spiroxamine.

#### C. Aggregate Exposure

1. *Dietary exposure.* An aggregate risk assessment was conducted to assess the potential acute and chronic dietary exposure from applications of spiroxamine on grape, hop, and banana (imported). Novigen Sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM) was used to estimate the chronic and acute dietary exposure.

For the acute dietary analysis, the proposed acute reference dose (aRfD) of 0.1 mg/kg/day was used. This aRfD is based on NOELs of 10 mg/kg from an acute oral toxicity and an acute neurotoxicity screening study and applying a 100-fold uncertainty factor.

For the chronic dietary analysis, the proposed chronic reference dose (cRfD) of 0.02 mg/kg/day was used. This cRfD is based on a parental toxicity NOEL of 2.13 mg/kg/day from the two-generation reproduction study and the application of a 100-fold uncertainty factor.

Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of spiroxamine on grape, hop, and banana.

i. *Food.* An acute dietary (food) risk assessment was conducted using the highest residue values and 100% crop treated. The estimated percent of the aRfD for the overall U.S. population (all seasons) at the 95 percentile are 8.4%. The most highly exposed population subgroup, non-nursing infants, had an exposure equal to 33.3% of the aRfD at the 95 percentile. These exposure estimates are within EPA's criteria of acceptability.

A chronic dietary analysis was conducted using average residue values and 100% crop treated. The estimated percent of the cRfD for the overall U.S. population (all seasons) was 8.8%. For the most highly exposed population subgroup, children (1–6 years), the exposure equaled 30.6% of the cRfD. These exposure estimates are within EPA's criteria of acceptability.

ii. *Drinking water.* No monitoring data are available for residues of spiroxamine in ground water, and EPA has established no health advisory levels or maximum contaminant levels for residues of spiroxamine in drinking water.

Studies show low to no soil mobility for spiroxamine and its primary metabolites. In addition, field studies show that spiroxamine and its

degradates do not leach below the 6–inch depth level, and show very low potential to leach into ground water. Therefore, it can be concluded with reasonable certainty that no harm will result from acute or chronic aggregate exposure to spiroxamine residues in drinking water.

2. *Non-dietary exposure.* Spiroxamine is not registered nor are registrations pending for uses that would result in non-dietary exposure.

#### D. Cumulative Effects

Spiroxamine belongs to a new class of chemistry known as spiroketalamines. Therefore, for this tolerance petition, it is assumed that spiroxamine does not have a common mechanism of toxicity with other substances and only the potential risks of spiroxamine in its aggregate exposure are considered.

#### E. Safety Determination

1. *U.S. population.* Based on the above aggregate food exposure estimates for the overall U.S. population 8.4% of the aRfD and (8.8% of the cRfD), the low potential for spiroxamine and its degradates to leach into ground water, and the completeness of the toxicity data base, there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to spiroxamine.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of spiroxamine, data from developmental toxicity studies in mice, rats, rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Based on the above aggregate food exposure estimates for the most highly exposed population subgroup, non-nursing infants (33.3% of the aRfD), and children 1–6 years (30.6% of the cRfD), the low potential for spiroxamine and its degradates to leach into ground water, and on the completeness of the toxicity data base, there is reasonable certainty that no harm to infants and children will result from aggregate exposure to spiroxamine.

*F. International Tolerances*

There are no established codex, Canadian or Mexican maximum residue levels for spiroxamine.

[FR Doc. 03-5316 Filed 3-6-03; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2003-0025; FRL-7289-8]

**Pyriproxyfen; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP-2003-0025, must be received on or before April 7, 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:** Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**
**I. General Information**
*A. Does this Action Apply to Me?*

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

- Crop producers (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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 in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2003-0025. 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](mailto:opp-docket@epa.gov), Attention: Docket ID number OPP-2003-0025. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number OPP-2003-0025.

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-2003-0025. 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. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## **II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section (408(d)2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### **List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2003.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

### **Summaries of Petitions**

The petitioner summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### **Interregional Research Project Number IR-4**

*2E6416, 2E6425, 2E6428, and 2E6436*

EPA has received pesticide petitions (2E6416, 2E6425, 2E6428, and 2E6436) from the Interregional Research Project Number IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902

proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.510 by establishing tolerances for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine] in or on the following raw agricultural commodities:

1. *PP 2E6416* proposes the establishment of tolerances for atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 parts per million ppm (ppm).

2. *PP 2E6425* proposes the establishment of tolerances for fig at 0.30 ppm, and fig, dried at .1 ppm.

3. *PP 2E6428* proposes the establishment of tolerances for avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla, and star apple at 1.0 ppm.

4. *PP 2E6436* proposes the establishment of a tolerance for okra at 0.02 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Valent USA Corporation.

#### A. Residue Chemistry

1. *Plant metabolism.* The major metabolic pathways in plants is aryl hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by further oxidation and/or conjugation reactions. However, the bulk of the radiochemical residue on raw agricultural commodities samples remained as parent. Comparing metabolites detected and quantified from cotton, apple, tomato, goat, hen, and rat shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. The residue of concern is best defined as the parent, pyriproxyfen.

2. *Analytical method.* The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical methods for analysis of cottonseed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of

food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues.* The magnitude of residues for pyriproxyfen is adequately understood for the proposed commodities.

#### B. Toxicological Profile

1. *Acute toxicity.* An assessment of toxic effects caused by pyriproxyfen is discussed in Unit II.B. of the **Federal Register** dated April 4, 2001 (FRL-6772-4) (66 FR 17883).

2. *Animal metabolism.* The absorption, tissue distribution, metabolism and excretion of <sup>14</sup>C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 milligrams/kilograms body weight (mg/kg/bwt) (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg/bwt, phenoxyphenyl label only, following 14 daily oral doses at 2 mg/kg/bwt of unlabelled material. For all dose groups, most 88–96% of the administered radiolabel was excreted in the urine and feces within 2 days after radiolabeled test material dosing, and 92–98% of the administered dose was excreted within 7 days. Seven days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed <sup>14</sup>C. Radiocarbon concentrations in fat were the higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

3. *Metabolite toxicology.* The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the maximum tolerated dose and consequent chronic exposure to the internally formed metabolites. Seven metabolites of pyriproxyfen, 4'-OH-pyriproxyfen, 5'-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity, via Ames assay, and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micrograms per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertible colonies in any of the test strains. Positive control chemicals showed marked increases in reverting colonies.

The acute toxicity to mice of 4'-OH-pyriproxyfen, 5'-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral lethal dose (LD<sub>50</sub>) values greater than 2,000 mg/kg/bwt. The two pyridines, 2-OH-

pyridine and 2,5-diOH-pyridine, gave acute oral LD<sub>50</sub> values of 124 (male) and 166 (female) mg/kg/bwt, and 1,105 (male) and 1,000 (female) mg/kg/bwt, respectively.

4. *Endocrine disruption.* While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, Valent concludes that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

#### C. Aggregate Exposure

1. *Dietary exposure—i. Food.* An evaluation of chronic dietary exposure including both food and drinking water has been performed for the U.S. population and various sub-populations including infants and children. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore, the Valent Corporation concludes that there is a reasonable certainty of no harm from acute dietary exposure.

Chronic dietary exposure to pyriproxyfen residues was calculated for the U.S. population and 25 population subgroups assuming tolerance level residues, processing factors from residue studies, and 100% of the crop-treated. The analyses included residue data for all existing uses, pending uses, and proposed new uses.

ii. *Drinking water.* Since pyriproxyfen is applied outdoors to growing agricultural crops, the potential exists for pyriproxyfen or its metabolites to reach ground water or surface water that may be used for drinking water. Because of the physical properties of pyriproxyfen, it is unlikely that pyriproxyfen or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for pyriproxyfen were estimated using Generic Expected Environmental Concentration (GENEEC) 1.3.

2. *Non-dietary exposure.* Pyriproxyfen is currently registered for use on residential non-food sites. Pyriproxyfen is the active ingredient in numerous registered products for flea and tick control. Formulations include foggers,

aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars). With the exception of the pet collar uses, consumer use of pyriproxyfen typically results in acute and short-term intermittent exposures.

#### D. Cumulative Effects

There are no other pesticidal compounds that are structurally related to pyriproxyfen and have similar effects on animals. In consideration of potential cumulative effects of pyriproxyfen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by pyriproxyfen would be cumulative with those of other chemical compounds. Thus, only the potential risks of pyriproxyfen have been considered in this assessment of aggregate exposure and effects. Valent will submit information for EPA to consider concerning potential cumulative effects of pyriproxyfen consistent with the schedule established by EPA at (62 FR 42020 August 4, 1997) and other subsequent EPA publications pursuant to the Food Quality Protection Act.

#### E. Safety Determination

1. *U.S. population.* Chronic exposure to the overall U.S. population is estimated to be 0.002984 mg/kg/bwt day, representing 0.9% of the Reference Dose (RfD). The results of the chronic dietary exposure assessment demonstrate that estimates of chronic dietary exposure for all existing, pending and proposed uses of pyriproxyfen are well below the chronic RfD of 0.35 mg/kg/bwt day. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is from 0.002123 to 0.003884 mg/kg/bwt day, 0.607 to 1.100% of the RfD. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the RfD. Valent concludes that there is a reasonable certainty that no harm will result to the overall U.S. population or any non-child/infant subgroups from aggregate, chronic dietary exposure to pyriproxyfen residues.

2. *Infants and children—i.* Safety factor for infants and children. In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to 10-fold, for added protection for infants and children in the case of threshold effects unless EPA determines

that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating prenatal and postnatal toxicity for pyriproxyfen is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed for pyriproxyfen to be further protective of infants and children.

ii. *Chronic dietary exposure and risk infants and children.* For the most highly exposed sub-population, children 1 to 6 years of age, exposure is calculated to be 0.007438 mg/kg/bwt day, or 2.1% of the RfD. Using the conservative exposure assumptions, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of pyriproxyfen ranges from 0.002601 mg/kg/bwt day for nursing infants, up to 0.007438 mg/kg/bwt day for children (1 to 6 years of age), 0.743 to 2.125% of the RfD, respectively. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Valent concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic dietary exposure to pyriproxyfen residues.

iii. *Drinking water.* The average 56-day concentration predicted in the simulated pond water was 0.16 parts per billion (ppb). Using standard assumptions about body weight and water consumption, the chronic exposure to pyriproxyfen from this drinking water would be  $4.57 \times 10^{-6}$  and  $1.6 \times 10^{-5}$  mg/kg/bwt day for adults and children, respectively; 0.0046% of the RfD 0.35 mg/kg/day for children. Based on this worse case analysis, the contribution of water to the dietary risk is negligible.

iv. *Non-dietary exposure.* Chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses. The risk assessment was conducted using the following assumptions: Application rate of 0.58 mg active ingredient day, average body weight for a 1–6 year old child of 10 kg, the active ingredient dissipates uniformly through 365 days the label instruct to change collar (once a year),

1% of the active ingredient is available for dermal and inhalation exposure per day assumption from Draft EPA Standard Operating Procedures (SOPs) for Residential Exposure Assessments (December 18, 1997). The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%. The estimated chronic term margin of exposure (MOE) was 61,000 for children, and 430,000 for adults. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

#### F. International Tolerances

There are no presently existing Codex maximum residue levels for pyriproxyfen.

[FR Doc. 03–5315 Filed 3–6–03; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0011; FRL–7290–1]

### Sulfentrazone; Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2003–0011, must be received on or before April 7, 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:** Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS

32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in insert appropriate cite to either another unit in the preamble or a section in a rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0011. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents

of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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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.

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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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2003-0011.

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-2003-0011. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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#### *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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### **II. What Action is the Agency Taking?**

EPA has received pesticide petitions proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the FFDCA, 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on the petitions.

#### **List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2003.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

#### **Summaries of Petitions**

The petitioner's summaries of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summaries of the petitions was prepared by FMC Corporation and

represents the view of FMC Corporation. The petitions summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

#### **Interregional Research Project Number 4 and FMC Corporation**

*PP (OE6149, 1E6311, 2E6405, 2E6498, 2E6500, 0F6116, and 2F6391*

EPA has received pesticide petitions (OE6149, 1E6311, 2E6405, 2E6498, and 2E6500) from Interregional Research Project Number (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902. EPA has also received pesticide petitions (0F6116 and 2F6391) from FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.498 by establishing tolerances for residues of sulfentrazone (*N*-2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenylmethanesulfonamide) and its metabolites 3-hydroxymethyl-sulfentrazone (*N*-2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenylmethanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) in or on the following raw agricultural commodities:

1. PP OE6149 proposes the establishment of a tolerance for sunflower, seed at 0.2 parts per million (ppm).

2. PP 1E6311 proposes the establishment of tolerances for horseradish, roots at 0.2 ppm, cabbage at 0.2 ppm, peppermint, tops at 0.3 ppm, and spearmint, tops at 0.3 ppm.

3. PP 2E6405 proposes the establishment of a tolerance for potato at 0.1 ppm.

4. PP 2E6498 proposes the establishment of a tolerance for bean, lima, succulent at 0.15 ppm.

5. PP 2E6500 proposes the establishment of a tolerance for asparagus at 0.15 ppm.

6. PP 0F6116 proposes the establishment of tolerances for peanut nutmeat and its processed parts at 0.2 ppm, and sugarcane and its processed parts at 0.1 ppm.

7. PP 2F6391 proposes the establishment of tolerances for corn, field, forage at 0.25 ppm, corn, field,

stover at 0.35 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes summaries of the petitions prepared by FMC Corporation, Philadelphia, PA 19103.

#### A. Residue Chemistry

1. *Plant metabolism.* The metabolism of sulfentrazone in plants is adequately understood for the existing and proposed tolerances.

2. *Analytical method.* The proposed analytical method for determining residues of sulfentrazone is hydrolysis followed by gas chromatographic separation.

3. *Magnitude of residues.* The magnitude of residues is adequately understood for the proposed commodities.

#### B. Toxicological Profile

1. *Acute toxicity.* A battery of acute toxicity studies placed technical sulfentrazone in toxicity categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs. In an acute neurotoxicity study in rats at gavage doses of 0, 750, or 2,000 milligrams/kilogram (mg/kg), the no observable adverse effect level (NOAEL) of 250 mg/kg and the lowest observable adverse effect level (LOAEL) of 750 mg/kg were based upon increased incidences of clinical signs, Functional Observation Battery (FOB) findings, and decreased motor activity which were reversed by day 14 post-dose. There was no evidence of neuropathology.

2. *Genotoxicity.* A reverse gene mutation assay (*salmonella typhimurium*) yielded negative results, both with and without metabolic activation. A mouse lymphoma forward gene mutation assay yielded negative results with equivocal results without activation. A mouse micronucleus assay test was negative following intraperitoneal injection of 340 mg/kg.

3. *Reproductive and developmental toxicity.* In a dermal developmental study in the rat at doses of 0, 5, 25, 50, 100, and 250 mg/kg/day, a maternal (systemic) NOAEL was established at 250 mg/kg/day. Significant treatment-related increases in the fetal and litter incidences of incompletely ossified lumbar vertebral arches, hypoplastic or

wavy ribs, and incompletely ossified or nonossified ischia or pubes occurred at the high-dose (250 mg/kg/day). An additional significant increase in the high-dose fetal incidence of variations in the sternbrae (incompletely ossified or unossified) was not judged to be treatment-related. At 250 mg/kg/day, the mean numbers of thoracic vertebral and rib ossification sites were significantly decreased, a high-dose effect of treatment with sulfentrazone consistent with the significant treatment-related hypoplasia observed in the skeletal evaluation of the ribs. Therefore, the developmental (fetal) LOAEL is 250 mg/kg/day based on decreased fetal body weight; increased incidences of fetal variations: Hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, and incompletely ossified ischia or pubes; and reduced number of thoracic vertebral and rib ossification sites. The developmental (fetal) NOAEL is 100 mg/kg/day.

A developmental toxicity study in rabbits was conducted at gavage dose levels of 0, 100, 250, or 375 mg/kg/day. Treatment-related incidences of decreased feces and hematuria were noted at 250 mg/kg/day or greater. In addition, at the 375 mg/kg/day dose level, 5 rabbits aborted. Significant reductions in mean body weight change were observed for the dosing period (GD 7–19) and for the study duration (GD 0–29, both before and after adjustment for gravid uterine weight) at the 250 and 375 mg/kg/day dose levels. Therefore, the maternal (systemic) LOAEL is 250 mg/kg/day, based upon increased abortions, clinical signs (hematuria and decreased feces), and reduced body weight gain. The maternal (systemic) NOAEL is 100 mg/kg/day. Skeletal evaluation in fetuses revealed dose-related and treatment-related findings at the 375 mg/kg/day dose level. These included significant increases in both the fetal and litter incidences of fused caudal vertebrae (a malformation) and of partially fused nasal bones (a variation). In addition, at 375 mg/kg/day, significant treatment-related reductions in ossification site averages were observed for metacarpals and both forepaw and hindpaw phalanges. Therefore, the developmental (fetal) LOAEL is 250 mg/kg/day, based upon increased resorptions, decreased live fetuses per litter, and decreased fetal weight. The developmental (fetal) NOAEL is 100 mg/kg/day.

A 2-generation reproduction study in the rat at dietary levels of 14, 33, or 46 mg/kg/day in males and 16, 40, or 56 mg/kg/day in females established a NOAEL for systemic and reproductive/developmental parameters of 14 mg/kg/

day for males and 16 mg/kg/day for females. The LOAEL for systemic and reproductive/development parameters was 33 mg/kg/day for males and 40 mg/kg/day for females. Systemic effects were comprised of decreased body weight gains, while reproductive/developmental effect at the LOAEL included degeneration and/or atrophy in the testes, with epididymal sperm deficits, in the second (F1) generation males. Male fertility in the F1 generation was reduced at higher doses; litter size, pup survival, and pup body weight for both generations were also effected at higher doses.

4. *Subchronic toxicity.* A 90-day subchronic toxicity study was conducted in rats, with dietary intake levels of 0, 3.3, 6.7, 19.9, 65.8, 199.3, or 534.9 mg/kg/day for males and 0, 4, 7.7, 23.1, 78.1, 230.5, or 404.3 mg/kg/day for females respectively. NOAELs of 19.9 mg/kg/day in males and 23.1 mg/kg/day in females were based on clinical anemia.

A 90-day subchronic feeding study was conducted in mice by dietary admix at doses of 0, 10.3, 17.8, 60.0, 108.4, or 194.4 mg/kg/day for males and 0, 13.9, 29.0, 79.8, 143.6, or 257.0 mg/kg/day for females, respectively. NOAELs of 60 mg/kg/day (males) and 79.8 mg/kg/day (females) were based on decreases in body weights and/or gains; decreased erythrocytes, hemoglobin (Hgb) and hematocrit (HCT) values; and splenic microscopic pathology.

In a 90-day subchronic feeding study in dogs administered by dietary admix at doses of 0, 10, 28, or 57 mg/kg/day for males and 0, 10, 28, or 73 mg/kg/day for females, a NOAEL of 28 mg/kg/day was determined for both males and females based on decreases in Hgb and HCT, elevated alkaline phosphatase levels, increased liver weights and microscopic liver as well as splenic changes.

A 90-day subchronic neurotoxicity study in the rat was conducted at dietary levels of 30, 150, or 265 mg/kg/day in males, and 37, 180, or 292 mg/kg/day in females, with a NOAEL of 30 mg/kg/day in males and 37 mg/kg/day in females. The LOAEL was 150 mg/kg/day for males and 180 mg/kg/day for females based on increased incidences of clinical signs, decreased body weights, body weight gains, and food consumption in females and increased motor activity in females at week 13. There were no neurohistopathological effects on the peripheral or central nervous system.

5. *Chronic toxicity.* A 12-month feeding study in dogs was dosed at levels of 0.0, 24.9, or 61.2 mg/kg/day for male dogs and 0.0, 10.4, 29.6, or 61.9

mg/kg/day for female dogs in the control through high-dose groups, respectively, with a NOAEL of 24.9 mg/kg/day for males and 29.6 mg/kg/day for females based on hematology effects and microscopic liver changes.

An 18-month feeding/carcinogenicity study in mice was conducted with dietary intake of 0, 46.6, 93.9, 160.5, or 337.6 mg/kg/day for males and 0, 58.0, 116.9, 198.0, or 407.1 mg/kg/day for females. A NOAEL of 93.9 mg/kg/day in males and 116.9 mg/kg/day in females was based on decreases in Hgb and HCT. There were no treatment-related increases in tumors of any kind observed at any dose level.

In a 24-month chronic feeding/carcinogenicity study in rats at dietary doses of 0, 24.3, 40.0, 82.8, or 123.5 mg/kg/day for males and 20.0, 36.4, 67.0, or 124.7 mg/kg/day for females, an overall NOAEL of 40.0 mg/kg/day in males and 36.4 mg/kg/day in females was based on hematology effects and reduced body weights. There was no evidence of a carcinogenic response.

6. *Animal metabolism.* A metabolism study in rats indicated that approximately 84 to 104% of the orally administered dose of sulfentrazone was excreted in the urine, and that the pooled urinary radioactivity consisted almost entirely of 3-hydroxymethyl sulfentrazone. Pooled fecal radioactivity showed that the major metabolite consisted of 3-hydroxymethyl-sulfentrazone (1.26 to 2.55% of the administered dose). The proposed metabolic pathway appeared to be conversion of the parent compound mainly to 3-hydroxymethyl-sulfentrazone (excreted in urine and feces).

7. *Endocrine disruption.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that sulfentrazone causes endocrine effects.

#### C. Aggregate Exposure

1. *Dietary exposure—i. Food.* A Tier 3 short-term exposure analysis has been performed to estimate the exposure for all adults, adult females, and toddlers (3 to 4 years of age) in the U.S. population for these raw commodities and processed commodities. This analysis utilized Novigen's (Novigen Sciences, Inc.) Dietary Exposure Evaluation Model (DEEM) software; field trial data for registered and pending crop uses; percent crop treated information; and

consumption data from the United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals (CSFIs), conducted from 1994–1996.

ii. *Drinking water.* A Tier 1 short-term drinking water exposure assessment was conducted to determine exposure risk of sulfentrazone residues from consumption of water. This analysis was performed utilizing EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure Risk Assessments (DUS EPA, 1997b), the absorbed (systemic) aggregate exposure estimates, and water data from FMC Corporation ground water study conducted in North Carolina.

2. *Non-dietary exposure.* The primary source for human non-dietary exposure to sulfentrazone will be from post-application exposure to treated residential turf grass. The routes of sulfentrazone exposure were dermal post-application exposure for adults and toddlers, and post-application incidental ingestion of sulfentrazone due to the hand-to-mouth behavior of toddlers. A worst case short-term non-dietary exposure analysis was conducted using algorithms and default factors published in EPA's SOPs for Residential Exposure Assessments.

#### D. Cumulative Effects

*Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers "available information" concerning the cumulative effects of a particular pesticide residue and "other substances that have a common mechanism of toxicity."

In the case of sulfentrazone, EPA has determined that it does not have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment. This tolerance determination therefore does not take into account common mechanism issues. The Agency will reexamine the tolerances for sulfentrazone, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

#### E. Safety Determination

1. *U.S. population.* The absorbed (systemic) aggregate exposure estimates for all adults, and adult females were found to be 0.0015 mg/kg/day and 0.0017 mg/kg/day, respectively. The acute dietary (99.9%), non-dietary, and aggregate margin of exposure (MOE) for

all adults were found to be 12,353, 7,571, and 6,726 respectively. The acute dietary (99.9%), non-dietary and aggregate MOE for adult females were 22,857, 6,327, and 5,717 respectively. The MOE from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to the U.S. population from exposure to sulfentrazone.

2. *Infants and children.* The absorbed (systemic) aggregate exposure estimates for toddlers were found to be 0.0054 mg/kg/day. The acute dietary (99.9%), non-dietary, and aggregate MOE for toddlers were found to be 6,721, 2,048, and 1,869 respectively. The MOE from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to infants and children from exposure to sulfentrazone.

The calculated drinking water levels of concern for all adults, and adult females were estimated to be 298 parts per billion (ppb), 250 ppb, respectively. These values exceed the maximum water-monitoring residue of 42 ppb (from the North Carolina study). Therefore, the data indicate a low risk potential due to the aggregate (food, water and residential) exposures to sulfentrazone residues.

#### F. International Tolerances

There are no Codex Alimentarius Commission (Codex) maximum residue levels for sulfentrazone.

[FR Doc. 03-5319 Filed 3-6-03; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0350; FRL-7285-8]

### Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP-2002-0350, must be received on or before April 7, 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:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; e-mail address: [mendelsohn.mike@epa.gov](mailto:mendelsohn.mike@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

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

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

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket (ID) number OPP-2002-0350. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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.

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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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### **II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

#### **List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

#### **Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Mycogen/Dow AgroSciences and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

#### *Mycogen/Dow AgroSciences PP 0G6112*

This notice of filing summarizes information submitted and cited by Mycogen/Dow AgroSciences in support of a request for a temporary exemption from tolerance residues of the plant-incorporated protectant *Bacillus thuringiensis* (*B.t.* Cry34/35Ab1 Insecticidal Crystal Protein (ICP), and the genetic material necessary for its production in corn (formerly known as *Bacillus thuringiensis* (*B.t.*)) 149B1 protein and the genetic material necessary for its production in corn). The Mycogen/Dow AgroSciences and Pioneer Hi-Bred experimental use permits associated with the petition are 68467-EUP-3, 68467-EUP-5, 68467-EUP-T, 68467-EUP-I, 29964-EUP-1, 29964-EUP-3, 29964-EUP-U, and 29964-EUP-L.

#### *A. Petition Summary for B.t. Cry34/35Ab1 ICP Uses*

*B.t.* Cry34/35Ab1 ICP is expressed in corn plants to provide protection from key coleopteran insect pests such as the western corn rootworm. *B.t.* Cry34/35Ab1 transgenic plants are derived from transformation events that contain the insecticidal genes via a plasmid insert. The *B.t.* Cry34/35Ab1 ICP poses no foreseeable risks to non-target organisms including mammals, birds, fish, beneficial insects, and earthworms. *B.t.* Cry34/35Ab1-protected field corn provides growers with a highly efficacious tool for controlling important insect pests in corn in a manner that is fully compatible with integrated pest management practices.

### B. Product Identity and Chemistry

The Cry34Ab1 and Cry35Ab1 genes were isolated from *Bacillus thuringiensis* strain PS149B1 and modified before insertion into corn plants. The Cry34/35Ab1 ICP has been adequately characterized. Several safety studies were conducted using microbially produced test substances that contained 54% of the Cry34Ab1 (14 kDa) protein and 37% of the Cry35Ab1 (44 kDa) protein. Studies conducted to establish the equivalence of the Cry34/35Ab1 ICP obtained from corn or from a microbial source demonstrate that the materials are similar with respect to molecular weight, immunoreactivity, lack of post-translational modification (glycosylation) N-terminal amino acid sequence, and spectrum of bioactivity.

A qualitative analytical method (lateral flow immunoassay) for the detection of the Cry34Ab1 (14 kDa) protein has been submitted (MRID #45383401).

### C. Mammalian Toxicity Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial *Bacillus thuringiensis* formulations for almost 40 years. There are currently 180 registered microbial *Bacillus thuringiensis* products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry34/35Ab1 ICP demonstrated that the proteins have very low toxicity. The acute oral LD<sub>50</sub> of Cry34Ab1 (14 kDa) is greater than 5,000 milligrams/kilogram (mg/kg), and at 54% purity, the acute LD<sub>50</sub> for pure protein is greater than 2,700 mg/kg. The acute oral LD<sub>50</sub> of Cry35Ab1 (44 kDa) is greater than 5,000 mg/kg, and at 37% purity, the acute LD<sub>50</sub> for pure protein is greater than 1,850 mg/kg in male mice when the proteins were tested individually. When tested as a mixture (1:3 molar ratio of Cry34Ab1:Cry35Ab1 proteins), the acute oral LD<sub>50</sub> of PS149B1 Cry34/35Ab1 proteins in male and female mice is greater than 5,000 mg/kg, and greater than 2,000 mg/kg of an equimolar (1:3) mixture of pure proteins.

In *in vitro* studies, Cry34/35Ab1 ICP exhibited a high rate of digestibility under simulated gastric conditions

(referred to as SGF) in the presence of pepsin. The Cry34Ab1 (14 kDa protein) was greater than 90% digested in SGF 6.2 minutes. The Cry35Ab1 (44 kDa protein) was greater than 97% digested in less than 5 minutes. Also, thermolability testing results showed that the ICP was deactivated following exposure to 60 °C, 75 °C, and 90 °C for 30 minutes. A search of relevant data bases indicated that the amino acid sequences of the Cry34/35Ab1 ICP exhibit no significant homology to the sequences of known protein allergens. Thus, Cry34/35Ab1 ICP is highly unlikely to exhibit an allergic response.

The genetic material necessary for the production of the Cry34/35Ab1 ICP is nucleic acid (DNA) which is common to all forms of plant and animal life. There are no known instances where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry34/35Ab1 ICP along with the safe use history of microbial *Bacillus thuringiensis* products establishes the safety of the plant-incorporated protectant *B.t.* Cry34/35Ab1 ICP and the genetic material necessary for its production in all raw agricultural commodities.

### D. Aggregate Exposure

Because *B.t.* Cry34/35Ab1 ICP is expressed in minute quantities and is retained within the plant, there is virtually no potential for dermal or inhalation exposure to the protein. Significant dietary exposure to Cry34/35Ab1 ICP is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although, they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein. In addition, the protein is not likely to be present in drinking water because the protein is deployed in minute quantities within the plant, and studies demonstrate that Cry34/35Ab1 ICP is rapidly degraded in soil. In summary, the potential for significant aggregate exposure to Cry34/35Ab1 is highly unlikely.

### E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *B.t.* Cry34/35Ab1 ICP. The product has demonstrated low toxicity, and these effects do not appear to be cumulative with any other known compounds.

### F. Safety Determination

1. *U.S. population.* The deployment of the product in minute quantities within the plant, the very low toxicity of the

product, the lack of allergenic potential, and the high degree of digestibility of the proteins, are all factors in support of Mycogen/Dow AgroSciences' assertion that no significant risk is posed by exposure of the U.S. population to *B.t.* Cry34/35Ab1 ICP.

2. *Infants and children.* Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the proteins, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

### G. Effects on the Immune and Endocrine System

Given the high degree of digestibility of the Cry34/35Ab1 ICP, no chronic effects are expected. Cry34/35Ab1 ICP, or metabolites of the ICP are not known to, or are expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the Cry34/35Ab1 ICP.

### H. Existing Tolerances or Exemptions from Tolerance

There are no existing tolerances or exemptions from tolerance for *B.t.* Cry34/35Ab1 ICP.

[FR Doc. 03-5620 Filed 3-7-03; 2:17 pm]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2003-0016; FRL-7289-3]

### Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** This notice announces receipt of an application 68467-EUP-4 from Mycogen Seeds/Dow Agrosciences LLC requesting an experimental use permit (EUP) amendment/extension for *Bacillus thuringiensis* moCry1F protein and the genetic material necessary for its production (plasmid insert PHP 12537) in corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

**DATES:** Comments, identified by docket ID number OPP-2003-0016, must be received on or before April 7, 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:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; e-mail address: [mendelsohn.mike@epa.gov](mailto:mendelsohn.mike@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get 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-2003-0016. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public 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.

*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-2003-0016. 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](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-

2003-0016. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2003-0016.

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-2003-0016. 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**

Mycogen Seeds/Dow AgroSciences LLC has applied to amend/extend 68467-EUP-4 for *Bacillus thuringiensis* moCry1F protein and the genetic material necessary for its production (plasmid insert PHP 12537) in corn to allow the planting of 291 acres of field corn to conduct insect resistance management, agronomic observation, breeding and observation nursery, efficacy, maize demonstration, and herbicide tolerance study trials. The Mycogen Seeds' program is authorized in the States of California, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Virginia, and Wisconsin and the Commonwealth of Puerto Rico. The original notice of approval for this EUP published in the **Federal Register** on June 26, 2002 (67 FR 43115) (FRL-7182-2).

#### **III. What Action is the Agency Taking?**

Following the review of the Mycogen Seeds/Dow Agrosciences LLC application and any comments and data received in response to this notice, EPA

will decide whether to issue or deny the EUP request. Any issuance of the EUP will be announced in the **Federal Register**.

#### **IV. What is the Agency's Authority for Taking this Action?**

The specific legal authority for EPA to take this action is under FIFRA section 5.

#### **List of Subjects**

Environmental protection,  
Experimental use permits.

Dated: February 28, 2003.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 03-5619 Filed 3-5-03; 2:17 pm]

**BILLING CODE 6560-50-S**

#### **ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7459-6]

#### **Proposed Administrative Peripheral Party, Inability To Pay, Cash-out Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Regarding the Meadowlands Plating & Finishing Site, East Rutherford, NJ**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative cash-out agreement and opportunity for public comment.

**SUMMARY:** The Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. "9601 *et seq.* In accordance with EPA guidance, notice is hereby given of a proposed administrative settlement pursuant to section 122(h)(1) of CERCLA concerning the Meadowlands Plating & Finishing Site, located in East Rutherford, New Jersey. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve a responsible party's civil liability for response costs incurred by EPA at the Meadowlands Plating & Finishing Site. CERCLA provides EPA the authority to settle certain claims for response costs incurred by the United States with the approval of the Attorney General of the United States.

The proposed settlement provides that John Canavari, will pay \$80,000 over 36 months, in reimbursement of response costs incurred by EPA in remediating the Meadowlands Plating & Finishing site in return for a covenant not sue under section 107 of CERCLA from the United States.

**DATES:** Comments must be provided by April 7, 2003.

**ADDRESSES:** Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007-1866 and should refer to: In the Matter of Meadowlands Plating & Finishing Site, John Canavari, Settling Party, U.S. EPA Region II Docket No. CERCLA-02-2003-2005.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007-1866, Attention: Patricia C. Hick, Esq. (212) 637-3137.

**SUPPLEMENTARY INFORMATION:** A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007-1866.

Dated: January 3, 2003.

**William McCabe,**

*Acting Director, Emergency & Remedial Response Division.*

[FR Doc. 03-5475 Filed 3-6-03; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 27, 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

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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and 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 7, 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, 445 12th Street, SW., DC 20554 or via the Internet to [jboley@fcc.gov](mailto: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](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0240.

*Title:* Equipment Changes.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 36.

*Estimated Time Per Response:* .5-1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 24 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Commission is consolidating three information collections into one comprehensive collection covering equipment changes. All three collections are under different OMB control numbers but the Commission will retain 3060-0240 as the active number and cancel the other two numbers. All three rule sections require that the licensees of various stations notify the Commission in writing of equipment changes. The data is used to maintain complete technical records regarding a licensee's facilities and to assure that the changes made are in compliance with current FCC rules and regulations.

*OMB Control No.:* 3060-XXXX.

*Title:* Potential Reporting Requirements on Local Exchange Carriers (LECs) to Assist Expeditious

Implementation of Wireless E911 Service.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 6 respondents; 24 responses.

*Estimated Time Per Response:* 8 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 192 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Commission plans to seek information from six of the nation's Local Exchange Carriers (LECs) regarding the status of their efforts in connection with wireless E911 deployment. The information will be used by the Commission to determine whether the LECs are meeting their responsibilities with respect to E911. Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-5398 Filed 3-6-03; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 21, 2003.

**SUMMARY:** The Federal Communications Commissions, 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, 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 7, 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 Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0176.

*Title:* Section 73.1510, Experimental Authorizations.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents:* 70.

*Estimated Time per Response:* 2.25 to 5.25 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 323 hours.

*Total Annual Costs:* \$53,375.

*Needs and Uses:* 47 CFR 73.1510 requires a licensee of an AM, FM, and TV broadcast station to file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal transmission, and the proposed hours and duration of the experimentation. FCC staff use these data to maintain complete technical information about a broadcast station and to ensure that such experimentation does not cause interference to other broadcast stations.

*OMB Control Number:* 3060-0398.

*Title:* Equipment Authorization Measurement Standards, Sections 2.948 and 15.117(g)(2).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 320.

*Estimated Time per Response:* 5 to 30 hours.

*Frequency of Response:*

Recordkeeping; on occasion, one-time,

and three year reporting requirements; third party disclosure.

*Total Annual Burden:* 9,100 hours.

*Total Estimated Cost:* None.

*Needs and Uses:* 47 CFR 2.948 and 15.117(g)(2) of FCC rules require that data accompanying all requests for equipment authorization are valid and that proper testing procedures are used. Testing ensures that potential interference to radio communications is controlled, and if necessary, the data may be used for investigating complaints or harmful interference, or for verifying the manufacturer's compliance with FCC rules. Manufacturers were no longer required to file UHF noise figure data documenting the performance of TV receivers tested and marketed in the U.S. following release of the FCC's Report and Order in ET Docket No. 95-144.

*OMB Control Number:* 3060-0564.

*Title:* Section 76.924, Allocation to Service Cost Categories.

*From Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 50.

*Estimated Time per Response:* 40 hours.

*Total Annual Burden:* 2,000 hours.

*Frequency of Response:*

Recordkeeping; third party disclosure.

*Total Annual Costs:* None.

*Needs and Uses:* 47 CFR 76.924 of FCC rules specifies cost accounting and cost allocation requirements for regulated cable operators. Section 76.924 was established as part of the cable rate regulation requirements set forth in the *Cable Television Consumer Protection and Competition Act of 1992* ("1992 Cable Act"), which requires cable operators to rearrange their accounting records to comply with the requirements set forth in section 76.924. Because these requirements became effective July 21, 1993, existing cable operators are assumed to have already rearranged their accounting records and comply with this recordkeeping requirement. Cable operators use the information derived from their accounting records to complete their rate filings, while the local franchising authorities use it to review these rate filings.

*OMB Control Number:* 3060-0703.

*Title:* Determining Costs of Regulated Cable Equipment and Installation, FCC Form 1205.

*Form Number:* FCC 1205.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 2,000.

*Estimated Time per Response:* 4 to 12 hours.

*Frequency of Response:*

Recordkeeping; annual reporting requirements; third party disclosure.

*Total Annual Burden:* 28,000 hours.

*Total Annual Costs:* \$900,000.

*Needs and Uses:* Pursuant to 47 CFR 76.923, cable operators must keep records and file FCC Form 1205 annually with the local franchise authority (LFA) to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the FCC rules. The LFA uses the information derived from FCC Form 1205 filings to review equipment and installation rates.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-5399 Filed 3-6-03; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2596]

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

March 3, 2003.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY-A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International, (202) 863-2893. Oppositions to these petitions must be filed by March 24, 2003. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Revision of the Commission's rules to ensure compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102).

*Number of Petitions Filed:* 3.

*Subject:* Review of the Commission's Broadcast and Cable Equal Employment Opportunity rules and policies (MM Docket No. 98-204).

*Number of Petitions Filed:* 3.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-5397 Filed 3-6-03; 8:45 am]

**BILLING CODE 6712-01-M**

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a non-vessel operating common carrier and ocean freight forwarder—ocean transportation intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

A.C.T. Logistics, Inc., 147–39 175th Street, Rm. #217, Jamaica, NY 11434.  
Officer: Annie Chik, President, (Qualifying Individual).

Concord Express, Inc., 5500 W. Rosecrans Avenue, Hawthorne, CA 90250. Officers: William Wu, Secretary, (Qualifying Individual), Joseph Chang, Chairman.

Kase Logistics, Inc., 6280 Manchester Blvd., Suite #117, Buena Park, CA 90621. Officers: Kun Kai Chang, President, (Qualifying Individual), Louis Suen, Director.

Speedway Freight Services, Inc., 167–43 148th Avenue 2nd Floor, Jamaica, NY 11434. Officer: Woong Chol Kang, President, (Qualifying Individual).

Bestway Logistics Inc., 1611 W. Rosecrans Avenue, Gardena, CA 90249. Officer: Shine Daniel Lee, President, (Qualifying Individual).

J & B Logistics, Inc., 500 Carson Plaza Drive, #109, Carson, CA 90746.  
Officer: OK B. Park, President, (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Alliance Overseas Shipping Inc., 326 Troy Avenue, Brooklyn, NY 11213.  
Officer: James Hubert, President, (Qualifying Individual).

Bahaghari, LLC dba DL Lawin Cargo, dba Bahaghari Express Cargo, 102 Route 66, Suite D, Glendora, CA 91740. Officers: Leandro R. Dinglasan, President, (Qualifying Individual), Elizabeth Z. Dinglasan, Vice President.

Louisiana Forwarder, 2440 Veterans Blvd., Suite K, Kenner, LA 70062.  
Officers: Alba L. Labrano, Partner,

(Qualifying Individual), Carlos H. Sanchez, Partner.  
Hansen Shipping, LLC, 223 Winnona Drive, Decatur, GA 30030. Officers: Peter Aaro-Hansen, President, (Qualifying Individual).

International Freight Logistics LLC, 8820 South Sepulveda Blvd., Suite 221B, Los Angeles, CA 90045.  
Officers: Clemencia T. Hilvano, President, (Qualifying Individual), Alejandro Labendia, Vice President.  
Washington Movers, Inc., 8210 Cinderbed Road, Lorton, VA 22029.  
Officer: Sam R. Ghanem, President, (Qualifying Individual).

Continental Logistic Service Inc., 325 W. 131st Street, Los Angeles, CA 90061. Officer: Cindy H. Shin, President, (Qualifying Individual).

Dated: March 3, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–5345 Filed 3–6–03; 8:45 am]

**BILLING CODE 6730–01–P**

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License Revocations**

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean transportation intermediaries, effective on the corresponding date shown below:

License Number: 15893N.  
Name: Altamar Shipping Services, Inc.  
Address: 1701 N 20th Street, Tampa, FL 33605.

Date Revoked: February 7, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 15696N.  
Name: ENC, Inc.  
Address: 15606 Broadway Center, Gardena, CA 90248.

Date Revoked: February 7, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 14464N.  
Name: Glo Best World Wide Shipping Inc.  
Address: 110–39 Dunkirk Street, Jamaica, NY 11412.

Date Revoked: February 5, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 4637N.  
Name: Lion Cargo Brokers, Inc. dba Polaris Ocean Line.

Address: 8055 NW., 77th Court, Suite 3, Medley, FL 33166.

Date Revoked: February 9, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 15255N.  
Name: Triways Shipping Lines, Inc.  
Address: 11938 South La Cienega Blvd., Hawthorne, CA 90250.

Date Revoked: February 6, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 17909N.  
Name: Willmar International, Inc.  
Address: 975 Navajo Drive, Bluffton, OH 45817.

Date Revoked: February 1, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 2157F.  
Name: FNC International Inc.  
Address: 534 Eccles Avenue, So. San Francisco, CA 94080.

Date Revoked: December 23, 2002.  
Reason: Surrendered license voluntarily.

License Number: 2023F.  
Name: Pike Shipping Co., Inc.  
Address: 2 Canal Street, 22nd Fl., New Orleans, LA 70130.

Date Revoked: January 10, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 725F.  
Name: Fernant Export Shipping Co., Inc.  
Address: 401 Broadway, New York, NY 10013.

Date Revoked: January 31, 2003.  
Reason: Surrendered license voluntarily.

License Number: 2942F.  
Name: Baltimore Shipping Co., Inc.  
Address: 1601 S. Highland Avenue, Baltimore, MD 21224.

Date Revoked: January 23, 2003.  
Reason: Failed to maintain a valid bond.

License Number: 2659F.  
Name: Miriam Martinez.  
Address: P.O. Box 11478, San Juan, PR 00922.

Date Revoked: November 22, 2002.  
Reason: Failed to maintain a valid bond.

License Number: 17276NF.  
Name: Mega-Trans, Inc.  
Address: 1080 Randolph Avenue, Suite #5, Rahway, NJ 07065.

Date Revoked: November 27, 2002, and January 16, 2003.  
Reason: Failed to maintain valid bonds.

License Number: 3813F.  
Name: Page International, Inc.  
Address: 109 Minus Avenue, #C–7, Garden City, GA 31408.

Date Revoked: January 31, 2003.  
Reason: Failed to maintain a valid bond.  
License Number: 995F.  
Name: Marine Agency of Tampa, Inc.  
Address: 2206 Saxon Street, Tampa, FL 33605.  
Date Revoked: January 1, 2003.  
Reason: Failed to maintain a valid bond.  
License Number: 2274N.  
Name: David K. Lindemuth Co., Inc. dba DKL Container Line.  
Address: 154 South Spruce Avenue, So. San Francisco, CA 94080.  
Date Revoked: February 11, 2003.  
Reason: Failed to maintain a valid bond.  
License Number: 279F.  
Name: Charles Happel, Inc.  
Address: 120 Broadway, Suite 3330, New York, NY 10271.

Date Revoked: February 10, 2003.  
Reason: Failed to maintain a valid bond.  
License Number: 338F.  
Name: Fred P. Gaskell Company, Inc.  
Address: P.O. Box 3157, Norfolk, VA 23514.  
Date Revoked: February 5, 2003.  
Reason: Failed to maintain a valid bond.  
License Number: 4642F.  
Name: Varko International, Corp.  
Address: 7700 NW., 73rd Court, Medley, FL 33166.  
Date Revoked: February 7, 2003.  
Reason: Failed to maintain a valid bond.  
**Sandra L. Kusumoto,**  
*Director, Bureau of Consumer Complaints and Licensing.*  
[FR Doc. 03-5347 Filed 3-6-03; 8:45 am]  
**BILLING CODE 6730-01-P**

**FEDERAL MARITIME COMMISSION**

**Ocean Transportation Intermediary License Reissuances**

Notice is hereby given that the following ocean transportation intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean transportation intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
17662N .....	Cargozone Trans Corporation, 19550 Dominguez Hills Drive, Rancho Dominguez, CA 90220 .....	January 11, 2003.
16848N .....	eKka Forwarding Inc., 223 Bergen Turnpike, Bldg. 3, Ridgefield Park, NJ 07660 .....	December 15, 2001.
16996F .....	UC Bridge Inc., 13353 E. Alondra Blvd., #104, Santa Fe Springs, CA 90670 .....	November 24, 2002.
4648N .....	Mega Express, Inc., 6481 Orangethorpe Avenue, #21, Buena Park, CA 90620 .....	November 18, 2002.
16982NF .....	GKN Freight Services, Inc., 209 S. Washington Street, Van Wert, OH 45891 .....	December 27, 2002.
17754N .....	ADCOM Express, Inc. dba ADCOM Worldwide, 7424 W. 28th Street, Edina, MN 55439 .....	December 15, 2002.

**Sandra L. Kusumoto,**  
*Director, Bureau of Consumer Complaints and Licensing.*  
[FR Doc. 03-5346 Filed 3-6-03; 8:45 am]  
**BILLING CODE 6730-01-P**

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

**Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 2003**

**A. Introduction**

The following is the final solicitation for the Fiscal Year (FY) 2003 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that

company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

**B. Program Description**

*Objectives*

The Labor-Management Cooperation Act of 1978 identifies the following

seven general areas for which financial assistance would be appropriate.

- (1) To improve communication between representatives of labor and management;
- (2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;
- (3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;
- (4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry.
- (5) To enhance the involvement of workers in making decisions that affect their working lives;
- (6) To expand and improve working relationships between workers and managers; and
- (7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the fore

mentioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or State government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2003, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.)

#### Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the

problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *what* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific and measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *how* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for existing employees.

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable

for *when* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 2003, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

### Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

- (1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.
- (2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.
- (3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.
- (4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.
- (5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.
- (6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.
- (7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and
- (8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

### C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all

requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Successful grantees *will* be bound by OMB Circular 110 *i.e.*, "contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded*" (emphasis added from competing for such procurements).

Applicants who receive funding under this program in the past for committee operations are not eligible to re-apply. The only exception will be made for grantees that seek funds on behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

### D. Allocations

The FY2003 appropriation for this program anticipated to be \$1,490,250, of which at least \$1,000,000 available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), provided that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed 30 percent of its non-reserved appropriations to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY2003 appropriation to contract for program support purposes (such as evaluation) other than administration.

### E. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within the specified period, these grants may be extended for up to six months. Continuation awards are projected to be made.

The dollar range of awards is as follows:

- Up to \$65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;
- Up to \$125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only*. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit

### F. Cash Match Requirements and Cost Availability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from State or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It is the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee

training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2003 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

#### G. Application Submission and Review Process

The Application for Federal Assistance (SF-424) form must be signed by *both* a labor and management representative. In lieu of signing the SF-424 form representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF-424 form. Applications must be postmarked no later than June 28, 2003. No applications or supplementary materials will be accepted after the deadline. It is the responsibility of the applicant to ensure that the U.S. Postal Service or other carrier correctly postmarks the application. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Programs, will finalize the scoring and selection process. The individual listed as contact person in item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2003.

All FY2003 grant applicants will be notified of results and all grant awards will be made before October 1, 2003. Applications submitted after the June 28 deadline date or fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants Program.

#### H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible

to obtain an application kit. Please consult the FMCS Web site ([www.fmcs.gov](http://www.fmcs.gov)) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427; or by calling 202-606-8181.

**John J. Toner,**

*Chief of Staff, Federal Mediation and Conciliation Service.*

[FR Doc. 03-5442 Filed 3-6-03; 8:45 am]

**BILLING CODE 6732-01-M**

#### FEDERAL RESERVE SYSTEM

##### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 2003.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Robert C. Dunn, Jr.*, Hobbs, New Mexico, as trustee for the Dunn Family Trust, Hobbs, New Mexico; Keith Wayland Pearson, Gainesville, Texas; Samuel S. Spencer Jr., Hobbs, New Mexico, as trustee for the Separate Property Trust, Hobbs, New Mexico; and William Trent Stradley, Seminole, Texas, to acquire voting common stock of Lea County Bancshares, Inc., Hobbs, New Mexico, and indirectly acquire voting common stock of Lea County State Bank, Hobbs, New Mexico.

Board of Governors of the Federal Reserve System, March 3, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-5367 Filed 3-6-03; 8:45 am]

**BILLING CODE 6210-01-S**

#### FEDERAL RESERVE SYSTEM

##### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 2003.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Blanco National Holdings, Inc.*, Blanco, Texas, and Blanco National Holdings of Delaware, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Blanco National Bank, Blanco, Texas.

Board of Governors of the Federal Reserve System, March 3, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03-5366 Filed 3-6-03; 8:45 am]

**BILLING CODE 6210-01-S**

**GOVERNMENT PRINTING OFFICE**

**Depository Library Council to the Public Printer; Meeting**

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 6, 2003, through Wednesday, April 9, 2003, in Reno, Nevada. The sessions will take place from 1 p.m. until 4 p.m. and 7 p.m. to 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 3:30 p.m. on Wednesday. The meeting will be held at the Peppermill Hotel, 2707 South Virginia Street, Reno, Nevada. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of rooms are being held for Council attendees at the rate of \$55 (plus tax). The rate for a Friday and/or Saturday night stay is \$79 (plus tax). Reservations can be made by dialing toll free, 1-800-282-2444 or the hotel directly at (775) 826-2121. The rate is good for the meeting dates as well as the three (3) days prior to the meeting and the three (3) days after the meeting. To receive the Government rate, you must make your reservation no later than March 14, 2003 and mention the U.S. Government Printing Office or the Depository Library Council meeting. After that date, rooms will be subject to availability at the best obtainable rate.

**Bruce R. James,**  
Public Printer.

[FR Doc. 03-5431 Filed 3-6-03; 8:45 am]

**BILLING CODE 1520-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[30DAY-23-03]**

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Evaluating the Impact of Lymphedema and a Lymphedema Management Intervention for Women with Lymphatic Filariasis: Understanding Issues Related to Quality of Life—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Lymphatic filariasis, a mosquito-transmitted parasitic disease affecting over 120 million people, is the second leading cause of permanent disability worldwide. Globally, lymphatic filariasis causes debilitating genital disease in an estimated 25 million men and lymphedema or elephantiasis of the leg in 15 million people, mostly women in poverty stricken countries. The World Health Organization (WHO) recently identified community management of chronic lymphedema as one of the top twenty lymphatic

filariasis research priorities. Recent advances in the management of chronic lymphedema include a prescribed hygiene and wound care intervention. This intervention has shown promising results in preventing bacterial infections thus reducing acute attacks, and anecdotally improving overall quality of life, alleviating pain and preventing further suffering.

This pilot study will provide a micro-level perspective of women's own experiences of living with lymphedema and others responses to it, illuminating the nature of the disease, the vulnerability of those disabled by the disease, and the impact of an intervention to influence the consequences of having the disease. This study will provide a better understanding, through a combination of qualitative and quantitative methods, the influence of lymphedema as well as the efficacy of a lymphedema management intervention in reducing episodes of bacterial infections and improving quality of life in women with lymphedema in two developing countries.

Women will be queried through in-depth interviews, focus groups, and questionnaire surveys as to the influence of lymphedema on their lives. Quality of life domains that will be explored include physical health, psychological health, social relationships, economic productivity, spiritual health, stigma, and environment. Recommendations will be derived from this study for the global community of lymphatic filariasis researchers in developing countries initiating national and local programs for the management of chronic lymphedema. There are no costs to respondents.

Forms	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
In-depth Survey at Sites A and B .....	50	1	60/60
Cross-sectional Survey at Sites A and B .....	200	1	60/60

Dated: February 28, 2003.

**Thomas Bartenfeld,**

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03-5394 Filed 3-6-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[30DAY-30-03]**

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under

review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* An Evaluation of Targeted Health Communication Messages: Folic Acid and Neural Tube Defects (OMB No. 0920-0461)—Revision—The National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

**Background**

The Division of Birth Defects and Developmental Disabilities, within NCBDDD launched a national education campaign in January 1999 to increase women's knowledge about neural tube birth defects (NTDs) and the beneficial role folic acid, a B vitamin, plays in the prevention of NTDs. Studies show that a 50 to 70 percent reduction in the risk of neural tube birth defects is possible if all women capable of becoming pregnant consume 400 micrograms of

folic acid daily both prior to and during early pregnancy. Studies also indicate that Hispanic women have a greater risk for NTD-affected pregnancies than women in the general population. Specific, culturally sensitive, targeted media messages need to be directed at this population.

CDC and the March of Dimes Birth Defects Foundation developed health communication media messages and educational materials targeted to health care providers and English- and Spanish-speaking women. These media messages and educational materials consist of television and radio public service announcements (PSA), brochures and resource manuals. The Spanish-language folic acid communication evaluation survey examines the impact of Spanish-

language media messages on the levels of awareness, knowledge, and vitamin use among Hispanic women of childbearing age.

Hispanic women's exposure to Spanish-language media messages and educational materials on folic acid information will be collected and measured to determine whether these exposures influenced the women's knowledge and usage of folic acid. The number and frequency of women's exposures to the media messages such as television and radio PSAs will be collected from media channels and compared to information collected from survey data, National Council on Folic Acid organizations and the National Clearinghouse on Folic Acid activities. The estimated annualized burden is 250 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)
Telephone Interview .....	1,000	1	15/60

Dated: February 28, 2003.

**Thomas Bartenfeld,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03-5395 Filed 3-6-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[30DAY-32-03]**

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Outcome Follow-up Survey for CDC's Youth Media Campaign—New—National Center for Chronic Disease Prevention and Health

Promotion (NCCDPPH), Centers for Disease Control and Prevention (CDC).

**Background**

In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages. CDC, working in collaboration with federal partners, is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help youth develop habits that foster good health over a lifetime. The Campaign is based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; refining the messages based on research; and measuring the effect of the campaign on the target audiences.

To measure the effect of the campaign on the target audiences, CDC designed a baseline survey for tween and parent dyads (Children's Youth Media Survey

and Parents' Youth Media Survey) that assessed aspects of the knowledge, attitudes, beliefs, and levels of involvement in positive activities of tweens and a parent or guardian. The baseline survey was conducted prior to the launch of the campaign from April 8, 2002 through June 21, 2002. The methodology was to use a panel design and to survey 3000 dyads (3000 parents and 3000 tweens) from a nationally representative sample and to survey 3000 dyads (again 3000 parents and 3000 tweens) from the six "high dose" communities for a total of 6000 dyads or 12,000 respondents. The survey was conducted using random digit dial.

The next steps in the measurement of effects of the campaign is to collect follow-up data one year post baseline survey and two years post baseline survey. The same panel members (minus attrition) of 6000 tween/parent dyads used in the baseline survey—nationally and in the six selected metropolitan areas—would be re-contacted to complete a survey that would be similar to that used at baseline. Items on campaign awareness would be added to the survey to enable segmentation of the respondents by awareness of the campaign. Thus, the data collection would be with approximately 4,200 tween/parent dyads in spring 2003 and 3,350 tween/parent dyads in 2004. The average annualized burden is 2,571 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
2003:			
Screener .....	7,502	1	1/60
Child .....	4,242	1	20/60
Parent .....	4,009	1	20/60
2004:			
Screener .....	4,009	1	1/60
Child .....	3,353	1	20/60
Parent .....	3,247	1	20/60

Dated: February 28, 2003.

**Thomas Bartenfeld,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03-5396 Filed 3-6-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[Program Announcement 03052]

**Building Capacity To Address Emerging Infectious Diseases in the Americas; Notice of Intent To Fund Single Eligibility Award**

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for Building Capacity to Address Emerging Infectious Diseases in the Americas. The purpose of the program is to implement a coordinated plan to assist national governments and regional authorities in the Americas to better address infectious diseases. Specific activities will focus on improving surveillance and response, building public health infrastructure, promoting applied research activities, and developing improved infectious disease prevention and control strategies. The Catalog of Federal Domestic Assistance number for this program is 93.283.

**B. Eligible Applicant**

Assistance will be provided only to the Pan American Health Organization (PAHO).

PAHO is the only international/intergovernmental agency qualified to conduct the activities (improve infectious disease surveillance and response, develop infectious disease prevention and control strategies, build public health infrastructure and promote applied research activities in

the Americas) under this cooperative agreement for the following reasons:

1. PAHO is the one single health organization that represents all countries in the Americas Region. It began as the International Sanitary Bureau, established in 1902 by the International Conference of American States to serve as "a general convention of representatives of the health organizations of the different American republics." In 1924, the 21 American republics assigned broader functions and responsibilities to the International Sanitary Bureau as the central coordinating agency for international health activities in the Americas. PAHO continues in this role for countries in North, Central, and South America, including the Caribbean nations.

2. PAHO has access to national health promotion and disease prevention programs and potential research sites in the Americas through their 35 member governments, scientific and technical expert employees, 28 country offices, and 10 scientific centers. PAHO member countries are: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela. PAHO maintains country offices in 28 of the above member states and is headquartered in Washington, DC.

3. Because of its unique status representing and uniting all member country health agencies, PAHO is the only appropriate "pinnacle" organization to conduct the activities under this cooperative agreement.

4. In its role as the central coordinating agency for health in the Americas, PAHO collaborates with Ministries of Health, social security agencies, other government institutions, non-governmental organizations,

universities, community groups, and others in all member countries.

5. PAHO has nearly 100 years of experience working to improve health and living standards of countries of the Americas.

6. PAHO serves as the regional office for the Americas for the World Health Organization and is a component of the United Nations.

**C. Funding**

Approximately \$500,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before May 16, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

**D. Where To Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, *Telephone:* (770) 488-2700.

For technical questions about this program, contact: Greg Jones, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, *Telephone:* (404) 639-4180, E-mail address: *gjj1@cdc.gov*.

Dated: February 28, 2003.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03-5389 Filed 3-6-03; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention**

[Program Announcement 03005]

**Cooperative Agreement With the United Nations Children's Fund; Notice of Intent To Fund Single Eligibility Award****A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for polio eradication, measles mortality reduction and control, and reduction and control of other vaccine preventable diseases.

**B. Eligible Applicant**

Assistance will be provided only to the United Nations Children's Fund (UNICEF). UNICEF is the only organization with a worldwide vaccine procurement and distribution network. UNICEF has established relationships with member governments and their immunization programs.

**C. Funding**

Approximately \$60,000,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before April 1, 2003, and will be made for a 9-month budget period in year one, and 12-month budget periods for years two through five. The project period will be up to five years. Funding estimates may change.

**D. Where To Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: (770) 488-2700.

For technical questions about this program, contact: Denise Johnson, 1600 Clifton Road NE., Mailstop E-05, Atlanta, GA 30333, Telephone: (404) 639-8252, E-mail: [Djohnson@cdc.gov](mailto:Djohnson@cdc.gov).

Dated: February 26, 2003.

**Sandra R. Manning,**

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03-5388 Filed 3-6-03; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare and Medicaid Services**

[Document Identifiers: CMS-R-38]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Coverage for Rural Health Clinics—42 CFR 491.9 Subpart A; *Form No.:* CMS-R-38 (OMB #0938-0334); *Use:* This information is needed to determine if rural health clinics meet the requirements for approval for Medicare Participation.; *Frequency:* Initial Application for Medicare approval; *Affected Public:* Business or other for-profit, State, Local, or Tribal Gov't., and not-for-profit institutions, Individuals or households, Farms, and Federal Government; *Number of Respondents:* 3,305; *Total Annual Responses:* 3,305; *Total Annual Hours:* 8,580.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at <http://cms.hhs.gov/regulations/pr/default.asp>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willingham, Room: C5-14-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: February 26, 2003.

**John P. Burke III,**

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03-5437 Filed 3-6-03; 8:45 am]

BILLING CODE 4120-03-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare and Medicaid Services**

[Document Identifier: CMS-10068]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection; *Title of Information Collection:* Assessing the Division of Beneficiary Inquiry Customer Service's Performance for Written Responses; *Form No.:* CMS-10068 (OMB# 0938-NEW); *Use:* DBICS

will collect information several times during FY 2003 to assess the customer service provided via written responses. DBICS will conduct the written survey through mailings that will accompany actual responses. The envelopes will be sent by Release Clerks so that the actual writer has no knowledge that a particular response is being rated.; *Frequency*: Quarterly; *Affected Public*: Individuals or Households; *Number of Respondents*: 2,872; *Total Annual Responses*: 2,872; *Total Annual Hours*: 287.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at <http://cms.hhs.gov/regulations/prd/default.asp>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, *Attention*: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 26, 2003.

**John P. Burke III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.*

[FR Doc. 03-5438 Filed 3-6-03; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 02N-0063]

#### Agency Information Collection Activities; Announcement of OMB Approval; Consumer Surveys on Food and Dietary Supplement Labeling Issues

**AGENCY**: Food and Drug Administration, HHS.

**ACTION**: Notice.

**SUMMARY**: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Consumer Surveys on Food and Dietary Supplement Labeling Issues" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT**: Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION**: In the **Federal Register** of December 23, 2002 (67 FR 78234), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0492. The approval expires on January 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: February 19, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-5354 Filed 3-6-03; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 02N-0383]

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

**AGENCY**: Food and Drug Administration, HHS.

**ACTION**: Notice.

**SUMMARY**: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES**: Submit written comments on the collection of information by April 7, 2003.

**ADDRESSES**: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC, 20503, *Attention*: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT**: Denver Presley, Office of Information

Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-26, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION**: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

#### Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report—21 CFR Part 510 (OMB Control Number 0910-0012)—Extension

In response to a 60-day notice that published in the **Federal Register** of September 5, 2002 (67 FR 56846), the agency received four sets of comments. Two sets of comments were from a pharmaceutical company and two were from individuals. A discussion of the comments with the Center for Veterinary Medicine's response follows:

The two individual comments pertained to a complaint concerning a veterinary product and the elimination of antibacterial soaps. These comments are not germane to this collection of information.

Four comments pertained to the interim final rule for records and reports (21 CFR 514.80) that published February 4, 2002 (67 FR 5046), which is not the subject of this **Federal Register** notice. The closing date for receiving comments on the interim final rule was April 5, 2002. These comments were submitted on November 4, 2002 and thus, FDA will not respond. Further, the substance of these comments were submitted in response to the Interim Final Rule and will be addressed in the Final Rule for Records and Reports.

Three comments asked FDA to increase the amount of time for investigating, gathering, and processing information and data for Form FDA 1932. One comment estimated that the burden estimate should be increased by as much as 1 to 1.75 hours for product defects. Another comment estimated that the burden estimate should be increased from 0.25 to 1 hours. The third comment stated that it would take close to 2 hours to investigate, collect, conduct quality control, and record the information.

FDA will increase the burden for the Form FDA 1932 from 1 hour to 2 hours. This will increase the total burden hours for the Form FDA 1932 from 18,385 hours to 36,770 hours.

Section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(i)), 21 CFR 510.300, 510.301, and 510.302 require that applicants of approved NADA's submit within 15-working days of receipt, complete records of reports of certain

adverse drug reactions and unusual failure of new animal drugs. Other reporting requirements of adverse reactions to these drugs must be reported annually or semi-annually in a specific format. This continuous monitoring of approved new animal drugs, affords the primary means by which FDA obtains information regarding potential problems in safety and effectiveness of marketed animal drugs and potential manufacturing problems. Data already on file with FDA is not adequate because animal drug

effects can change over time and less apparent effects may take years to manifest themselves. Reports are reviewed along with those previously submitted for a particular drug to determine if any change is needed in the product or labeling, such as package insert changes, dosage changes, additional warnings or contraindications, or product reformulation.

Adverse reaction reports are required to be submitted by the drug manufacturer on FDA Forms 1932 or 1932a (voluntary reporting form),

following complaints from animal owners or veterinarians. Likewise, product defects and lack of effectiveness complaints are submitted to FDA by the drug manufacturer following their own detection of a problem or complaints from product users or their veterinarians using forms FDA Forms 1932 and 1932a. Form FDA-2301 is available for the required transmittal of periodic reports and promotional material for new animal drug applications.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total hours
Form FDA 2301	510.302(a)	190	10.94	2,079	0.5	1,040
Form FDA 1932	510.302(b)	190	96.76	18,385	2.0	36,770
Form FDA 1932a (voluntary)	510.302(b)	100	1.0	100	1.0	100
Total Burden Hours						37,910

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total annual response	Hours per Recordkeeper	Total hours
510.300(a) and 510.301(a)	190	13.16	2,079	10.35	21,518
510.300(b) and 510.301(b)	190	94.74	18,385	0.50	9,193
Total Burden Hours					30,711

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communication with industry. Other information needed to calculate the total burden hours (i.e., adverse drug reaction, lack of effectiveness, and product defect reports) are derived from agency records and experience.

Dated: February 21, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-5355 Filed 3-6-03; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 02N-0302]

**Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescriptions Drug User Fee Act Products**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Formal Meetings with Sponsors and Applicants for Prescription Drug User Fee Act (PDUFA) Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of Friday, October 18, 2002 (67 FR 64390), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0429. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: February 28, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-5356 Filed 3-6-03; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 02N-0452]

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by April 7, 2003.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW. rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

FDA has amended its new drug and biological product regulations to allow appropriate studies in animals in certain cases to provide substantial evidence of effectiveness of new drug and biological products used to reduce or prevent the toxicity of chemical, biological,

radiological, or nuclear substances when adequate and well-controlled efficacy studies in humans cannot be ethically conducted because the studies would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers and field trials are not feasible prior to approval. In these circumstances, when it may be impossible to demonstrate effectiveness through adequate and well-controlled studies in humans, FDA is providing that certain new drug and biological products intended to treat or prevent serious or life-threatening conditions could be approved for marketing based on studies in animals, without the traditional efficacy studies in humans. FDA is taking this action because it recognizes the importance of improving medical responses capabilities to the use of lethal or permanently disabling chemical, biological, radiological, and nuclear substances in order to protect individuals exposed to these substances.

Respondents to this information collection are business and other for-profit organizations, and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.610(b)(2), 314.630, 601.91(b)(2), and 601.93	1	1	1	5	5
314.610(b), 314.640, 601.91(b), and 601.94	1	1	1	240	240
Total					245

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
314.610(b)(2), 314.630, 601.91(b)(2), and 601.93	1	1	1	1	1
314.610(b), and 601.91(b)	1	1	1	1	1
Total					2

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that only one application of this nature may be submitted every 3 years, however, for calculation purposes. FDA is estimating the submission of one application annually. FDA estimates 240 hours for a manufacturer of a new drugs or

biological product to develop patient labeling and to submit the appropriate information and promotional labeling to FDA. At this time, FDA cannot estimate the number of postmarketing reports for information collection. These reports are required under 21 CFR parts 310,

314, and 600. Any requirements will be reported under the adverse experience reporting (AER) information collection requirements. The estimated hours for postmarketing reports range from 1 to 5 hours based on previous estimates for AER; however, FDA is estimating 5

hours for the purpose of this information collection.

The majority of the burden for developing the patient labeling is included under the reporting requirements; therefore, minimal burden is calculated for providing the guide to patients. As discussed previously, no burden can be calculated at this time for the number of AER reports that may be submitted after approval of a new drug or biologic. Therefore, the number of records that may be maintained also cannot be determined. Any burdens associated with these requirements will be reported under the AER information collection requirements. The estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

FDA, in the **Federal Register** of November 13, 2002 (67 FR 68874), the agency requested comments on the proposed collection of information. No comments were received.

Dated: February 28, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-5357 Filed 3-6-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 02N-0528]

#### Risk Management; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop, request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public workshop to discuss risk management activities for drug and biological products (excluding blood products other than plasma derivatives). The purpose of the workshop is to present FDA's current thoughts on risk management activities and to solicit views from the public. To facilitate public input and discussion, FDA is issuing for review and comment three concept papers that focus on risk assessment, risk management, and pharmacovigilance. The input received at the workshop and from comments on the concept papers will be considered in drafting guidance for industry.

**DATES:** The public workshop will be held on April 9, 10, and 11, 2003, from

8 a.m. to 4:30 p.m. Submit written or electronic requests to preregister to speak by March 21, 2003. Written or electronic comments on the concept papers will be accepted until April 30, 2003. However, to have your comments considered at the workshop, submit them by March 21, 2003.

**ADDRESSES:** The public workshop will be held at the National Transportation Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594; 202-314-6421. The center may be reached by Metro, using the L'Enfant Plaza Station on the green, yellow, blue, and orange lines) <http://www.nts.gov/events/newlocation.htm>. Seating is limited and will be available on a first-come first-served basis each day of the workshop.

Submit written or electronic requests to speak and comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; e-mail [FDADockets@oc.fda.gov](mailto:FDADockets@oc.fda.gov); or on the Internet at <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Transcripts of the workshop will be available for review at the Dockets Management Branch (see address above) and on the Internet at <http://www.fda.gov/ohrms/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

*For media and press inquiries:* Jason Brodsky, Office of Public Affairs (HFI-020), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-827-6242, [jbrodsky@oc.fda.gov](mailto:jbrodsky@oc.fda.gov).

*For all other inquiries:* Lee Lemley, Center for Drug Evaluation and Research (HFD-006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6218, [lemley@cder.fda.gov](mailto:lemley@cder.fda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 12, 2002, the President signed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188), which includes the Prescription Drug User Fee Amendments of 2002 (Public Law 102-571) (PDUFA 3). In exchange for receiving user fees under PDUFA 3, FDA agreed to certain performance goals. As one of its PDUFA 3 goals, FDA agreed to produce guidance for industry on risk management activities. Specifically, FDA intends to produce three guidance documents by September 30, 2004, addressing: Good risk assessment, risk management, and pharmacovigilance practices for drug and biological

products (excluding blood products other than plasma derivatives). As an initial step, three joint Center for Drug Evaluation and Research (CDER)/Center for Biologics Evaluation and Research (CBER) working groups have developed concept papers outlining FDA's preliminary thoughts for providing guidance for industry. The concept papers are available at FDA's Dockets Management Branch and on the Internet (<http://www.fda.gov/cder/meeting/riskmanagement.htm>). FDA welcomes written and electronic comments on the concept papers (see section IV of this document).

##### II. Scope of Workshop and Concept Papers

At this public workshop, FDA is interested in receiving comments from stakeholder groups likely to be affected by its risk management activities. Stakeholder groups of interest include, but are not limited to: Consumer groups, physicians, nurses, pharmacists, drug and biological product manufacturers, and third party payers for health care services and medical products.

Each day of the 3-day workshop will focus on one aspect of risk management activities, including: (1) Premarketing risk assessment on April 9, 2003, (2) risk management programs and planning on April 10, 2003, and (3) pharmacovigilance and pharmacoepidemiologic assessment on April 11, 2003.

##### A. Premarketing Risk Assessment (April 9, 2003)

Risk assessment is the process of identifying, estimating, and evaluating the nature and severity of risks associated with a product throughout its lifecycle. On April 9, 2003, the public workshop discussion will focus on good risk assessment practices during product development. Specifically, the discussion will focus on issues raised by the concept paper "Premarketing Risk Assessment" (<http://www.fda.gov/cder/meeting/riskmanagement.htm>). This concept paper presents FDA's preliminary thoughts on:

1. Important risk assessment concepts,
2. Generation and acquisition of safety data during clinical trials, and
3. Analysis and presentation of safety data in an application for approval

##### B. Risk Management Programs and Planning (April 10, 2003)

Risk management is the overall and continuing process of minimizing risks throughout a product's lifecycle to optimize its benefit/risk balance. On April 10, 2003, the public workshop discussion will focus on the

development, implementation, and evaluation of strategic safety programs designed to decrease a product's risks. Specifically, the discussion will focus on issues raised by the concept paper "Risk Management Programs" (<http://www.fda.gov/cder/meeting/riskmanagement.htm>). This concept paper presents FDA's preliminary thoughts on:

1. Considerations on what comprises and prompts a risk management program,
2. The selection and development of risk management tools,
3. The evaluation of risk management programs, and
4. The recommended elements of a risk management program submission to FDA.

Comments on evaluation methods and overall concepts are requested, in particular, from academicians and others with experience in outcomes research in health care quality or pharmacoepidemiology.

*C. Risk Assessment of Observational Data: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment (April 11, 2003)*

Pharmacovigilance is generally regarded as all postapproval scientific and data gathering activities relating to the detection, assessment, understanding, and prevention of adverse events or any other product-related problems. On April 11, 2003, the public workshop discussion will focus on the assessment of a product's risk profile as identified from observational data sources (including case reports, case series, and pharmacoepidemiologic studies). Specifically, the discussion will focus on issues raised by the concept paper "Risk Assessment of Observational Data: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment" (<http://www.fda.gov/cder/meeting/riskmanagement.htm>). This concept paper presents FDA's preliminary thoughts on:

1. Important pharmacovigilance concepts,
2. Safety signal identification,
3. Pharmacoepidemiologic assessment and interpretation of safety signals, and
4. The development of pharmacovigilance plans.

In particular, in this segment of the public workshop, FDA is interested in receiving public input on the following questions:

1. How can the quality of spontaneously reported case reports be improved?
2. What are possible advantages or disadvantages of applying datamining

techniques (e.g., empirical Bayesian techniques, proportional reporting ratios) to spontaneous reports databases for the purpose of identifying safety signals?

3. What are possible advantages or disadvantages of performing causality assessments at the individual case level?

4. Under what circumstances would a registry be useful as a surveillance tool and when would it cease to be useful?

5. Under what circumstances would active surveillance strategies prove useful to identify as yet unreported adverse events?

6. Under what circumstances would additional pharmacoepidemiologic studies be useful?

### III. Registration and Requests for Oral Presentations

To speak at the workshop you must preregister by March 21, 2003. Requests must be submitted electronically or in writing. In your request to speak, you should state the: (1) Day of the workshop when you would like to speak; (2) specific issue related to that day's topic that you intend to address; (3) names and addresses of all individuals that plan to participate; and (4) approximate time requested to make your presentation. Electronic requests to speak at the workshop may be submitted at <http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm>. Requests to speak will be accepted on a first-come, first-served basis.

Individuals who register to speak will be notified of the scheduled time for their presentation before the workshop and will have reserved seating. Depending on the number of speakers, FDA may need to limit the time allotted for each presentation. Speakers must submit two copies of each presentation by the date they have registered to speak. If you need special accommodations due to a disability, please inform the registration contact person when you register. Presentations should be limited to the topics addressed in the concept papers. Preregistration is not necessary if you are not speaking and plan to come only as an attendee to the workshop. However, seating is limited and will be available on each of the workshop days on a first-come first-served basis.

### IV. Request for Comments

Regardless of attendance at the workshop, interested persons may submit written or electronic comments on the concept papers to the Dockets Management Branch (see **ADDRESSES**). You should annotate and organize your comments to identify the specific

concept paper and issue to which they refer. Where possible, comments should reference line numbers in the concept papers. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The concept papers and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the hearing also will be available for review at the Dockets Management Branch.

### V. Electronic Access

Electronic versions of the concept papers are available via Internet using the World Wide Web at <http://www.fda.gov/cder/meeting/riskmanagement.htm>.

Dated: March 3, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03-5353 Filed 3-6-03; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that the 36th meeting of the Substance Abuse and Mental Health Service Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will be held in March 2003.

A portion of the meeting is open and includes discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council's meeting will include reports on SAMHSA's Faith-Based and Community Initiative; Pregnant and Postpartum Women (PPW) & Residential Women and Children (RWC) Cross Site Evaluations; Oral Fluid Testing; Science to Services; Methadone Deaths; and SAMHSA's Co-Occurring Report to Congress. In addition, the CSAT Director will provide an update on CSAT's program and activities.

The meeting will also include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance

with title 5 U.S.C. 552b(c) and (6) and 5 U.S.C. App. 2, § 10(d).

SAMHSA/CSAT welcomes the attendance of the public at its advisory committee, and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please inform the contact person at least 7 days in advance of the meeting. Substantive program information, a summary of the meeting and a roster of Council members may also be obtained from the contact person.

*Committee Name:* Center for Substance Abuse Treatment, National Advisory Council.

*Meeting Dates:* March 12—8:30 a.m.—5:30 p.m., March 13—9:30 a.m.—1 p.m.

*Place:* Embassy Suites Hotel, Chevy Chase Ballroom, 4300 Military Road, Washington, DC 20015.

*Type:*

Closed: March 12, 2003—8:30 a.m.—10 a.m., Open: March 12, 2003—10 a.m.—5:30 p.m., Open: March 13, 2003—9:30 a.m.—1 p.m.

*Contact:* Cynthia Graham, Public Health Analyst, SAMHSA/CSAT NAC, 5600 Fishers Lane, RW II, Ste 618, Rockville, MD 20857. (301) 443-8923. FAX: (301) 480-6077.

Dated: February 28, 2003.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 03-5349 Filed 3-6-03; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4809-N-10]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** March 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnson, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 27, 2003.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 03-5005 Filed 3-6-03; 8:45 am]

**BILLING CODE 4210-29-M**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

#### Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications for Funding Assistance Under the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program (CAP) for Fiscal Year (FY) 2003

**AGENCY:** Geological Survey, Department of the Interior.

**ACTION:** Notice inviting applications for the NSDI Cooperative Agreements Program Awards for FY 2003, with performance to begin in August 2003 through September 2004.

**SUMMARY:** The purpose of the NSDI Cooperative Agreements Program is to facilitate and foster partnerships, alliances, and technology within the among various public and private entities to assist in building the NSDI. The NSDI consists of technologies, policies, organizations and people necessary to promote cost-effective production, ready availability, and greater utilization of high quality geospatial data among a variety of sectors, disciplines and communities.

The FY 2003 NSDI Cooperative Agreements Program will fund projects in five categories of activities: (1) Metadata implementation assistance, (2) metadata trainer assistance, (3) metadata outreach, (4) clearinghouse integration with OpenGIS services, and (5) U.S. and Canadian Spatial Data Infrastructure development. Applications may be submitted by Federal agencies, State and local government agencies,

educational institutions, private firms, non-profit foundations, and Federally acknowledge or state-recognized Native American tribes or groups. Applications from Federal agencies will not be competed against applications from other sources. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

**DATES:** The program announcements and application forms for the FY 2003 NSDI Cooperative Agreements Program are expected to be available on or about March 3, 2003. Applications must be received on or before May 2, 2003.

**ADDRESSES:** Copies of each Program Announcement #03HQPA0006 for the NSDI Cooperative Agreements Program will be available through the Internet at <http://www.usgs.gov/contracts/index.html> and <http://www.fgdc.gov>. Copies of Program Announcement #03HQPA0006 may also be obtained by writing to Karen Staubs, U.S. Geological Survey, Office of Acquisition and Grants, National Assistance Programs Branch, MS 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or emailing [kstaubs@usgs.gov](mailto:kstaubs@usgs.gov). Requests must be in writing; verbal requests will not be honored.

#### FOR FURTHER INFORMATION CONTACT:

For NSDI technical information contact: David Painter, U.S. Geological Survey, Federal Geographic Data Committee, MS 590, 12201 Sunrise Valley Drive, Reston, Virginia 20192; 703-648-5513, fax 703-648-5755, e-mail [dpainter@fgdc.gov](mailto:dpainter@fgdc.gov).

For the NSDI Cooperative Agreements Program contact: Ms. Karen Staubs, U.S. Geological Survey, Office of Acquisition and Grants, National Assistance Programs Branch, MS 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192; 703-648-7393, fax 703-648-7901, e-mail [kstaubs@usgs.gov](mailto:kstaubs@usgs.gov).

**SUPPLEMENTARY INFORMATION:** Under the NSDI Cooperative Agreements Program a total of \$1,000,000 is available for award.

2003 NSDI Cooperative Agreement Program Categories:

*Category 1: "Don't Duck Metadata:"* Metadata Implementation and Creation Assistance. The objectives for this category are the documentation of geospatial data through metadata creation and serving that documentation on the Internet through a NSDI clearinghouse. Under this category funds are provided for organizations needing assistance in receiving metadata training and in metadata creation.

*Category 2: "Don't Duck Metadata:"* Metadata Trainer Assistance. Funding

in this category is for those organizations and individual that can provide training assistance to other organizations in becoming skilled and knowledgeable in metadata creation.

**Category 3:** "Don't Duck Metadata:" Metadata Outreach Assistance. Funding in this category is for organizations with robust metadata programs to extend their programs and assist other organizations with resources and staff in innovative approaches to the implementation and service of metadata.

**Category 4:** Clearinghouse Integration with OpenGIS services will provide funding to extend existing Clearinghouse Nodes with OpenGIS Consortium (OGC) complaint web mapping service capabilities and related standards-based services in a consistent way.

**Category 5:** Canadian/U.S. Spatial Data Infrastructure Project will provide funding assistance to support a collaborative project between organizations in the U.S. and Canada to coordinate, create, maintain and share geospatial data to support decision-making over a common geography. The FGDC in partnership with the GeoConnections of Natural Resources Canada will fund lead organizations in their respective countries in a collaborative cross-border project.

Dated: January 15, 2003.

**Patricia P. Dunham,**

*Deputy Chief, Office of Administrative Policy and Services.*

[FR Doc. 03-5446 Filed 3-6-03; 8:45 am]

**BILLING CODE 4410-Y7-M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Class III gaming compact between the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the State of Oregon.

**EFFECTIVE DATE:** March 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-4066.

Dated: February 25, 2003.

**Aurene M. Martin,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03-5342 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-4N-M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM091-9941-EK-HE931]**

#### Extension of Approved Information Collection, OMB Control Number 1004-0180

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from private parties who enter into agreements to recover and dispose of helium on Federal lands. BLM uses Form 3100-12, Gas Well Data Survey of Helium-Bearing Natural Gas, to collect this information. This information allows BLM to determine and evaluate the extent of any helium resources that may exist in natural gas.

**DATES:** You must submit your comments to BLM at the address below on or before May 6, 2003. BLM will not necessarily consider any comments received after the above date.

**ADDRESSES:** You may mail comments to: Bureau of Land Management, (WO-630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: [WOCComment@blm.gov](mailto:WOCComment@blm.gov). Please include "ATTN: 1004-0180" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** You may contact Brent Gage on (806) 324-2659 (Commercial or FTS). Persons who use a telecommunications device for the

deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8330, 24 hours a day, seven days a week, to contact Mr. Gage.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1320.12(a) requires BLM to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Owners and operators of helium-bearing natural gas wells and transmission lines must submit Form 3100-12, Gas Well Data Survey of Helium-Bearing Natural Gas, to provide for gas sampling and analysis we use to locate helium occurrences in natural gases. BLM carries out this program under 74 Stat. 920, Public Law 104-273, Helium Privatization Act of 1996. The knowledge of helium occurrences is part of the Government's conservation program.

We request the following information on Form 3100-12:

(A) BLM needs the survey information to locate natural gas wells and evaluate the helium resources of the United States. Results of released gas well analyses and related data are published annually for Government, industry, and public use.

(B) *Field Survey Number:* The BLM, Helium Operations Office, assigns this number to record and catalog the gas sample. The number is necessary for reference and future identification of the gas sample.

(C) *State and County:* The geographical location is necessary to identify the source of the gas sample. After the gas source is identified, BLM uses this information to evaluate the potential for supplying helium.

(D) *Field, Well Name, and API Number:* This information identifies the source of the gas sample. Each producing state assigns official field designations to producing areas. BLM uses this information to determine

location and size of helium reserves. The well name is registered with the state and identifies the specific well from where the gas sample came. This information provides both the owner and BLM a reference so that any further questions that arise concerning the gas sample can be specifically referred to a certain well. Each well in the United States is assigned a unique number based on guidelines from the American Petroleum Institute (API). This number is essential to assure that wells with similar names are not confused.

(E) *Location and Owner*: We need the legal description of the location of the well. This information will help to locate the well on maps of the area and other features, both surface and subsurface, and to determine helium reserves. The owner's name and address are necessary to report analyses results and for further correspondence.

(F) *Sampled By*: This information provides the name of the person taking the gas sample and allows verification of well and sampling conditions if any questions arise concerning the gas sample.

(G) *Date Completed and Date Sampled*: This information refers to the date the well was ready for production. This information is necessary to determine if this is an older producing well or a recently completed well. An older producing well will have production and pressure records available within the company and at state agencies that are of great value to evaluate the helium reserves. The date sampled is important because we search the records to determine under what conditions the gas sample was taken if any questions arise concerning the gas sample.

(H) *Elevation*: This information refers to the elevation of the Kelly Bushing or ground level elevation on the drilling rig. This information is necessary because most wireline logs, mud logs, and other references to the depth of the well are made with the Kelly Bushing data. The elevation will assist to classify the geologic horizons penetrated by the well, and give some true depth in relation to sea level data.

(I) *Name of Producing Formation and Geological Age of Producing Formation*: This information is necessary to classify the subsurface source of the gas sample and to consider other producing zones in the field or area.

(J) *Depth (Feet) of Producing Formation and Thickness (Feet)*: This information is necessary to consider the producing zones with those in other fields or wells. Thickness of the producing zone is an essential factor to

determine the volume of helium reserves presently in a reservoir.

(K) *Shut-In Wellhead Pressure and Open Flow*: This information is necessary to determine the reserves of helium and the adequacy of a well to produce sufficient process gas to a helium extraction plant. Shut-in wellhead pressure is essential to estimate the helium reserves. Open flow is the capacity of the well to produce gas. BLM uses this information to determine if the process gas volumes are available.

Without this information, the location and development of helium reserves could not be done, long range helium production and conservation could not be carried out, and an assured supply of helium to the Federal Government would not be available.

Based on our experience administering the activities described above, we estimate the public reporting burden is 15 minutes per response to supply the required information. The respondents are owners and operators of helium-bearing natural gas wells and transmission lines. The frequency of response is annual. We estimate 200 responses per year and a total annual burden of 50 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 13, 2003.

**Michael H. Schwartz,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 03-5384 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-84-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-960-1060-PF-24 1A]

#### Extension of Approved Information Collection, OMB Control Number 1004-0042

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from those individuals requesting to adopt a wild horse or burro (43 CFR part 4750). BLM uses Form 4710-10, Application for Adoption of Wild

Horse(s) or Burro(s), to collect this information. This information allows BLM to determine whether or not an individual qualifies to provide humane care and proper treatment, including transportation, feeding and handling, to an adopted wild horse or burro.

**DATES:** You must submit your comments to BLM at the address below on or before May 6, 2003. BLM will not necessarily consider any comments received after the above date.

**ADDRESSES:** You may mail comments to: Bureau of Land Management (WO-630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: [WOCComment@blm.gov](mailto:WOCComment@blm.gov). Please include "ATTN: 1004-0042" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** You may contact Bea Wade, on (775) 861-6583 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact Ms. Wade.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1320.12(a) requires BLM to provide 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section 3(b)(2)(B) of the Wild Free-Roaming Horse and Burro Act requires that BLM provide for individuals to adopt wild horses and burros whom the Secretary determines are qualified to provide humane care and proper treatment. The regulations are found at

43 CFR Subpart 4750—Private Maintenance. Applicants submit Form 4710–10, Application for Adoption of Wild Horse(s) and Burro(s), to adopt wild horses and burros.

BLM requests the following information on Form 4710–10:

(A) The applicant's name, address, and telephone number to further communicate about the adoption.

(B) For possible debt collection purposes, the driver's license number to locate the adopter if the adopter changes his/her address within the state and does not leave a forwarding address. Wild horses and burros remain the property of the United States until title passes to private individuals. During the period between adoption and the passing of title, BLM is under obligation to see that the animals receive human care and proper treatment. For that reason, BLM visits and contacts the adopter to determine that status and condition of the animals. BLM uses this information to also determine the location and condition of animals if the adopter should change the location of the animals within the State.

(C) The birth date of the applicant to assure that the applicant qualifies to adopt an animal under 43 CFR 4750.3–2 (must be at least 18 years or older).

(D) The applicant's social security number. In those states where the driver's license and social security numbers are the same, the applicant needs only his/her driver's license number. BLM uses this information for possible debt collection purposes and to track the location of the adopter if the adopter moves out-of-state.

(E) The applicant must indicate the number and species of animals the adopter wishes to adopt so we can determine the availability of the animals requested.

(F) The applicant must provide a map of the location where the adopted animals will be located so that we can conduct inspections of the facility and the animals to ensure compliance under 43 CFR 4750.3–2 relating to private maintenance.

(G) The applicant must understand the restrictions related to adopting a wild horse or burro.

(H) BLM needs the information on the site where the animals are kept to assure that the facilities provide for humane care and comply with the private maintenance regulations located at 43 CFR 4750.3–2.

(I) The applicant must sign a Private Maintenance and Care Agreement (a part to the Form 4710–10) after BLM approves the application to adopt a wild horse or burro.

BLM uses the information to determine whether individuals are qualified to provide humane care and proper treatment to one or more adopted animals. When BLM approves the application and the individual completes a Private Maintenance and Care Agreement, the individual may adopt one to four wild horses or burros at one time. There is no other source for the required information, and failure to furnish the required information will result in the applicant's denial to adopt a wild horse or burro.

The collection of information is short, simple and does not inconvenience the applicant. Valuable dialogue normally occurs during the approval process when BLM conducts an interview with the applicant to ensure that the applicant understands the obligations and prohibited acts and is knowledgeable about horses and burros or has access to assistance from a knowledgeable individual.

Based on BLM's experience in administering the activities described above, we estimate the public reporting burden is 10 minutes per response to complete the required information. We estimate 30,000 responses per year and a total annual burden of 5,000 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 13, 2003.

**Michael H. Schwartz,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 03–5385 Filed 3–6–03; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[HE–952–9911–EK]

#### Extension of Approved Information Collection, OMB Control Number 1004–0179

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect helium sales information from Federal agencies and helium suppliers. BLM uses the In-Kind Crude Helium Sales Contract and nonform information from the

regulations at 43 CFR 3195 to collect this information. This information allows BLM to monitor reporting and recordkeeping of crude helium sales and purchases.

**DATES:** You must submit your comments to BLM at the address below on or before May 6, 2003. BLM will not necessarily consider any comments received after the above date.

**ADDRESSES:** You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: [WOCComment@blm.gov](mailto:WOCComment@blm.gov). Please include “ATTN: 1004–0179” and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC 20036.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** You may contact Connie H. Neeley, Crude Helium Sales Analyst, on (806) 324–2635 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Neely.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Helium Privatization Act of 1996 requires the Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, and other Federal agencies to purchase major helium requirements from authorized contractors. These contractors must

purchase an equivalent amount of crude helium from the Department of the Interior, Bureau of Land Management.

The In-Kind Crude Helium Sales Contract requires that contract holders supply the following information to BLM:

(A) Section 3.3 asks for reporting each quarter the deliveries made of refined helium. The section refers to Addendum B of the contract, which specifies providing the following:

- (1) Company name;
- (2) Address and contract number;
- (3) Name of the Federal agency to which helium sold;
- (4) Date of delivery;
- (5) Sale reference number;
- (6) Location of helium use;
- (7) Volume; and
- (8) Units of helium sold during the itemized sales for the quarterly report.

BLM uses this information to track sales of refined helium and to determine the use of the helium.

(B) Section 3.5 requires helium suppliers to notify BLM 14 days in advance of needing Federal helium in order to provide BLM sufficient time to deliver the helium.

(C) Section 3.7 requires contractors to keep available for BLM inspection all pertinent documents and records. We use this information to audit the contractors and to determine whether or not helium sales were reported accurately.

(D) Section 7.4 prohibits assigning the contract to another contractor without BLM's prior approval.

BLM also requires the following nonform information at 43 CFR 3195:

(A) Federal helium suppliers and buyers must report the total itemized quarterly deliveries of helium within 45

calendar days after the end of the previous quarter.

(B) Federal helium suppliers must report the annual cumulative helium delivery report by November 15 of each year.

(C) The name of the company from which you purchased helium.

(D) The amount of helium you purchased and the date it was delivered.

(E) The helium use location.

Based on our experience administering the activities described above, we estimate the public reporting burden is one hour for the contract and two hours for the nonform quarterly helium sales reports at 43 CFR 3195. We estimate 76 respondents will submit a contract once and quarterly provide helium sales information. We estimate 380 responses per year and a total annual burden of 684 hours as indicated in the table below:

Requirement	Hours per responses	Number of responses	Burden hours
In-kind crude helium sales contract .....	1	76	76
Helium sales information .....	2	304	608
<b>Total</b> .....		<b>380</b>	<b>684</b>

We will summarize all responses to this notice and send them to OMB when we request approval. All comments will become a matter of public record.

Dated: March 3, 2003.

**Michael H. Schwartz,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 03-5386 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-84-M**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[WO640 1020 PF 24 1A]

**Call for Nominations for Resource Advisory Councils**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Resource Advisory Council Call for Nominations.

**SUMMARY:** The purpose of this notice is to solicit public nominations for each of the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. Public nominations will be considered

for 45 days after the publication date of this notice.

**SUPPLEMENTARY INFORMATION:** The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

*Category One*—Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

*Category Two*—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

*Category Three*—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources,

academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

**Alaska**

**Alaska RAC**

Teresa McPherson, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, (907) 271-3322

**Arizona**

## Arizona RAC

Deborah Stevens, Arizona State Office,  
BLM, 222 N. Central Avenue,  
Phoenix, Arizona 85004-2203, (602)  
417-9215

**California**

## Central California RAC

Larry Mercer, Bakersfield Field Office,  
BLM, 3801 Pegasus Avenue,  
Bakersfield, California 93308, (661)  
391-6000

## Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office,  
BLM, 2950 Riverside Drive,  
Susanville, California 96130, (530)  
257-0456

## Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office,  
BLM, 2950 Riverside Drive, Susanville,  
California 96130, (530) 257-0456

**Colorado**

## Front Range RAC

Ken Smith, Canon City Field Office,  
BLM, 3170 E. Main Street, Canon  
City, Colorado 81212, (719) 269-8513

## Southwest RAC; Northwest RAC

Larry Porter, Grand Junction Field  
Office, BLM, 2815 H Road, Grand  
Junction, Colorado 81506, (970) 244-  
3012

**Idaho**

## Upper Columbia RAC

Stephanie Snook, Upper Columbia-  
Salmon Clearwater Field Office, BLM,  
1808 North Third Street, Coeur  
d'Alene, Idaho 83814-3407, (208)  
769-5004

## Upper Snake RAC

David Howell, Upper Snake River  
District Office, BLM, 1405 Hollipark  
Drive, Idaho Falls, Idaho 83401, (208)  
524-7559

## Lower Snake RAC

MJ Byrne, Lower Snake River District  
Office, BLM, 3948 Development  
Avenue, Boise, Idaho 83705, (208)  
384-3393

**Montana and Dakotas**

## Eastern Montana RAC

Mark Jacobsen, Miles City Field Office,  
BLM, 111 Garryowen Road, Miles  
City, Montana 59301, (406) 233-2831

## Central Montana RAC

Kaylene Patten, Lewistown Field Office,  
BLM, Airport Road, PO Box 1160,

Lewistown, Montana 59457, (406)  
538-1957

## Western Montana RAC

Marilyn Krause, Butte Field Office,  
BLM, 106 North Parkmont, Butte,  
Montana 59701-3388, (406) 533-7617

## Dakotas RAC

Mary Ramsey, North Dakota Field  
Office, BLM, 2933 Third Avenue  
West, Dickinson, North Dakota  
58601-2619, (701) 227-7700

**Nevada**

Mojave-Southern RAC; Northeastern  
Great Basin RAC; Sierra Front  
Northwestern RAC

Debra Kolkman, Nevada State Office,  
BLM, 1340 Financial Boulevard,  
Reno, Nevada 89502-7147, (775) 289-  
1946

**New Mexico**

## New Mexico RAC

Theresa Herrera, New Mexico State  
Office, BLM, 1474 Rodeo Road, Sante  
Fe, New Mexico 87505, (505) 438-  
7517

**Oregon/Washington**

Eastern Washington RAC; John Day/  
Snake RAC; Southeast Oregon RAC

Pam Robbins, Medford District Office,  
BLM, 3040 Biddle Road, Medford,  
Oregon 97504, (541) 618-2456

**Utah**

## Utah RAC

Sherry Foot, Utah State Office, BLM,  
324 South State Street, Suite 301, P.O.  
Box 45155, Salt Lake City, Utah  
84145-0155 (801) 539-4195

**DATE:** All nominations should be  
received by the appropriate BLM State  
Office by *45 days from the publication  
date of this notice.*

**FOR FURTHER INFORMATION CONTACT:**

Alden Boetsch, U.S. Department of the  
Interior, Bureau of Land Management,  
Intergovernmental Affairs, MS-LS-406,  
Washington, DC, 20240; 202-452-0393.

Dated: February 27, 2003.

**Kathleen Clarke,**

*Director, Bureau of Land Management.*

[FR Doc. 03-5468 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-84-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

**Notice of Availability of a Draft  
Environmental Impact Statement for  
the Black Rock Desert-High Rock  
Canyon Emigrant Trails National  
Conservation Area Resource  
Management Plan, Nevada**

**AGENCY:** Bureau of Land Management,  
Interior.

**ACTION:** Notice of Availability of a Draft  
Environmental Impact Statement (DEIS)  
for the Black Rock Desert-High Rock  
Canyon Emigrant Trails National  
Conservation Area Resource  
Management Plan (RMP), Nevada.

**SUMMARY:** In accordance with Section  
202 of the National Environmental  
Policy Act of 1969, a Draft Resource  
Management Plan/Environmental  
Impact Statement has been prepared for  
the Black Rock Desert-High Rock  
Canyon Emigrant Trails National  
Conservation Area.

The Black Rock Desert-High Rock  
Canyon Emigrant Trails National  
Conservation Area Act of 2000 (the Act)  
gave special designation to 1.2 million  
acres of public lands managed by the  
Bureau of Land Management (BLM) in  
northwestern Nevada, collectively  
known as "Black Rock-High Rock." The  
Act designated 815,000 acres as a  
National Conservation Area (NCA) and  
752,000 acres as 10 Wilderness Areas  
(378,000 of the Wilderness acres overlap  
the NCA). The NCA and associated  
Wilderness Areas were created  
specifically to protect one of the last  
nationally significant segments of the  
historic emigrant trails used by pioneers  
to travel from the eastern States to  
Oregon and California, and a landscape  
largely unchanged since the mid-1800s.  
Black Rock-High Rock contains an array  
of unique historic, cultural, educational,  
wildlife, riparian, and wilderness  
resources, threatened species, and  
recreational values. The Act also  
identified wilderness, grazing, and  
special recreation permit events as  
valuable existing land uses that are  
expected to continue.

Designating Black Rock-High Rock as  
an NCA and Wilderness Areas placed  
new emphasis and requirements on  
resource uses in the area. The DEIS/  
RMP has been developed to address  
these changes. This DEIS/RMP does not  
evaluate the designation of the NCA and  
Wilderness Areas, but rather develops  
several resource management  
alternatives that fully comply with the  
NCA Act and the Wilderness Act and  
other applicable laws, regulations and

policies, and analyzes the environmental consequences associated with implementation of each alternative. Additionally, approximately 15,000 acres in the south playa, 16,000 acres in the Lahontan Cutthroat Trout (LCT) Area, and 3,000 acres included in wilderness access and boundary roads and road corridors located outside the NCA that are not included in the designation are evaluated in the DEIS/RMP due to their being contiguous lands with similar planning issues. These designated and adjacent areas, totaling approximately 1,221,000 acres of public lands, are referred to as the planning area.

In addition to other existing laws, regulations and policies, the NCA Act and the Wilderness Act govern land and resource use decisions in 97.4% of the planning area. As a result, the range of alternatives presented in this planning document and the impacts anticipated from their implementation are more constrained than is typical of BLM management plans.

Current management is guided by four Management Framework Plans (MFPs): The Sonoma-Gerlach, Paradise-Denio, Tulead-Homecamp, and Cowhead-Massacre MFPs. The No Action Alternative in the DEIS/RMP would continue management under these MFPs consistent with the requirements of the NCA Act of 2000 as amended and the Wilderness Act of 1964.

**DATES:** Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced in 15 days in advance through public notices, media news releases, and/or mailings.

**ADDRESSES:** Comments may be submitted by any one of several methods. Comments can be mailed to the Bureau of Land Management, Winnemucca Field Office, Attention: NCA Plan, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445-2921. Comments can be posted through the Internet at <http://www.BlackRockHighRock.org/> by clicking on "Submit Your Input" and completing the online form. Comments will be accepted at public meetings in March 2003. Finally, comments can be hand-delivered to the Bureau of Land Management, Winnemucca Field Office, at the above address. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the

Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public review in their entirety. Copies of the Draft RMP/EIS are available for review online at the Web site <http://www.BlackRockHighRock.org/>, at the BLM NV Winnemucca Field Office at the above address, and at the following repositories: U of Nevada-Reno Gatchell Library, Humboldt County Library, BLM NV Carson City Field Office, BLM NV State Office, Gerlach NV Library, Reno NV Public Library, Pershing County NV Public Library, Lyon County NV Library—Dayton NV, BLM CA Surprise Field Office, Modoc County CA Library—Cedarville CA, Modoc County Library—Alturas CA, BLM CA State Office, and BLM CA Eagle Lake Field Office. Persons who are not able to review the DEIS in either of these ways may request one of a limited number of printed copies or compact discs (CDs) by contacting the NCA Planning Staff at the Winnemucca Field Office. In addition, you can e-mail a request for a copy of the DEIS to [wfoweb@nv.blm.gov](mailto:wfoweb@nv.blm.gov), call in a request to (775) 623-1500, or fax a request to (775) 623-1503. Please be sure to direct the request to the NCA Planning Staff, clearly state that it is a request for a printed copy or CD of the Black Rock-High Rock DEIS, and include your name, mailing address and phone number.

**FOR FURTHER INFORMATION CONTACT:**

David C. Cooper, NCA Manager, BLM Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445-2921, (775) 623-1500.

**SUPPLEMENTARY INFORMATION:** The DEIS/RMP have been developed through a collaborative planning process involving two BLM State Offices and two BLM Field Offices, other federal agencies, the State of Nevada Black Rock Planning Team, area Tribal Government representatives, representatives of the local communities of Cedarville, California and Empire-Gerlach, Nevada, Modoc County, California, Humboldt County, Nevada, Pershing County, Nevada, and many diverse interests represented on a Resource Advisory Council Subgroup formed specifically to participate with BLM in the planning process. In addition, a planning Web site was created at <http://www.BlackRockHighRock.org/> to keep

interested members of the public informed and involved during the planning process. A total of 49 meetings involving participation of other federal agencies, State and Tribal representatives, and interested publics have been conducted in northern California and northern Nevada.

**Alternative Descriptions and Impacts Expected from Each:**

**No Action—Continuation of Current Management:** This alternative entails continuation of those management activities that already occur in the planning area that are consistent with the requirements of the NCA Act and the Wilderness Act. Changes to these management practices would be made for the sole purpose of compliance with the NCA Act and other applicable laws and regulations. Natural resources and visitation would be managed in accordance with existing law, regulation and policy.

**Impacts—**The only impacts expected are those that would occur as a result of continuing current management practices in or adjacent to the planning area. The No Action Alternative is the baseline that the other alternatives are compared to, to determine impacts.

**Alternative A—Emphasis on Natural Processes:** This alternative emphasizes providing visitors with a self-directed opportunity to experience what the emigrants and other early visitors to the area experienced in the mid 1800s. Visitors would experience the area as an unspoiled, cross-section of the northwestern Great Basin where natural processes have been allowed to continue with specific restrictions on visitor activities to protect both visitors and resources. The focus of resource management would minimize intervention into natural processes to allow for their continued progression, provided degradation was not occurring. Specific management would be developed if degradation were to occur.

**Impacts—**The impacts from this alternative are similar to the no action alternative with few visitor services provided, but more opportunities for self-discovery. Minor impacts to natural resources are anticipated from increased, primarily self-directed visitation. This alternative could reduce the anticipated rate of increase in visitation due to difficulty in accessing the area.

**Alternative B—Emphasis on Response to Change (Preferred Alternative):** This alternative also emphasizes providing visitors with a self-directed opportunity to experience what the emigrants and other early visitors to the area experienced in the mid 1800s. It is distinguished from Alternative A in that

it employs a management approach that would more readily identify and accommodate changing conditions over time by allowing the application of management decisions responsive to these changing conditions. This alternative has the flexibility to respond to increasing visitation and resource deterioration that could occur over the long term. A visitor center would be developed outside the NCA.

**Impacts**—The impacts from this alternative are less spontaneity for visitor use, but more visitor services than alternative A. These visitor services will have minimal impacts on visual quality and feeling of remoteness. Alternative B is preferred because it provides for a management approach that is balanced between No Action (little regulation of use) and Alternative C (emphasis on visitation and interpretation including possible construction of a visitor center inside the NCA), while offering the best means of responding to changing conditions and public needs over the life of the RMP.

**Alternative C—Emphasis on Visitation and Interpretation:** Emphasis focuses on more active visitor support in this alternative. Resource management activities allow for necessary intervention at varying levels in geographic areas to enable both the natural and historic context to be experienced while ensuring that resource protection is not compromised. A visitor center would be developed in or near the NCA.

**Impacts**—This alternative has a slightly higher impact on visual quality and the feeling of remoteness than alternative B. This alternative could also result in increases in visitation due to the increased visitor services and easier access to the area.

Dated: December 11, 2002.

**Terry A. Reed,**

*Field Manager, Winnemucca Field Office,  
Bureau of Land Management.*

[FR Doc. 03-5304 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-AG-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-075-03-1330-EO]

#### **Notice of Availability of Supplemental Mine and Reclamation Plan, North Rasmussen Ridge Mine, and Associated Draft Environmental Impact Statement, Caribou County, ID**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of Draft Environmental Impact Statement (DEIS).

**SUMMARY:** In accordance with Section 202 of the National Environmental Policy Act of 1969, a Draft Environmental Impact Statement has been prepared for the Supplemental Mine and Reclamation Plan for the North Rasmussen Ridge phosphate mine, Caribou County, Idaho. The Environmental Impact Statement was prepared to assess the impacts of implementing the Supplemental Mine and Reclamation Plan, and to disclose those impacts to the public and the lead agency decision-maker. The DEIS analyzes the potential impacts related to the expansion of mining at Agrium's North Rasmussen Ridge Mine in southeast Idaho. The Proposed Action includes developing two mine pits and a haul road. Use of existing support and transportation systems would continue. Existing operations at the Central Rasmussen Ridge Mine were approved in a 1997 Record of Decision. This environmental analysis reviews potential impacts from selenium and updates the previous impact analyses for other resources. Alternatives to the Proposed Action are also analyzed and site-specific mitigation measures developed.

**DATES:** Written comments on the DEIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

**ADDRESSES:** Written comments should be sent to the Pocatello Field Office Manager, BLM, 1111 N. 8th Avenue, Pocatello, Idaho 83201, or e-mailed to [ID\\_Nrasmussen\\_EIS@blm.gov](mailto:ID_Nrasmussen_EIS@blm.gov). 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 confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the document, please call (208) 478-6353, or write or e-mail Mr. Wendell Johnson, BLM Pocatello Field Office, 1111 North 8th Avenue,

Pocatello, Idaho 83201, or e-mail [ID\\_NRasmussen\\_EIS@blm.gov](mailto:ID_NRasmussen_EIS@blm.gov).

**SUPPLEMENTARY INFORMATION:** The agency Preferred Alternative is the Proposed Action because it disturbs the least acreage of the action alternatives and all waste material is backfilled to the pits. In addition to the Proposed Action of continuing mining along the strike of the ore while backfilling previously mined-out pits, two additional alternatives are being considered. Alternative 1 is similar to the proposed alternative, but includes impermeable capped backfilled wastes. Alternative 2 is described as the No-Action Alternative and would not allow mineral extraction to occur on the approved leases.

The BLM believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period for the draft EIS so that substantive comments and objections are made available to the BLM at a time when it can meaningfully consider and respond to them in the final EIS.

**Phil Damon,**

*Field Office Manager.*

[FR Doc. 03-5303 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-GG-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-090-5882-PH-EE01; GP3-0101]

#### **Eugene District BLM Resource Advisory Committee Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Meeting notice for the Eugene District, Bureau of Land Management (BLM) Resource Advisory Committees

under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106-393).

**SUMMARY:** This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Eugene District BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106-393 (the Act). Topics to be discussed by the BLM Resource Advisory Committee include selection of a chairperson, public forum and proposed projects for funding in "Round III FY 04" under Title II of the Act.

**DATES:** The BLM Resource Advisory Committees will meet on the following dates: The Eugene Resource Advisory Committee will meet at the BLM Eugene District Office, 2890 Chad Drive, Eugene, Oregon 97440, 9 a.m. to 3 p.m., on May 22, 2003 and 9 a.m. to 3 p.m., on June 26, 2003. The public forum will be held from 12:30-1 p.m. on both days.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Roads lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus 6 alternates) representing a wide array of interests.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the BLM Resource Advisory Committees may be obtained from Wayne Elliott, Designated Federal Official, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440, (541) 683-6600, or [wayne\\_elliott@or.blm.gov](mailto:wayne_elliott@or.blm.gov).

Dated: February 28, 2003.

**Julia Dougan,**

*Eugene District Manager.*

[FR Doc. 03-5390 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-33-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-910-03-1020-PG]

#### Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held on April 3-4, 2003, at the NM Tech, Macey Center, Galena Room, Olive Lane, Socorro, NM, beginning at 8 a.m. The meeting will adjourn between 4 and 5 p.m. both days. An optional Field Trip is planned for April 2 to view the Socorro off-highway vehicle area east of Johnson Hill, Sierra Ladrones Wilderness Study Area, and Ladrone Area of Critical Environmental Concern, private in-holdings, Dogs Trials, a stop at Riley to discuss cultural issues, and Box Canyon Special Management Area. The three established RAC subcommittees will meet in the late afternoon or evening on Thursday, April 3. The public comment period will begin at 10 a.m. on Friday, April 4, and end at 12 noon.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. At this meeting, the topics we plan to discuss include: Wilderness Study Proposal, Socorro Resource Management Plan, Resource Management Plan Process.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. New Mexico RAC meetings are coordinated with the representative of the Governor of the State of New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Theresa Herrera, RAC Coordinator, New Mexico State Office, Office of External Affairs, Bureau of Land Management, PO box 27115, Santa Fe, NM 87502-0115, (505) 438-7517.

Dated: February 28, 2003.

**Linda S.C. Rundell,**

*State Director.*

[FR Doc. 03-5435 Filed 2-6-03; 8:45 am]

**BILLING CODE 4310-FB-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-942-5700-BJ-044B]

#### California: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plat of survey.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM California State Office, Sacramento, California, in 30 days from the date of publication in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** The plats of Survey of Lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, California.

#### Humboldt Meridian, California

*T. 4 N., R 1 W.*

Corrective dependent resurvey of a portion of the subdivisional lines, and a portion of the metes-and-bounds survey of the Headwaters Tract under (Group 1354) accepted September 9, 2002 to meet certain administrative needs of the BLM, Arcata Field Office.

*T. 6N., R 5 E.*

Dependent resurvey, retracement, and metes-and-bounds survey under (Group 1367) accepted September 30, 2002 to meet certain administrative needs of the BLM, Arcata Field Office.

#### Mount Diablo Meridian, California

*T. 1 S., R 25 E.*

Amended protraction diagram for unsurveyed area, accepted February 27, 2002 to meet certain administrative needs of the BLM, Bishop Field Office.

*T. 2 S., R 21 E.*

Amended protraction diagram, accepted March 4, 2002 to meet certain administrative needs of the BLM, Folsom Field Office.

*T. 29 N., R 4 E.*

Dependent resurvey of a portion of the South boundary, and the metes-and-bounds Survey of Tract 37, under (Group 1360) accepted March 29, 2002

to meet certain administrative needs of the BLM, Folsom Field Office.

*T. 47 N., R 1 W.*

Supplemental plat showing new lotting in section 14, accepted April 8, 2002 to meet certain administrative needs of the BLM, Redding Field Office.

*T. 6 S., R 26 E.*

Amended protraction diagram for unsurveyed area, accepted April 8, 2002 to meet certain administrative needs of the BLM, Bakersfield Field Office.

*T. 6 S., R 27 E.*

Amended protraction diagram for unsurveyed area, accepted April 8, 2002 to meet certain administrative needs of the BLM, Bakersfield Field Office.

*T. 30 S., R 14 E.*

Supplemental plat of the NW  $\frac{1}{4}$  of section 2 and N  $\frac{1}{2}$  of section 3, accepted April 8, 2002, to meet certain administrative needs of the BLM, Bakersfield Field Office.

*T. 10 N., R 11 E.*

Supplemental plat of a portion of section 6, accepted April 15, 2002, to meet certain administrative needs of the BLM, Folsom Field Office.

*T. 2 S., R 9 E.*

Supplemental plat showing Tract 37, containing new lots 8, 9, 10, 11, and 12, Replacing old lot 6 in the SW  $\frac{1}{4}$  of section 23, accepted April 15, 2002, to meet certain administrative needs of the BLM, Folsom Field Office.

*T. 6 S., R 28 E.*

Amended protraction diagram for unsurveyed area, accepted April 24, 2002, to meet certain administrative needs of the BLM, Bishop Field Office and Bakersfield Field Office.

*T. 5 S., R 29 E.*

Amended protraction diagram, accepted April 24, 2002, to meet certain administrative needs of the BLM, Bishop Field Office and Bakersfield Field Office.

*T. 5 S., R 28 E.*

Amended protraction diagram for unsurveyed area, accepted April 24, 2002, to meet certain administrative needs of the BLM, Bishop Field Office and Bakersfield Field Office.

*T. 6 S., R 29 E.*

Amended protraction diagram for unsurveyed area, accepted April 24, 2002 to meet certain administrative needs of the BLM, Bishop Field Office and Bakersfield Field Office.

*T. 8 S., R 29 E.*

Amended protraction diagram for unsurveyed area, accepted April 26, 2002, to meet certain administrative needs of the BLM, Bishop Field Office and Bakersfield Field Office.

*T. 8 S., R 31 E.*

Amended protraction diagram for unsurveyed area, accepted April 29, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 7 S., R 27 E.*

Amended protraction diagram for unsurveyed area, accepted May 7, 2002, to meet certain needs of the BLM, Bakersfield Field Office.

*T. 8 S., R 27 E.*

Amended protraction diagram for unsurveyed area, accepted May 7, 2002, to meet certain needs of the BLM, Bakersfield Field Office.

*T. 32 N., R 5 W.*

Dependent resurvey, subdivision of section 30, and metes-and-bounds survey under Group (1336) accepted June 18, 2002, to meet certain needs of BLM, Redding Field Office.

*T. 33 N., R 11 W.*

Dependent resurvey and metes-and-bounds survey of tract 37 under Group (1376) accepted June 20, 2002, to meet certain needs of BLM, Redding Field Office.

*T. 21 N., R 9 W.*

Dependent resurvey, corrective dependent resurvey and survey under Group (1156) accepted July 1, 2002, to meet certain needs of BLM, Redding Field Office.

*T. 38 N., R 6 E.*

Dependent resurvey and subdivision of sections 19 and 20, accepted July 1, 2002, to meet certain needs of BLM, Alturas Field Office.

*T. 18 N., R 10 W.*

Corrective dependent resurvey, dependent resurvey, and metes-and-bounds survey, under Group (1309) accepted July 1, 2002, to meet certain needs of the BLM, Redding Field Office.

*T. 4 N., R 10 E.*

Dependent resurvey and subdivision of section 3, under Group (1328) accepted July 1, 2002, to meet certain needs of the BLM, Folsom Field Office.

*T. 5 N., R 10 E.*

Dependent resurvey and subdivision of section 34, under Group (1328) accepted July 1, 2002, to meet certain needs of the BLM, Folsom Field Office.

*T. 30 S., R 15 E.*

Dependent resurvey and subdivision of section 19, under Group (1329) accepted July 3, 2002, to meet certain needs of the BLM, Bakersfield Field Office.

*T. 44 N., R 7 W.*

Dependent resurvey and subdivision of section 2, under Group (1381) accepted July 3, 2002, to meet certain needs of the BLM, Redding Field Office.

*T. 2 N., R 25 E.*

Dependent resurvey and subdivision of section 13, under Group (1338) accepted July 26, 2002, to meet certain needs of the BLM, Redding Field Office.

*T. 5 S., R 30 E.*

Dependent resurvey and subdivision of section 24, under Group (1380) accepted July 26, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 5 N., R 25 E.*

Dependent resurvey and subdivision of section 28, under Group (1348) accepted July 26, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 6 N., R 8 E.*

Dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of section 18, under Group (1348) accepted July 31, 2002, to meet certain needs of the BLM, Palm Springs Field Office.

*T. 1 S., R 27 E.*

Dependent resurvey and Metes-and-bounds of Tract 37, under Group (1361) accepted July 31, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 4 S., R 30 E.*

Dependent resurvey and subdivision of section 29, under Group (1355) accepted July 31, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 2 N., R 26 E.*

Dependent resurvey and subdivision and metes-and-bounds survey, under Group (1284) accepted August 1, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 16 N., R 8 E.*

Supplemental plat of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of section 1, under Group (1400) accepted August 8, 2002, to meet certain needs of the BLM, Folsom Field Office.

*T.47 N., R 12 W.*

Dependent resurvey and metes and bounds survey, under Group (1310) accepted August 13, 2002, to meet

certain needs of the BLM, Redding Field Office.

*T. 10 S., R 22 E.*

Dependent resurvey and subdivision of section 11 and 15, under Group (1357) accepted August 13, 2002, to meet certain needs of the BLM, Bakersfield Field Office.

*T. 32 N., R 5 W.*

Supplemental plat of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of section 31, accepted September 13, 2002, to meet certain needs of the BLM, Redding Field Office.

*T. 46 N., R 16 E.*

Dependent resurvey and metes-and-bounds survey, under Group (1383) accepted September 13, 2002, to meet certain needs of the BLM, Alturas Field Office.

*T. 13 S., R 39 E.*

Dependent resurvey and subdivision of sections 17, 18, 19, and 20, Under Group (1350) accepted September 19, 2002, to meet certain needs of the BLM, Ridgecrest Field Office.

#### **San Bernardino Meridian, California**

*T. 13 S., R 3 E.*

Dependent resurvey and subdivision of section 25, under Group (1382) accepted January 23, 2002, to meet certain needs of the USDA, Forest Service, Cleveland National Forest.

*T. 11 N., R 10 E.*

Dependent resurvey and subdivision of section 29, under Group (1389) accepted February 8, 2002, to meet certain needs of the BLM, Needles Field Office.

*T. 1 S., R 1 E.*

Dependent resurvey and subdivision of the NE $\frac{1}{4}$  section 18, under Group (1389) accepted March 26, 2002, to meet certain needs of the BLM, Needles Field Office.

*T. 1 N., R 18 W.*

Metes-and-bounds survey in Rancho Las Virgenes, under Group (1349) accepted July 1, 2002, to meet certain needs of the BLM, Spring-South Coast Field Office.

*T. 25 N., R 5 E.*

Dependent resurvey and subdivision, under Group (1379), accepted July 31, 2002, to meet certain needs of the BLM, Bishop Field Office.

*T. 6 S., R 3 E.*

Dependent resurvey of a portion of the South boundary, a portion of the subdivisional lines, and the subdivision

of sections 30, 31, 32, and 33, under Group (1353) accepted August 1, 2002, to meet certain needs of the BLM, Palm Springs-South Coast Field Office.

*T. 10 and 11 S., R 1 W.*

Dependent resurvey of a portion of the subdivisional lines and certain tract boundaries, Under Group (1358) accepted August 26, 2002, to meet certain needs of the BLM, Palm Springs Field Office.

We will place a copy of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against any of these surveys, as shown on these plats, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file these plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 2800 Cottage Way, Room W-1834, Sacramento, CA 95825, (916) 978-4310.

Dated: February 24, 2003.

**Lance J. Bishop,**

*Chief, Branch of Geographic Services,  
Division of Support Services.*

[FR Doc. 03-5441 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-40-M**

## **DEPARTMENT OF THE INTERIOR**

### **National Park Service**

#### **60 Day Notice of Intention To Request for Clearance of Information Collection, Special Park Use Application Forms, Opportunity for Public Comment**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-14, 44 U.S.C. 3507 and 5 CFR part 1320, Reporting and Record Keeping Requirements), the National Park Service (NPS) invites public comment on a request for renewal for the information collection requirements. The NPS seeks comments on the necessity for this information collection, the accuracy of our burden estimates, ways to enhance the quality, utility and clarity of the information to be collected and alternative methods of collection to minimize burden and improve service to the public, including the use of

automated information collection techniques or other forms of information technology. These information collections are associated with permits implementing provisions of the agency regulations pertaining to the use of public lands. The application forms are up for renewal. The forms have been modified slightly and are the subject of this request for comments.

**DATES:** Written comments must be submitted on or before May 6, 2003.

**ADDRESSES:** Comments should be addressed to Lee Dickinson, National Park Service, 1849 C Street, NW. (org. code 2460), Washington, DC 20240. All responses to this notice will be summarized and included in the request for OMB renewal of the forms, as modified. All comments will become a matter of public record. Copies of the above mentioned draft forms may be obtained from the Internet at <http://www.nps.gov/policy/Dorders/Permitform.pdf> or by contacting Lee Dickinson.

**FOR FURTHER INFORMATION CONTACT:** Lee Dickinson, Ranger Activities Division, National Park Service, at telephone 202-513-7092, or by e-mail at [lee\\_dickinson@nps.gov](mailto:lee_dickinson@nps.gov).

**SUPPLEMENTARY INFORMATION:** There are three (3) collection information forms up for renewal.

*Title:* Application for Special Use Permit (10-930); Application for Photography/Filming Permit—Short Form (10-931); Application for Photography/Filming Permit—Long Form (10-932).

*OMB Number:* 1024-0026.

*Expiration Date of Approval:* September 30, 2003.

*Type of Request:* Extension of and revision to currently approved information collection.

*Abstract:* The National Park Service's legislative mandate is to preserve America's natural and cultural treasures unimpaired for future generations, while also making them available for the enjoyment of the visitor (16 U.S.C. 1). NPS regulations, codified at title 36 code of Federal Regulations, are promulgated to allow for the enjoyment and use of the resource by the public while protecting the resource. These forms are intended to gather sufficient information to enable park managers to be able to approve or deny the requested uses of public lands authorized in 36 CFR and, if approved, to provide sufficient conditions to protect park lands from impairment or derogation of the resources, values and purposes for which the park was created. The uses considered under these information

collection applications generally include those which regulate or limit those activities not available to the public at large, such as special events, commercial filming, and grazing in parks where such activity is authorized by law.

*Respondents:* Individuals, not-for-profit institution, for profit businesses.

*Estimated annual burden on respondents:* 11,150 hours.

*Estimated average burden hours per response:* .6 hours.

*Estimated average number of respondents:* 18,600 annually.

*Estimated frequency of response:* 18,600 annually.

**Leonard E. Stowe,**

*Acting Information Collection Clearance Officer, National Park Service, WAPC.*

[FR Doc. 03-5499 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Environmental Statements; Notice of Availability

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the draft General Management Plan and draft Environmental Impact Statement for Morristown National Historical Park, New Jersey. The draft GMP/EIS proposes a long-term approach to managing Morristown NHP. Consistent with the park's mission, NPS policy, and other laws and regulations, three alternatives are presented to guide the management of the park over the next 15 to 20 years. The alternatives incorporate various zoning and management prescriptions to ensure resource preservation and public enjoyment of the park. The environmental consequences that are anticipated from implementing the various alternatives are evaluated in the report. Impact topics include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and sustainability. Alternative C is the preferred alternative.

**DATES:** The draft GMP/EIS will remain on public review for 60 days, from February 7, 2003 through April 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Morristown National

Historical Park, 30 Washington Place, Morristown, NJ 07960, (973) 539-2016, ext. 201.

**SUPPLEMENTARY INFORMATION:** Copies of the document will be available for review at the following locations:

- Morristown National Park headquarters, 30 Washington Place, Morristown, New Jersey
- Morris County Library, 30 E. Hanover Avenue, Whippany, New Jersey
- The Joint Free Public Library of Morristown and Morris Township, 1 Miller Road, Morristown, New Jersey
- Mendham Borough Library, 10 Hilltop Road, Mendham, New Jersey
- Bernards Township Library, 32 S. Maple Avenue, Basking Ridge, New Jersey
- Somerset County Library, 1 Vogt Drive, Bridgewater, New Jersey

To request copies of the document, please contact the park. After public and interagency review of the draft GMP/EIS, comments will be considered, and a final EIS, followed by a Record of Decision, will be prepared. The process is anticipated to be completed by July 2003.

Comments on the draft General Management Plan/Environmental Impacts Statement should be submitted to Brian Aviles, Project Manager, at the NPS Boston Support Office, 15 State Street, Boston, MA 02109. Comments may also be faxed to (617) 223-5164.

Dated: January 9, 2003.

**Michael D. Henderson,**

*Superintendent, Morristown National Historical Park.*

[FR Doc. 03-5500 Filed 3-6-03; 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 February 15, 2003. Pursuant to section 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 24, 2003.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

## GEORGIA

### DeKalb County

Briarcliff—Normandy Apartments, Roughly along Briarcliff Rd., Normandy Dr. and Chalmette Dr., Atlanta, 03000136

### Jackson County

Jefferson Historic District, Roughly centered on the downtown central business district of Jefferson extending to city limits to NW and SW, Jefferson, 03000137

### Jasper County

Phillips—Turner—Kelly House, 3321 Calvin Rd., Monticello, 03000135

### Muscogee County

Peacock Woods-Dimon Circle Historic District, Bounded by Cherokee and Forest Aves. and 13th and 17th Sts., Columbus, 03000134

## INDIANA

### Allen County

Wabash Railroad Depot, 530 State St., New Haven, 03000146

### Grant County

Jay, Abijah C., House, 118 W 7th St., Marion, 03000145  
Jenkins, Israel, House, 7453 E 400 S, Marion, 03000139

### Hendricks County

Hendricks County Bridge Number 316, Center Rd., Friendship Gardens over White Lick Creek, Plainfield, 03000140

### Jackson County

Beatty—Trimpe Farm, 4475 E IN 258, Seymour, 03000138

### Knox County

Hack and Simon Office Building, 1006 N 3rd St., Vincennes, 03000141

### Lake County

Lowell Commercial Historic District, 305-519 Commercial Ave. and 108-110 Clark St., Lowell, 03000144

### Marion County

Franklin, Benjamin, Public School Number 36, (Public School Buildings in Indianapolis Built Before 1940 MPS) 2801 N. Capitol Ave., Indianapolis, 03000143  
Indianapolis Park and Boulevard System, Roughly bounded by 38th St., Emerson, Southern and Tibbs Aves., ext. to Fall Creek and Pleasant Run Pkways to Shadeland, Indianapolis, 03000149

### Morgan County

Cedar Point Farm, 8185 E. IN 252, Morgantown, 03000148  
Mooresville Commercial Historic District, roughly, one blk N,S, E and W of the corner of Main and Indiana, Mooresville, 03000147

**Tippecanoe County**

Dayton Historic District, Roughly bounded by Walnut, Harrison, and Pennsylvania Sts., Dayton, 03000142

**TENNESSEE****Haywood County**

Woodland Baptist Church, 885 Woodland Church Rd., Woodland, 03000150

**Montgomery County**

Guildfield Missionary Baptist Church, (Rural African-American Churches in Tennessee MPS) Guildfield Church Rd., South Guthrie, 03000151

**UTAH****Davis County**

West Bountiful Historic District, 800 West, 400 North, 1000 North, West Bountiful, 03000158

**Kane County**

Kanab (Union Pacific) Lodge, (Kanab, Utah MPS) 86 S 200 W, Kanab, 03000153  
Kanab Hotel and Cafe, (Kanab, Utah MPS) 19 W. Center St., Kanab, 03000152

**Salt Lake County**

Salt Lake Engineering Works—Bogue Supply Company Building, 741 W 400 S, Salt Lake City, 03000156

**San Juan County**

Jones, Frederick Issac and Mary M., House, 117 E 200 S, Monticello, 03000154

**Summit County**

Echo Post Office, 3455 S. Echo Rd., Echo, 03000159  
McPolin Farmstead, UT 224, Park City, 03000155

**Utah County**

Springville Historic District, (Springville MPS) Roughly bounded by 400 North, 400 East, 800 South, Main St., 400 South and 400 West, Springville, 03000157

**WASHINGTON****King County**

Cooper, Frank B., Cooper Elementary School, 4408 Delridge Way SW, Seattle, 03000161  
Gaffney's Lake Wilderness Lodge, 22500 SE 248th St., Maple Valley, 03000163  
Northern Bank and Trust Building, 1500 Fourth Ave., Seattle, 03000165

**Lewis County**

Centralia Downtown Historic District, Roughly bounded by Center St., Burlington Northern right-of-way, Walnut St., and Pearl St., Centralia, 03000164  
Grace Evangelical Church of Vader, 618 D St., Vader, 03000162

**Pierce County**

North Slope Historic District, Area bounded by Division Ave., N. Grant Ave, N. Steele St., and N I St., Tacoma, 03000160

**WISCONSIN****Clark County**

First Church of Christ, Scientist, 132 E Fourth St., Neillsville, 03000168

**Dane County**

Cold, Jens and Ingeborg, House, 111 S Fifth St., Stoughton, 03000169

**Door County**

Bullhead Point Historical and Archeological District, (Great Lakes Shipwreck Sites of Wisconsin MPS) N. Duluth Ave., Sturgeon Bay, 03000175

**Oneida County**

Jollywood, 999 Leatzow Rd., Three Lakes, 03000166  
[FR Doc. 03-5502 Filed 3-6-03; 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 February 22, 2003. Pursuant to section 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 24, 2003.

**Beth Boland,**

*Acting Keeper of the National Register of Historic Places.*

**CONNECTICUT****Hartford County**

Colt Industrial District (Boundary Increase), 34 Sequassen St., 1-3 and 17 Van Dyke Ave., and 47, 49, 50 and 53 Vredendale Ave., Hartford, 03000171

**DELAWARE****New Castle County**

Mount Cuba, 3120 Barley Mill Rd., Greenville, 03000172

**GEORGIA****Baldwin County**

Fort—Hammond—Willis House, 1760 Irwinton rd., Milledgeville, 03000173

**MICHIGAN****Livingston County**

Fishbeck, Jacob, Farmstead, 5151 Crooked Lake Rd., Genoa Township, 03000178

**Washtenaw County**

Devereaux, Nathan B., Octagon House, 66425 Eight Mile Rd., Northfield, 03000177

**Wayne County**

Cherry Hill Historic District, Cherry Hill and Ridge Rds., Canton Township, 03000176  
Clyde, Thomas and Isabella Moore, House, 50325 Cherry Hill Rd., Canton Township, 03000175  
Truesdell, Ephraim and Emma Woodworth, House, (Canton Township MPS) 1224 Haggerty Rd., Canton, 03000174

**MISSOURI****Crawford County**

Wagon Wheel Motel, Cafe and Station, 901-905 e. Washington St., Cuba, 03000183

**Greene County**

Rock Fountain Court Historic District, 2400 W. College St., Springfield, 03000179

**Jasper County 66 Drive-In,**

17231 Old 66 Blvd., Carthage, 03000182

**St. Louis County**

Big Chief Restaurant, 17352 Old Manchester Rd., Wildwood, 03000181  
Red Cedar Inn, 1047 East Osage, Pacific, 03000180

**RHODE ISLAND****Providence County**

Smith—Ballou House, 641 Harris Avenue, Woonsocket, 03000184

**TEXAS****Dallas County**

Texas Theatre, 231 W. Jefferson Blvd., Dallas, 03000187

**Harris County**

Texas Company Building, 1111 Rusk, Houston, 03000185

**Travis County**

Fogel, Seymour and Barbara, House, 2411 Kinney Rd., Austin, 03000186

**VIRGINIA****Buena Vista Independent City**

Buena Vista Colored School, 30th St. and Aspen Ave., Buena Vista (Independent City), 03000191

**Loudoun County**

Smith, William, House, 38678 Piggott Bottom rd., Hamilton, 03000189  
Richmond Independent City National Theater, 700-710 E. Broad St., Richmond (Independent City), 03000188  
Pine Camp Tuberculosis Hospital, 4901 Old Brook Rd., Richmond (Independent City), 03000190

[FR Doc. 03-5503 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Intent to Repatriate a Cultural Item: American Museum of Natural History, New York, NY****AGENCY:** National Park Service, Interior.**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate a cultural item in the possession of the American Museum of Natural History, New York, NY, that meets the definition of "object of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a hat resembling a Tlingit spruce wood hat but made of brass. A row of sea lion whiskers inserted into the hat extends halfway around the base. The whiskers are held in place by twisted thread. Faceted blue, red, and amber beads are attached to the bases of most of the whiskers. Smaller blue and white beads are attached in various places along the length of some of the whiskers. The hat is topped with four cylinders surmounted by a four-scrolled finial, all made of brass.

The brass hat was procured by George Thorton Emmons at an unknown date. In 1894, the American Museum of Natural History acquired the brass hat from Mr. Emmons and accessioned this cultural item into its collection the same year.

The cultural affiliation of this item is Sitka Tlingit as indicated by museum records and by representatives of Central Council Tlingit and Haida Indian Tribes of Alaska during consultation. Central Council Tlingit and Haida Indian Tribes of Alaska has filed a claim for this cultural item on behalf of the Kiks.adi Clan of Sitka. Museum records and consultation with Central Council Tlingit and Haida Indian Tribes of Alaska indicate that the brass hat was given to a Sitka Kiks.adi Clan chief.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001, Sec. 2

(3)(D), this cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between this object of cultural patrimony and Central Council Tlingit and Haida Indian Tribes of Alaska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Craig Morris, Acting Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769-5883, before April 7, 2003. Repatriation of this object of cultural patrimony to Central Council Tlingit and Haida Indian Tribes of Alaska on behalf of the Kiks.adi Clan may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying Central Council Tlingit and Haida Indian Tribes of Alaska, Sealaska Corporation, and Sitka Tribe of Alaska that this notice has been published.

Dated: January 21, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5508 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S****DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, Department of the Army, Fort Benning, GA; Correction****AGENCY:** National Park Service, Interior.**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, Department of the Army, Fort Benning, GA. These human remains and associated funerary objects were removed from various sites in Chattahoochee, Muscogee, and Russell Counties, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the list of Native American tribes to which these human remains and associated funerary objects are affiliated. The Chickasaw Nation, Oklahoma was inadvertently omitted from the last two paragraphs of a Notice of Inventory Completion published in the **Federal Register** on August 29, 2002 (FR Doc. 02-22000, pages 55426-55428).

Paragraphs 16 and 17 are corrected by substituting the following paragraphs:

Based on the above-mentioned information, officials at Fort Benning and the U.S. Army installation staff, U.S. Army Engineer District, St. Louis, Mandatory Center of Expertise for the Curation and Management of Archaeological Collections have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 25 individuals of Native American ancestry. Officials at Fort Benning and the U.S. Army installation staff, U.S. Army Engineer District, St. Louis, Mandatory Center of Expertise for the Curation and Management of Archaeological Collections have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 1,551 funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials at Fort Benning and the U.S. Army installation staff, the U.S. Army Engineer District, St. Louis, Mandatory Center of Expertise for the Curation and Management of Archaeological Collections have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can reasonably be traced between these Native American human remains and associated funerary objects and the Muscogee-speaking people who inhabited the region prior to their removal to Oklahoma and elsewhere in 1836, namely the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chickasaw Nation, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole

Nation of Oklahoma; Seminole Tribe of Florida; and Thlopthlocco Tribal Town, Oklahoma.

This notice has been sent to officials of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chickasaw Nation, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida; and Thlopthlocco Tribal Town, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Christopher E. Hamilton, Attention: ATZB-ELN-E, Cultural Resource Manager, Fort Benning, GA 31905-5000, telephone (706) 545-2377, before April 7, 2003. Repatriation of the human remains and associated funerary objects to the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chickasaw Nation, Oklahoma; Coushatta Tribe of Louisiana; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida; and Thlopthlocco Tribal Town, Oklahoma may proceed after that date if no additional claimants come forward.

Dated: December 12, 2002.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5506 Filed 3-6-03; 8:45 am]

BILLING CODE 4310-70-S

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Intent to Repatriate a Cultural Item: Field Museum of Natural History, Chicago, IL**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate a cultural item in the possession of the Field Museum of Natural History, Chicago, IL, that meets the definition of "sacred object" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a Thunder Clan War Bundle, which consists of a club, a pipe and rest, 13 whistles, animal skins, 3 small containers, a fire drill, a headpiece, and a rattle.

The museum purchased the war bundle in 1926 in Winnebago, NE, from Oliver La Mere, a member of the Winnebago Tribe of Nebraska. The museum accessioned the war bundle into its collection the same year.

The war bundle is culturally affiliated with the Ho-Chunk people, who are now the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. In a letter dated April 20, 1998, the Winnebago Tribe of Nebraska advised the museum that, "[t]he Repatriation Department, representing the Winnebago Tribe of Nebraska has agreed to let the Ho-Chunk Nation of Wisconsin repatriate the sacred Thunder Clan War Bundle (Catalog No. 155613) from the Chicago Field Museum in Chicago. The Winnebago Tribe has agreed that all War Bundles go back to Wisconsin, even though they come from Nebraska, because the Ho-Chunk Nation still does War Bundle ceremonies." Based on this letter and other information provided to the museum by the Ho-Chunk Nation of Wisconsin, it is the museum's understanding that the Winnebago Tribe of Nebraska no longer practices the traditional ways of the Ho-Chunk people and that the Winnebago Tribe of Nebraska will not seek repatriation of the war bundle pursuant to NAGPRA.

Officials of the museum have determined that, pursuant to 25 U.S.C., Sec. 2 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Officials of the museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between the war bundle and the Winnebago Tribe of Nebraska and the Ho-Chunk Nation of Wisconsin.

Officials of the museum recognize that the war bundle is significant to the Ho-Chunk Nation of Wisconsin, and assert that the museum has right of possession of the war bundle. However,

the museum has reached an agreement with the Ho-Chunk Nation of Wisconsin that will allow the museum to return the war bundle to the tribe pursuant to the compromise of claim provisions of the museum's repatriation policy. The museum will return the war bundle to the Ho-Chunk Nation of Wisconsin in reliance upon passage by the Ho-Chunk Nation Legislature on November 4, 2002, of Resolution #11-04-02B, "Tribal Property Rights of Repatriated Items," which identifies the war bundle as a sacred object and provides that any object repatriated to the Ho-Chunk Nation of Wisconsin shall be considered property of the Ho-Chunk Nation of Wisconsin and shall be inalienable from the tribe.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7829, before April 7, 2003. Repatriation of this sacred object to the Ho-Chunk Nation of Wisconsin may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska that this notice has been published.

December 17, 2002.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5514 Filed 3-6-02; 8:45 am]

BILLING CODE 4310-70-S

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains in the possession of the Horner Collection, Oregon State University, Corvallis, OR. These human remains were removed from Crescent City, Del Norte County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Horner Collection professional staff in consultation with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Elk Valley Rancheria, California; and Smith River Rancheria, California.

In 1892, human remains representing one individual were removed from an unknown site in Crescent City, CA. The human remains consist of a skull, on which is written "1892 Crescent City Cal Indian Skull." The skull was included as part of the Dr. J.L. Hill collection, which was acquired from Dr. Hill's daughter in 1925. It is unknown how Dr. Hill acquired these human remains and no provenance documentation is available other than the writing on the skull. No known individual was identified. No associated funerary objects are present.

Smith River Rancheria, California believes the skull to be that of a Tolowa person. The territory of the Tolowa people extended from Wilson Creek in southern Del Norte County, CA, northward along the coast to the Sixes River, OR, and eastward to the crest of the Coast Range. The Crescent City area was heavily occupied by Tolowa people well into historical times. The Smith River Rancheria, California includes approximately 900 enrolled Tolowa members.

Officials of the Horner Collection have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Horner Collection also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2(2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Smith River Rancheria, California.

The Smith River Rancheria, California submitted a request for repatriation of these human remains. The Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; and Elk Valley Rancheria, California have indicated either verbally or in writing that they agree that the Smith River Rancheria, California is the appropriate claimant for these human remains.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Orcilia Forbes, Vice President for University Advancement, Oregon State University, 2 Gill Coliseum, Corvallis, OR 97331, telephone (541) 737-9260, before April 7, 2003. Repatriation of these human remains to the Smith River Rancheria, California may proceed after that date if no additional claimants come forward.

The Horner Collection is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of Siletz Reservation, Oregon; Elk Valley Rancheria, California; and Smith River Rancheria, California that this notice has been published.

Dated: January 14, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5505 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: Louisiana State University Museum of Natural Science, Baton Rouge, LA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Tunica-Biloxi Indian Tribe of Louisiana.

In 1934, human remains representing five individuals were excavated by Dr. James A. Ford at the Angola Farm site

(16WF002), West Feliciana Parish, LA. No known individuals were identified. The 7,899 funerary objects recovered during this excavation are 7,298 glass beads, 15 shell beads, 22 ceramic beads, 400 ceramic sherds, 14 metal gun fragments, 73 metal nails and stakes, 1 metal button, 19 metal pellets, 3 metal tinkers, 21 metal fragments, 20 lead balls, 4 lead pellets, 1 copper fragment, 2 pewter buckles, 4 glass fragments, and 2 stone objects.

In 1935 and 1939, Dr. Ford donated the human remains and associated funerary objects to the Louisiana State University Museum of Natural Science where they were curated until 1974 when they were loaned to Dr. Jeffrey Brain at the Peabody-Essex Museum, Salem, MA, for restudy. The human remains and associated funerary objects were returned to the Louisiana State University Museum of Natural Science in 2002.

On December 13, 2000, the National Park Service published a separate notice of inventory completion of behalf of Louisiana State University Museum of Natural Science for the remains of 1 individual and 11 associated funerary objects from the Angola Farm site (16WF002) (Federal Register Document 00-31658, pages 77907-77908).

Officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9) and 2 (10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A), the 7,899 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Curator of Anthropology, Louisiana State University Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578-6562, before April 7, 2003. Repatriation of the human remains and associated funerary objects

to the Tunica-Biloxi Indian Tribe of Louisiana may proceed after that date if no additional claimants come forward.

Dated: December 18, 2002.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5509 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items: Oakland Museum of California, Oakland, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate cultural items in the possession of the Oakland Museum of California, Oakland, CA, that meet the definition of "sacred objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural items are two 19th-century shamans' power figures (Oakland Museum of California accession number H18.781A-B). Both are carved from wood and depict human figures with a three-step facial structure and a skeletal body structure. The first figure (H81.781A) is carved with its hands on its belly and measures 18 inches by 1.5 inches by 1 inch. The second figure (H18.781B) is carved with its hands at its sides and measures 17 inches by 1.75 inches by 1.5 inches. It has inlaid shell eyes and a broken base.

Both figures were donated to the Oakland Public Museum (now Oakland Museum of California) in 1927 by Mrs. A. Ellwood Brown. It is unknown how and when Mrs. Brown acquired these figures. They originally were described and catalogued as coming from the Pacific Islands.

Modern researchers have identified these objects as Quinault shamans' figures. Lawrence Dawson of the Lowie Museum of Anthropology (now Phoebe A. Hearst Museum of Anthropology) at

the University of California, Berkeley, CA, identified the figures as shamans' wands originating from the Olympic Peninsula, WA. Dr. Robin Wright, Curator of Native American Art at the Burke Museum, University of Washington, Seattle, WA, described them as Quinault shamans' power figures. Similar objects are described as Quinault shamans' rattles by Ronald Olsen in his 1967 book, "The Quinault Indian. Adze, Canoe, and House Types of the Northwest Coast." Consultation evidence presented by representatives of the Quinault Tribe of the Quinault Reservation, Washington confirms that these figures are used in potlatches and other ceremonies, including the first salmon ceremony, the salmonberry feast, and the elk ceremony. Representatives of the Quinault Tribe of the Quinault Reservation, Washington have also stated that these objects are needed by traditional religious leaders for the practice of traditional Native American religions by their present-day adherents.

Officials of the Oakland Museum of California have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(C), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Oakland Museum of California also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and the Quinault Tribe of the Quinault Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects should contact Ms. Carey Caldwell, Curator of Special Projects, History Department, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607-4892, telephone (510) 238-3842, before April 7, 2003. Repatriation of these sacred objects to the Quinault Tribe of the Quinault Reservation, Washington may proceed after that date if no additional claimants come forward.

The Oakland Museum of California is responsible for notifying the Quinault Tribe of the Quinault Reservation, Washington that this notice has been published.

Dated: January 21, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5507 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion of Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 3, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. These human remains and associated funerary objects were removed from a gravesite near Kelseyville, Lake County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the number of associated funerary objects listed in paragraphs 4 and 6 of a Notice of Inventory Completion published in the **Federal Register** on November 22, 2000 (FR Doc. 00-29834, pages 70363-70364).

Paragraph 4 is corrected by substituting the following paragraph:

In 1908, human remains representing one individual were collected by Grace A. Nicholson, and donated to the Peabody Museum of Archaeology and Ethnology by Lewis H. Farlow. This individual had been identified as Captain Posh-ka of the Kuh-lah-na-pi Tribe of Pomo Indians. The 118 associated funerary objects are 10 lots of shell beads, 10 stone beads, 30 clam shells, 5 stone chips, 9 stone knives, 5 bone fragments, 3 ceramic fragments, 29 buttons, 9 nails, 3 metal toy fragments, 2 obsidian fragments, 2 stone pestles, and 1 stone mortar.

Paragraph 6 is corrected by substituting the following paragraph:

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that pursuant to 43 CFR 10.2 (d)(1), the human remains

listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that pursuant to 43 CFR 10.2 (d)(2), the 118 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (c), there is a relationship of shared group identity that can be reasonably traced between these human remains and associated funerary objects and the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California. This notice has been sent to officials of the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California, and the Lake County Inter-Tribal NAGPRA Consortium. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before April 7, 2003. Repatriation of the human remains and associated funerary objects to the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California may begin after that date if no additional claimants come forward.

Dated: December 17, 2002.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5504 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Sitka National Historical Park, Sitka, AK**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Sitka National Historical Park, Sitka, AK, that meet the definition of "objects of

cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the National Park unit that has control of these cultural items. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

The first object is a Russian blacksmith's hammer known as K'alyaan aayi tákl' or Katlian's Hammer. The hammerhead is iron, formed in a modified cylindrical shape. Rounded, hammered surfaces are at both ends, with a large crack running through the entire body near the top side. The hammer measures 14 centimeters long by 4.5 centimeters in diameter. An oval hole for a handle is in the middle of the length of the head. The handle is missing.

In 1972 Mrs. Mary Williams, a Kiks.ádi woman of Sitka, AK, sold the hammer to Sitka National Historical Park.

The claim asserting that the hammer is an object of cultural patrimony was filed by the Central Council of Tlingit and Haida Indian Tribes acting on behalf of the Kiks.ádi clan of Sitka, AK. Originally a Russian blacksmith's hammer, it was captured by the Kiks.ádi during their 1802 attack on the Russian fort at Old Sitka, and subsequently used by the Kiks.ádi warrior K'alyaan during the Kiks.ádi battle against the Russians in 1804 at the mouth of Indian River in Sitka. It is a Western object that took on ceremonial significance in Kiks.ádi memory, symbolizing their loss of life and resistance to domination. Oral history recordings and archival documentation at Sitka National Historical Park, as well as evidence provided by the Kiks.ádi clan of Sitka, confirm that the hammer has been and is of ongoing historical, traditional, or cultural importance to the clan and that no individual had the right to alienate it from clan ownership.

The second object is a Chilkat robe known as the Yaaw T'eiyí Naaxein or Herring Rock Robe. The robe is 5 feet 4 inches wide and 3 feet long at its deepest point, with a row of fringe 16 inches long along the bottom edge. It is woven of goat wool and cedar bark in the traditional manner. The crest design, woven in green, black, yellow, and white, represents the story of the Herring Rock in Sitka.

The robe was commissioned in the traditional manner by Mrs. Sally Hopkins of the Kiks.ádi clan and woven

by Mrs. Anna Klaney of Klukwan in 1938. It was passed from Mrs. Hopkins to her son, Peter Nielsen. Peter Nielsen sold the robe to Mr. Joe Ashby of Sitka in 1967, and Mr. Ashby sold the robe to the Mt. McKinley Natural History Association in 1969. The Mt. McKinley Natural History Association donated the robe to Sitka National Historical Park that year.

The claim asserting that the robe is an object of cultural patrimony was filed by the Central Council of Tlingit and Haida Indian Tribes acting on behalf of the Kiks.ádi clan of Sitka, AK. Oral history recordings, archival documentation, and historical photographs in the collection of Sitka National Historical Park and the Southeast Alaska Indian Cultural Center, as well as testimony provided by the Kiks.ádi clan of Sitka, identify the Herring Rock site, Herring Rock crest, Herring Rock story, and the Herring Rock robe as traditional property of the Kiks.ádi clan of Sitka. As an object of cultural patrimony, the Herring Rock Robe has been and is of ongoing historical, traditional, or cultural importance central to the clan itself. The clan also states that such property is held in perpetuity by the group, and may not be alienated by an individual clan member.

Officials of Sitka National Historical Park have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(D), these cultural items have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

Officials of Sitka National Historical Park also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these objects of cultural patrimony and the Central Council of Tlingit and Haida Indian Tribes acting on behalf of the Kiks.ádi clan of Sitka, AK.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects of cultural patrimony should contact Gary Gauthier, Superintendent, Sitka National Historical Park, P.O. Box 738, Sitka, AK 99835, telephone (907) 747-6281, before April 7, 2003. Repatriation of these objects of cultural patrimony to the Central Council of Tlingit and Haida Indian Tribes acting on behalf of the Kiks.ádi clan of Sitka, AK, may begin after that date if no additional claimants come forward.

Sitka National Historical Park is responsible for notifying the Central Council of Tlingit and Haida Indian Tribes acting on behalf of the Kiks.ádi

clan of Sitka, AK, that this notice has been published.

Dated: January 21, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5513 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items: Springfield Science Museum, Springfield, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate cultural items in the possession of the Springfield Science Museum, Springfield, MA, that meet the definition of "sacred objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The eight cultural items, removed from various locations in western Massachusetts, are a ceramic elbow pipe, a steatite elbow pipe, a steatite pipe with incised decoration, a clay tubular pipe stem, a worked bone tubular pipe, a steatite turtle pipe, a slate animal effigy pipe bowl, and a steatite platform pipe.

In 1929, L. Lamb donated a ceramic elbow pipe from an unknown site in South Hadley, Hampshire County, MA, to the Springfield Science Museum. The circumstances surrounding its removal from South Hadley are unknown. This pipe likely dates to the Late Woodland period (circa A.D. 1000-1580).

In 1982, the Springfield Science Museum acquired a steatite elbow pipe from an unknown site in Belchertown, Hampshire County, MA. This item was donated to the museum by C.W. Hull who purchased it from S. Grasso. The circumstances surrounding its removal from Belchertown are unknown. This pipe likely dates to the Late Woodland period (circa A.D. 1000-1580).

Also in 1982, the Springfield Science Museum acquired a steatite tubular pipe stem with incised decorations from an unknown site in Agawam, Hampden County, MA. This item was donated to the museum by C.W. Hull. The circumstances surrounding its removal from Agawam are unknown. This pipe likely dates to the Early Woodland period (circa 1000 B.C.-A.D. 600).

In 1986, the Springfield Science Museum acquired a clay tubular pipe stem and a worked bone tubular pipe, which had been removed from the Bark Wigwams site (MA site 19-HS-280), Northampton, Hampshire County, MA, by W.S. Rodimon. The year the objects were removed is unknown. The Bark Wigwams site likely dates to the Early Historic period (circa A.D. 1625-1637) based on the presence of Dutch trade beads recovered from the site.

Also in 1986, the Springfield Science Museum acquired a steatite turtle pipe, which had been removed from MA site 19-FR-24 in Deerfield, Franklin County, MA, by W.S. Rodimon. The year it was removed is unknown. The site in Deerfield likely dates to the Late Woodland and Contact periods (circa A.D. 1580-1700).

Also in 1986, the Springfield Science Museum acquired a slate animal effigy pipe removed from the Baptist Hill site in Palmer, Hampden County, MA, by C.W. Hull. The year it was removed is unknown. The Baptist Hill site likely dates to the Late Woodland and Contact periods (circa A.D. 1580-1700).

In 1986, the Springfield Science Museum acquired a steatite platform pipe removed from the Riverside Y-4 site (MA site 19-FR-269), Gill, Franklin County, MA, by W.S. Rodimon. The year it was removed is unknown. The site in Gill likely dates to the Middle Woodland period (circa A.D. 600-1000).

Based on the geographic location of these sites within the historically known homeland of the Mohican Indians, these pipes are most likely culturally affiliated with the Stockbridge Munsee Community, Wisconsin, also known as the Stockbridge Munsee Tribe of Mohican Indians. The Stockbridge Indians were removed from Massachusetts in the late 1700s. Mohican traditional religious leaders indicated during consultation that the pipes are needed for the practice of traditional Mohican religion by present-day adherents.

Officials at the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(C), these eight pipes are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native

American religions by their present-day adherents. Officials of the Springfield Science Museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and the Stockbridge Munsee Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects should contact David Stier, Director, Springfield Science Museum, 220 State Street, Springfield, MA 01103, telephone (413) 263-6800, extension 321, before April 7, 2003. Repatriation of these sacred objects to the Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The Springfield Science Museum is responsible for notifying the Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: January 24, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5511 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: Springfield Science Museum, Springfield, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of the Springfield Science Museum, Springfield, MA. These human remains and associated funerary objects were removed from various sites in Florida.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of the Miccosukee Tribe of Indians of Florida.

In 1906, human remains consisting of one bone fragment, representing one individual, were removed from Rice Creek Mound (Florida site #8PU2), Putnam County, FL, by J.T. Bowne. These human remains were donated to the Springfield Science Museum in 1925 by Mr. Bowne. No known individual was identified. No associated funerary objects are present. Two projectile points collected from the shell mound have been identified as Putnam and Levy stemmed varieties, dating the shell mound to the Archaic period (5000-1000 B.C.).

In 1906, human remains consisting of 10 bone fragments, representing a minimum of 1 individual, were removed from a shell mound on the east bank of the St. Johns River, 5 miles west of Enterprise, Seminole County, FL, by J.T. Bowne. These remains were donated to the Springfield Science Museum in 1925 by Mr. Bowne. No known individual was identified. No associated funerary objects are present. According to the Florida State Archaeologist, this site is either the Mound Near Fort Florida (Florida site #8VO50) or Fort Florida Mound (Florida site #8V049), both of which date to the St. Johns II period (A.D. 750-1562).

In 1906, human remains consisting of 42 bone fragments, representing a minimum of 2 individuals, were removed from the Spring Grove Shell Mound (Florida site #VO55), Enterprise, Seminole County, FL, by J.T. Bowne. These human remains were donated to the Springfield Science Museum in 1925 by Mr. Bowne. No known individuals were identified. No associated funerary objects are present. According to the Florida State Archaeologist, this site dates to the Orange period (circa 2000-100 B.C.).

In 1906, human remains consisting of 41 bone fragments, representing a minimum of 1 individual, were removed from a burial mound at Ross Hummock, 3 miles south of Oak Hill, Volusia County, FL, by J.T. Bowne. These human remains were donated to the Springfield Science Museum in 1925 by Mr. Bowne. No known individual was identified. The four associated funerary objects are one turtle carapace fragment, two clam shells, and one fragment of St. Johns plain pottery, which suggest that the site dates to between 700 B.C. and A.D. 1562.

In 1906, human remains consisting of 15 bone fragments, representing a

minimum of 1 individual, and human remains consisting of 61 bone fragments, representing a minimum of 2 individuals, were removed from a shell mound in Oak Hill, Volusia County, FL, by J.T. Bowne. These human remains were donated to the Springfield Science Museum in 1925 by Mr. Bowne. No known individuals were identified. No associated funerary objects are present. According to the Florida State Archaeologist, the site is either Florida site #VO125 or VO128, both of which date from the Mount Taylor period to the St. Johns period (circa 5000 B.C.-A.D. 1562).

In 1906, human remains consisting of 31 bone fragments, representing a minimum of 3 individuals, were removed from the Hernandez Shell Mound (Cotton site) (Florida site #8VO83), Ormond, Volusia County, FL, by J.T. Bowne. These human remains were donated to the Springfield Science Museum in 1925 by Mr. Bowne. No known individuals were identified. No associated funerary objects are present. According to the Florida State Archaeologist, fragments of Orange plain, Orange incised, St. Johns plain, St. Johns incised, St. Johns cord-marked, and St. Johns check-stamped pottery recovered from the site suggest that the site dates from 1500 B.C. to A.D. 1562.

In 1909, human remains consisting of seven bone fragments, representing a minimum of two individuals, were removed from a shell mound in Everglades, Collier County, FL, by L.J. Sikes. These human remains were donated to the Springfield Science Museum in 1928 by Mr. Sikes. No known individuals were identified. No associated funerary objects are present. Ten fragments of St. Johns plain pottery collected in the vicinity of the graves place the age of the site between 500 B.C. and A.D. 1562.

In 1912, human remains consisting of 35 bone fragments, representing a minimum of 1 individual, were removed from the Orangedale Shell Mound (Florida site #8SJ21), St. Johns County, FL, by C.B. Moore and were donated to the Springfield Science Museum the same year. No known individual was identified. No associated funerary objects are present. According to the Florida State Archaeologist, the plain and stamped pottery recovered at the site dates to the St. Johns I and II periods and places the age of the site between 700 B.C. and A.D. 1562.

In 1912, human remains consisting of three bone fragments, representing a minimum of one individual, were removed from the Old Okahumpta Shell Mound (Florida site #LA57) near Old Okahumpta, Lake County, FL, by C.B.

Moore and were donated to the Springfield Science Museum the same year. No known individual was identified. The associated funerary objects are 14 shell beads. According to the Florida State Archaeologist, the site dates to the St. Johns II period (A.D. 750-1562).

The nine sites listed above are located within the known territory historically occupied by the Miccosukee Indians. During consultation, the sites were identified as earlier occupation areas by representatives of the Miccosukee Tribe of Indians.

Officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of a minimum of 15 individuals of Native American ancestry. Officials of the Springfield Science Museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A), the 18 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Miccosukee Tribe of Indians of Florida.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Stier, Director, Springfield Science Museum, 220 State Street, Springfield, MA 01103, telephone (413) 263-6800, extension 321, before April 7, 2003. Repatriation of these human remains and associated funerary objects to the Miccosukee Tribe of Indians of Florida may proceed after that date if no additional claimants come forward.

The Springfield Science Museum is responsible for notifying the Miccosukee Tribe of Indians of Florida that this notice has been published.

Dated: January 17, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5512 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Inventory Completion:  
University of Missouri—Columbia,  
Museum of Anthropology, Columbia,  
MO**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Missouri—Columbia, Museum of Anthropology, Columbia, MO. These human remains and funerary objects were removed from a site in Saline County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Missouri—Columbia professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; and Otoe-Missouria Tribe of Indians, Oklahoma.

Between 1939 and 1980, human remains representing a minimum of six individuals were removed from site 23SA002 (Utz site), Saline County, MO, during excavations conducted by University of Missouri—Columbia professional staff, supervised field school students, and volunteers of the Missouri Archaeological Society. No known individuals were identified. The 12 associated funerary objects are faunal remains, 5 pieces of debitage, and 6 pottery fragments.

Based on oral tradition, types of associated funerary objects, and historical documents, these individuals have been determined to be Native American. Based on radiocarbon dating, presence of trade objects, and historical documents, the Utz site has been identified as a village occupation estimated to date to approximately A.D. 1460-1712. Oral tradition, archeological evidence, and historical documents indicate that the Utz site was a village of the Missouri Tribe, and therefore,

the burials are reasonably believed to be culturally affiliated with the Otoe-Missouria Tribe of Indians, Oklahoma.

Officials of the University of Missouri—Columbia have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the University of Missouri—Columbia also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A), the 12 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Missouri—Columbia have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Otoe-Missouria Tribe of Indians, Oklahoma.

Additional human remains and funerary objects from the Utz site (23SA002) were described in two Notices of Inventory Completion published in the **Federal Register** July 18, 2000 (FR doc. 00-18137, page 44545), and April 3, 2001 (FR doc. 01-8175, pages 17732-17733), and were subsequently repatriated to the Iowa Tribe of Oklahoma on behalf of the Otoe-Missouria Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Michael O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri—Columbia, Columbia, MO 65211, telephone (573) 882-4421, before April 7, 2003. Repatriation of the human remains and associated funerary objects to the Otoe-Missouria Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

The University of Missouri—Columbia, Museum of Anthropology is responsible for notifying the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; and Otoe-Missouria Tribe of Indians, Oklahoma that this notice has been published.

Dated: December 10, 2002.

**John Robbins,**

*Assistant Director, Cultural Resources  
Stewardship and Partnerships.*

[FR Doc. 03-5515 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Inventory Completion: Walter  
Elwood Museum and the Greater  
Amsterdam School District,  
Amsterdam, NY**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of Walter Elwood Museum, Amsterdam, NY, and in the control of the Greater Amsterdam School District, Amsterdam, NY. These human remains and associated funerary objects were removed from a site in Montgomery County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Walter Elwood Museum professional staff in consultation with representatives of the Akwesasne Mohawk Nation.

In 1903 and 1904, human remains representing a minimum of four individuals were removed from the Wemp site (NYSM site #1100) near the hamlet of Fort Hunter in the town of Florida, Montgomery County, NY. The human remains were removed either by a farmer or a canal worker during gravel excavations to repair the Erie Canal, and subsequently were purchased by Mr. Max Reid. Mr. Reid's daughter, Mrs. Frazier Whitcomb, inherited the human remains from her father. In 1948, Mrs. Whitcomb donated the human remains to the Walter Elwood Museum. No known individuals were identified. The five associated funerary objects are pottery sherds.

The pottery sherds represent types common during the Late Woodland period that preceded the historic Mohawk settlement at Fort Hunter. The burials excavated at the Wemp site were located on a gravel ridge east of Fort Hunter where Mohawk groups established one of two remaining villages in the Mohawk Valley in the

early 18th century. The historically documented "Lower Mohawk Castle," also known as "Tionondoroge" or "Tehandaloga," is generally assumed to be associated with a settlement located near the confluence of the Schoharie Creek and the Mohawk River, which included the Wemp site cemetery. The Mohawk people established the settlement around 1710 and most had abandoned it by 1776.

Officials of the Walter Elwood Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of at least four individuals of Native American ancestry. Officials of the Walter Elwood Museum have also determined that, pursuant to 25 U.S.C. 3001, Sec. (3)(A), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Walter Elwood Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Akwesasne Mohawk Nation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Ronald E. Limoncelli, Superintendent, Greater Amsterdam School District, 11 Liberty Street, Amsterdam, New York 12101, telephone (518) 843-5217, before April 7, 2003. Repatriation of these human remains and associated funerary objects to the Akwesasne Mohawk Nation may proceed after that date if no additional claimants come forward.

The Walter Elwood Museum is responsible for notifying the Akwesasne Mohawk Nation that this notice has been published.

Dated: January 24, 2003.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 03-5510 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102-575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

*Date and Location:* The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting:

*Flagstaff, Arizona—March 28, 2003.*

The meeting will begin at 9:30 a.m. and conclude at 4 p.m. The meeting will be held at the Grand Canyon Monitoring and Research Center, 2255 N. Gemini Drive, Building #3 Conference Room, Flagstaff, Arizona.

*Agenda:* The purpose of the meeting will be to address the status of the humpback chub in the Colorado River. At the AMWG Meeting held on January 28-29, 2003, the following motion was passed: "AMWG meet in special session on or about April 1, 2003, to consider actions to implement a comprehensive research and management program for the HBC, and in the interim an ad hoc committee of AMWG, TWG, GCMRC, and science advisors develop recommendations and report to AMWG at the special session." In conjunction with that motion, the HBC Ad Hoc Group was formed and will present their report to the AMWG at the meeting. There will be no additional agenda items.

Time will be allowed for any individual or organization wishing to make formal oral comments (limited to 5 minutes) at the meeting.

To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524-3715; faxogram (801) 524-3858; e-mail at [dkubly@uc.usbr.gov](mailto:dkubly@uc.usbr.gov) at least FIVE (5) days prior to the meeting. Any written comments received will be

provided to the AMWG and TWG members.

**FOR FURTHER INFORMATION CONTACT:** Dennis Kubly, telephone (801) 524-3715; faxogram (801) 524-3858; or via e-mail at [dkubly@uc.usbr.gov](mailto:dkubly@uc.usbr.gov).

Dated: February 24, 2003.

**Randall V. Peterson,**

*Manager, Adaptive Management and Environmental Resources Division, Upper Colorado Regional Office.*

[FR Doc. 03-5393 Filed 3-6-03; 8:45 am]

**BILLING CODE 4310-MN-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-451]

### Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2002 Review

**AGENCY:** International Trade Commission.

**ACTION:** Institution of investigation and scheduling of hearing.

**SUMMARY:** Following receipt on February 20, 2003, of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332-451, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2002 Review.

*Background:* As requested by the USTR, in accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974 (1974 Act), and under section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary countries under the GSP for the following HTS subheadings: 0406.20.51, 0710.22.37, 0710.22.40, 0710.30.00, 0710.80.97 (pt.), 0710.80.9730, 0710.90.91, 0804.20.80, 1508.10.00, 1508.90.00, 1604.13.20, 1604.13.30, 2001.90.20, 2008.19.20, 2009.31.6020, 2009.39.6020, 2903.69.70 (pts.), 2917.12.10, 2921.43.15, 2921.43.80 (pt.), 2922.42.10, 7202.93.00 (pt.), 8108.20.0010, 8528.12.3224, 8528.12.3235, 8528.12.3250, and 8528.21.70. In providing its advice on these articles, the USTR asked that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act.

As requested by the USTR, in accordance with section 503(a)(1)(B), 503(e) and 131(a) of the Trade Act of 1974 (1974 Act), and under authority delegated by the President, delegated to the USTR by sections 4(c) and 8(c) of Executive Order 11846 of March 31, 1975, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for countries designated as least-developed beneficiary developing countries in general note 4(b)(i) of the HTS for the following HTS subheadings: 8211.91.20, 8215.99.01, 8215.99.10, and 8215.99.30. In providing its advice on these articles, the USTR asked that the Commission assume that the benefits of the GSP would apply to imports that would be normally excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act (an exemption from the application of the competitive need limits for the least-developed beneficiary developing countries is provided for in section 503(c)(2)(D) of the 1974 Act).

As requested under section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of Russia from eligibility for duty-free treatment under the GSP for HTS subheading 8108.90.60.

As requested under section 332(g) of the Tariff Act of 1930 and in accordance with section 503(d)(1)(A) of the 1974 Act, the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Argentina for 1508.10.00, 2009.31.6020, and 2009.39.6020; for Brazil for 2909.19.14, 7202.93.00, 8413.30.10, and 8708.99.67; for India for 7418.19.10, 7418.19.50, 9405.50.20, 9405.50.30, and 9405.50.40; for Kazakhstan for 7202.50.00 and 8108.20.0010; for Morocco for HTS subheadings 1604.13.20, 1604.13.30, and 2001.90.20; for Thailand for 8414.51.00 (pt.), 8528.12.28, and 8544.30.00; and for Turkey for 0813.10.00, and 7113.19.29.

With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of \$105,000,000.

As requested by the USTR, the Commission will seek to provide its advice not later than May 21, 2003.

**EFFECTIVE DATE:** February 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** (1) Project Manager, Cynthia B. Foreso (202-205-3348 or foreso@usitc.gov).

(2) Deputy Project Manager, Eric Land (202-205-3349 or land@usitc.gov). The above persons are in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202-205-3091 or wgearhart@usitc.gov.

**Public Hearing:** A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on April 8, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on March 17, 2003. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on March 20, 2003. Posthearing briefs should be filed with the Secretary by the close of business on April 14, 2003. In the event that no requests to appear at the hearing are received by the close of business on March 19, 2003, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1816) after March 19, 2003, to determine whether the hearing will be held.

**Written Submissions:** In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 14, 2003. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. The Commission may include such confidential business information in the report it sends to USTR. All submissions should be

addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

By order of the Commission.

Issued: March 3, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-5400 Filed 3-6-03; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731-TA-1015-1016 (Final)]**

### Polyvinyl Alcohol From Germany and Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-1015-1016 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Germany and Japan of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States.<sup>1</sup>

<sup>1</sup> For purposes of these investigations, the Department of Commerce has defined the subject merchandise as all polyvinyl alcohol ("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 these investigations:

- (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

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** February 26, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

(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 acetoacetyl late 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.

**Background**

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of polyvinyl alcohol from Germany and Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 5, 2002, by Celanese Chemicals, Ltd. of Dallas, TX and E.I. du Pont de Nemours & Co. of Wilmington, DE.

**Participation in the Investigations and Public Service List**

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff Report**

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 24, 2003, and a public version will be

issued thereafter, pursuant to section 207.22 of the Commission's rules.

**Hearing**

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 8, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 1, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 5, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written Submissions**

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 1, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 15, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 15, 2003. On May 30, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 3, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with

the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 3, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-5364 Filed 3-6-03; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[USITC SE-03-008]

### Sunshine Act Meeting Notice

#### AGENCY HOLDING THE MEETING:

International Trade Commission.

**TIME AND DATE:** March 17, 2003, at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-423 and 731-TA-1024-1028 (Preliminary) (Prestressed Concrete Steel Wire Strand from Brazil, India, Korea, Mexico, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on March 17, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before March 24, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 4, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-5599 Filed 3-5-03; 11:33 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day emergency notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; COPS Making Officer Redeployment Effective ("MORE") Grant Program Application Kit.

The Department of Justice Office of Community Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 14, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395-6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. Written comments and/or suggestions regarding additional information, including obtaining a copy of the proposed information collection instrument with instructions, should be directed to Gretchen DePasquale, 202-305-7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* COPS Making Officer Redeployment Effective ("MORE") Grant Program Application Kit.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Department of Justice, Office of Community Oriented Policing Services (COPS) *Form Number:* N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary State, local and Tribal law enforcement agencies. Other: University police, housing authorities, and school districts. Abstract: The information collected will be used by the COPS Office to determine whether law enforcement agencies are eligible for one year grants specifically targeted to provide funding for technology and equipment. The grants are meant to enhance law enforcement IT infrastructure and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 2,500 responses per year. The estimated amount of time required for the average respondent to respond is 26 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total number of annual burden hours associated with this collection is 65,000.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: February 27, 2003.

**Brenda Dyer,**

*Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03-5523 Filed 3-6-03; 8:45 am]

BILLING CODE 4410-AT-M

## DEPARTMENT OF JUSTICE

### Office of Justice Program

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: reinstatement, without change, of a previously approved collection for which approval has expired; COPS Universal Hiring Program (UHP) and COPS in Schools (CIS) Grant Applications.

The Department of Justice (DOJ), Office of Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 219, page 68885 on November 13, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

#### Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Universal Hiring Program and COPS in Schools Grant Applications.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None. Sponsoring component: Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local and tribal governments. Other: none. The COPS Office requests OMB approval of a reinstatement, without change, of a previously approved collection for which approval has expired. It will continue to be used by state, local and tribal jurisdictions to apply for federal funding which will be used to increase the number of sworn law enforcement positions in their law enforcement agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 3,500 respondents (or grantees): 2,000 respondents for the UHP, and 1,500 respondents for the CIS. The estimated amount of time required for the average respondent is 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 31,500 estimated burden hours associated with this collection: 18,000 annual burden hours for UHP, and 13,500 burden hours for CIS.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: February 27, 2003.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 03-5522 Filed 3-6-03; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

#### Solicitation for a Cooperative Agreement—"Executive Training for Women—Team Development"

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Solicitation for a cooperative agreement.

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC), announced the availability of funds in FY2003 for a cooperative agreement to fund the project, "Executive Training for Women—Team Building". This announcement, published in the **Federal Register** February 20, 2003, (Volume 68, Number 34, Page 8308-8311), is amended to clarify funding availability for FY2004.

*Funds Available:* The award amount will be limited to a maximum of \$175,000 (direct and indirect costs) \$100,00 will be paid in FY2003 and \$75,000 in FY2004.

*Number of Awards:* One (1).

*NIC Application Number:* 03P22. This number should appear as a reference line in the cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

*Catalog of Federal Domestic Assistance Number is:* 16.601, *Title:* Training and Staff Development.

*Executive Order 12372:* This program is not subject to the provisions of Executive Order 12372.

Dated: March 3, 2003.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 03-5524 Filed 3-6-03; 8:45 am]

BILLING CODE 4410-36-M

**DEPARTMENT OF JUSTICE****National Institute of Corrections****Solicitation for a Cooperative Agreement—"Best Practices in Prison Staffing Analysis"**

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Solicitation for a cooperative agreement.

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2003 for a cooperative agreement to fund the project "Prison Staffing Analysis." NIC will award a one year cooperative agreement to develop a training program, with accompanying materials, which can be used by state prisons to train their staff on how to conduct a prison staffing analysis; to examine staffing patterns and needs in women's prisons as well as special offender populations, such as units for the mentally ill and chronically ill, and to provide staffing recommendations for these units; and to identify best practices which are used in conducting a prison staffing analysis. A total of \$100,000 (direct and indirect costs) is reserved for this project commencing in fiscal year 2003.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. The recipient of the award will be selected through the competitive solicitation process.

**DATES:** Applications must be received by 4 p.m. Eastern Standard Time on April 25, 2003.

**ADDRESSES:** Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is still being delayed due to extensive screening procedures.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307-3106, extension 0 for pickup. Faxed or emailed applications will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** A copy of this announcement and the required application forms can be downloaded from the NIC Web page at [www.nicic.org](http://www.nicic.org) (Click on "cooperative agreements.") Hard copies of the announcement can be obtained by calling Rita Rippetoe at 1-800-995-

6423 extension 44222 or e-mail [rippetoe@bop.gov](mailto:rippetoe@bop.gov).

All technical or programmatic questions concerning this announcement should be directed to Madeline Ortiz, National Institute of Corrections. She can be reached by calling 1-800-995-6423 extension 30481 or by e-mail at [mmortiz@bop.gov](mailto:mmortiz@bop.gov).

**SUPPLEMENTARY INFORMATION:**

**Background:** The National Institute of Corrections has offered the training program, "Conducting Prison Staffing Analysis," over the last several years. Many participants have taken numerous ideas from this program back to their home agencies to implement within their institutions. The manuals used in the training programs are available to the field through the NIC Information Center. These manuals will help inform the applicant about the scope of the course work provided through those programs. In addition, the NIC Jails Division has produced a document and e-learning program regarding staffing analysis in jails which may also provide helpful information. The "Staffing Analysis Workbook for Jails" is available on the NIC Web site (<http://www.nicic.org>; click on "publications" then "jails"). For a CD of the e-learning training "Staffing Analysis for Jails" contact Sharon Floyd, NIC Prisons' Division, at 1-800-995-6423 ext 44072.

In 2002 the National Institute of Corrections' Prisons Division and Information Center conducted a survey of state corrections agencies on the subject of staffing needs and analysis of women's prisons as well as special offender population units, such as for the mentally ill and the chronically ill. The responses varied from state to state, however, the survey identified a clear need for different staffing requirements for these prison populations. Results of this survey will be available after March 15, 2003, on the NIC Web site (<http://www.nicic.org>).

Numerous changes in the correctional environment, such as budget reductions, changes in the characteristics of the workforce, changes in the demographics and characteristics of the inmate population, have created an even more pronounced need for assessing the current policies and procedures that systems have in place for establishing staffing patterns.

A goal of the Prisons Division is to provide the most current information to correctional managers regarding prison staffing analysis. Included in this project will be the compilation of relevant materials from past programs, the development of new information regarding staffing analysis for women's

prisons and special population units, and identification of "best practices" in the field of prison staffing analysis.

**Purpose:** To develop a training program which can be used by state prisons to train staff how to conduct a staffing analysis, to provide information on staffing analysis in women's prisons and special population units, and to identify "best practices" used in conducting staffing analysis by departments of corrections for state prisons.

**Scope of Work:** The awardee will research the NIC training materials, examine other sources of information regarding staffing analysis in prisons, and obtain specific information from various adult state and federal correction agencies to complete the following tasks:

1. Identify criteria required to conduct a valid staffing analysis in general male inmate populations, women's prisons populations, and for special populations such as mentally ill and chronically ill.
2. Update the assessment tool used in previous NIC programs as an example, not a model, of a comprehensive tool for assessing a correctional agency's staffing requirements. Examples of assessment instruments from other correctional systems that meet established criteria should also be considered and included in the training material if the awardee thinks advisable.
3. Provide an example, or examples, of staffing assessment instruments that may be used in women's prisons as well as special offender population units, such as for the mentally ill and the chronically ill. This can be done through identifying systems with existing formulas/strategies that meet established criteria, or the awardee may need to develop formulas/strategies.
4. Provide a comprehensive list of the range of issues that a correctional agency should address in their staffing plans. Provide sample policies and procedure that readers could use to improve their own.
5. Identify "best practices" which have been identified from state departments of corrections regarding staffing analysis for various types of offender populations.
6. Develop a training program, with all necessary materials, which can be used by a state prison to train staff on conducting a staffing analysis. The training materials are intended to be used on site at a prison without the necessity of an NIC instructor. The delivery method may include e-learning, self-explanatory course and workbook, in-house trainer delivered content, or other methods as identified by the awardee. The materials *must* be

amenable to delivery on site without outside/consultant expertise.

7. Compile relevant materials from previous NIC training programs and other sources on staffing analysis into a workbook which can be used as part of the developed training program.

8. Identify strategies that could be used to defend appropriate staffing levels in the climate of budget reductions. Case examples where staffing analysis have been used successfully to defend appropriate staffing levels should be included.

*Specific Requirements:* 1. The applicant must propose a project team which includes a person(s) with prison staffing analysis expertise and a person(s) with correctional management and operations experience. Documentation of the principal's and all team members relevant knowledge, skills, abilities, and specific experience related to carrying out the described tasks must be included in the application.

2. The person designated as project director must be the person who will manage the project on a day-to-day basis and who has full decision making authority to work with the NIC project manager. This person must have enough time dedicated to the project to assure they are available to direct the day-to-day activities of the project and to be available for collaboration with the NIC project manager.

3. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC. Specific examples of successful collaboration with NIC or other agencies will be helpful. The requirement, in federal law and policy, that NIC/the government agency be "substantially involved" in all aspects of the project work needs to be addressed in the proposal.

*Application Requirements:* Applications must be submitted using OMB Standard Form 424, Federal Assistance, and attachments. (Copies can be downloaded from the NIC Web page at <http://www.nicic.org/service/coop/default.htm>.) The applications should be concisely written, typed double-spaced and refer to the project by the "NIC Application Number;" and Title in this announcement.

Submit an original and six copies. The original should have the applicant's signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

The narrative portion of this cooperative agreement application should include, at a minimum:

1. A brief paragraph indicating the applicant's understanding of the purpose of this cooperative agreement;

2. One or more paragraphs detailing the applicants understanding of the history of and need for doing staffing analysis in prisons;

3. A brief paragraph summarizing the project goals and objectives;

4. A clear description of the methodology for project completion and achievement of its goals;

5. A clearly developed Project Plan which demonstrates how and when the various goals and objectives of the project will be achieved through its various activities so as to produce the required results;

6. A chart of measurable project milestones and time lines for the completion of each milestone;

7. A description of the qualifications of the applicant organization and each project staff direct experience in conducting staffing analysis should be highlighted;

8. A description of the staffing plan for the project, including the role of each project staff, the percentage of the time commitment for each (in days), the relationship among the staff (who reports to whom), and a statement from individual staff that they will be available to work on this project and meet the required level of experience.

9. A budget detailing all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed. The budget should be divided into object class categories as shown on application Standard Form 424A. A budget narrative must be included which explains how all costs were determined.

**Authority:** Public Law 93-415.

*Funds Available:* The award will be limited to a maximum of \$100,000 (direct and indirect costs). Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments. This project will be a collaborative venture with the NIC Prisons Division.

*Eligibility of Applicants:* An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individuals or team with expertise in the requested areas in order to successfully meet the objectives of this project.

*Review Considerations:* Applications received under this announcement will be subject to a 3- to 5-member Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number:* 03P25. This number should appear as a reference line in the cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

*Catalog of Federal Domestic Assistance Number is:* 16.601, *Title:* Training and Staff Development.

*Executive Order 12372:* This program is not subject to the provisions of Executive Order 12372.

Dated: March 3, 2003.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 03-5525 Filed 3-6-03; 8:45 am]

**BILLING CODE 4410-36-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94-283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chair of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 264.8 percent from its 1974 annual average of 147.7 to its 2002 annual average of 538.8. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 264.8 percent from its 1974 annual average of 100 to its 2002 annual average of 364.8.

Signed at Washington, DC on the 3rd day of March, 2003.

**Elaine L. Chao,**

*Secretary of Labor.*

[FR Doc. 03-5408 Filed 3-6-03; 8:45 am]

**BILLING CODE 4510-24-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,626]

#### Crowe Logging, Inc., Encampment, WY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2003, in response to a worker

petition filed by a company official on behalf of workers at Crowe Logging, Inc., Encampment, Wyoming.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of February 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5417 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,887]

#### General Binding Corporation, Notice of Termination of Investigation, De Forest, WI

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2003 in response to a worker petition filed on behalf of workers at General Binding Corporation, De Forest, Wisconsin.

The petitioning group of workers is covered by an earlier petition filed on January 31, 2003 (TA-W-50,813) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 21st day of February, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5420 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-41,799]

#### General Electric Industrial Systems, Salem, VA; Notice of Negative Determination Regarding Application for Reconsideration

By application received on September 30, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to

apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of General Electric Industrial Systems, Salem, Virginia was signed on September 3, 2002, and published in the **Federal Register** on September 23, 2002 (67 FR 59551).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at General Electric Industrial Systems, Salem, Virginia, engaged in activities related to production of drives and control systems, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act was not met. The contributed importantly test is generally demonstrated through a survey of customers of the workers' firm. Results of the survey revealed that customers did not increase their imports of competitive products during the relevant period. The subject firm did not import drives and control systems during the relevant period.

In requesting reconsideration, the petitioner(s) stated that their function as engineers merited separate consideration from the negative determination issued to production workers. This separate consideration appears to be based on the belief that their jobs had been shifted overseas and the understanding that "the moving of business functions overseas is the equivalent of importing products when U.S. jobs are eliminated."

The work conducted by the engineering group is considered a service. Since the engineering worker group was engaged in design and development and not the actual production of drive and control systems produced at the subject plant they do not meet the eligibility requirements under section 222 of the Trade Act of 1974, as amended. Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision under certification for TAA. If import impact had been established for the production workers of General Electric Industrial

Systems, only then, could the engineers be included in a certification for TAA.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of February 2003.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5415 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,775]

#### Harman Wisconsin, Inc., Prairie Du Chien, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2003 in response to a worker petition filed by a company official on behalf of workers at Harman Wisconsin, Inc., Prairie du Chien, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of February 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5418 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,779]

#### Jacobson Greenhouse, Inc. Spokane, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2003 in response to a worker petition filed by a company official on behalf of workers of Jacobson Greenhouse, Inc., Spokane, Washington.

The petitioning group of workers was separated from the Jacobson

Greenhouse, Inc., Spokane, Washington in January 1998, when the company ceased all its production. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of February, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5419 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

[TA-W-41,448]

**Ocwen Technology Xchange, Carlsbad, CA; Notice of Negative Determination Regarding Application for Reconsideration**

By application received on October 7, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on August 27, 2002, and published in the **Federal Register** on September 10, 2002 (67 FR 57456).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Ocwen Technology Xchange, Carlsbad, California was denied because the "contributed importantly" group eligibility requirement of Section 222(3)

of the Trade Act of 1974, as amended; was not met. The denial was based on evidence the workers developed software for e-commerce and software solutions used in the mortgage and real estate industries. The workers did not produce an article as required for certification under Section 222 of the Trade Act of 1974.

The petitioner alleges that software development activities conducted at the Carlsbad, California plant were shifted to an affiliated foreign source. The petitioner further states that the parent firm shipped the software that was in a later stage in the development back to the United States for quality adjustments to the software prior to the release of the software.

The Department considers the development stage of an article as a service activity. In the case of the workers identified as developing software, they were exclusively engaged in the development and design of a product, rather than the actual production of an article, they do not produce an article within the meaning of section 222(3) of the Trade Act of 1974.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 10th day of February 2003.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5414 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 17, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 17, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of February, 2003.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

**APPENDIX**

[Petitions Instituted Between 01/27/2003 and 01/31/2003]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,684	Producto Machine Company (Comp)	Bridgeport, CT	01/27/2003	01/24/2003
50,685	Elm Tex, Inc. (Comp)	Springfield, MA	01/27/2003	01/24/2003
50,686	First Source Furniture Group (Comp)	Halls, TN	01/27/2003	12/30/2002
50,687	Metso Paper (Wkrs)	Beloit, WI	01/27/2003	01/14/2003
50,688	Golden Northwest Aluminum (USWA)	The Dalles, OR	01/27/2003	01/15/2003

## APPENDIX—Continued

[Petitions Instituted Between 01/27/2003 and 01/31/2003]

TA-W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
50,689	F/V Wendy Anne (Comp)	Larsen Bay, AK	01/27/2003	01/24/2003
50,690	Pillsbury Company General Mills (Wkrs)	Denison, TX	01/27/2003	01/24/2003
50,691	Terry Wassillie (Comp)	Iliamna, AK	01/27/2003	01/24/2003
50,692	Findlay Industries (Comp)	Findlay, OH	01/27/2003	01/24/2003
50,693	Wards Cove Packing Company (Comp)	Seattle, WA	01/27/2003	01/15/2003
50,694	Modern Mold-Manufacturing, Inc. (MI)	Port Huron, MI	01/28/2003	01/17/2003
50,695	F/V Miss Maddison, Inc. (Comp)	Mercer Island, WA	01/28/2003	01/25/2003
50,696	Lustar Dyeing and Finishing (Comp)	Asheville, NC	01/28/2003	01/22/2003
50,697	F/V Able Mabel (Comp)	Sand Pt, AK	01/28/2003	01/25/2003
50,698	Motor Coach Industries, Inc. (IAM)	Pembina, ND	01/28/2003	01/24/2003
50,699	Jideco of Bardstown, Inc. (Comp)	Bardstown, KY	01/28/2003	01/22/2003
50,700	20th Century Machine (Comp)	Armada, MI	01/28/2003	01/21/2003
50,701	Midwest Electric Products, Inc. (Comp)	Mankato, MN	01/28/2003	01/24/2003
50,702	Motorola, Inc. (Wkrs)	Phoenix, AZ	01/28/2003	01/23/2003
50,703	Versa-Tool, Inc. (Wkrs)	Meadville, PA	01/28/2003	01/27/2003
50,704	Tarcon, Inc. (Wkrs)	Pulaski, WI	01/28/2003	01/09/2003
50,705	Rexam (NJ)	Mt. Holly, NJ	01/28/2003	01/27/2003
50,706	Oregon Steel Mills (Wkrs)	Portland, OR	01/28/2003	01/27/2003
50,707	Nippon Wiper Blade Co., Ltd. (Comp)	Petersburg, VA	01/28/2003	01/28/2003
50,708	Peace Industries, Ltd. (Comp)	Rolling Meadows, IL	01/28/2003	01/27/2003
50,709	Coilcraft, Inc. (Comp)	Cary, IL	01/28/2003	01/20/2003
50,710	F/V Kona Rose, Inc. (Comp)	Seattle, WA	01/28/2003	01/27/2003
50,711	F/V Capt. Anvis (Comp)	Manokatak, AK	01/28/2003	01/21/2003
50,712	F/V Mikna Rene (Comp)	Manokatak, AK	01/28/2003	01/21/2003
50,713	Jideco (Comp)	Farmington Hill, MI	01/28/2003	01/22/2003
50,714	F/V Missy Mary (Comp)	Manokatak, AK	01/28/2003	01/21/2003
50,715	F/V Aaron and Eric (Comp)	Manokatak, AK	01/28/2003	01/21/2003
50,716	F/V Miss Kristy (Comp)	Clark's Point, AK	01/28/2003	01/21/2003
50,717	F/V Echo 3 (Comp)	Clark's Point, AK	01/28/2003	01/21/2003
50,718	F/V Adrian D. (Comp)	Clark's Point, AK	01/28/2003	01/21/2003
50,719	Menasha Packaging Co., LLC (Comp)	Colona, MI	01/29/2003	01/23/2003
50,720	Siemens Business Services (Wkrs)	Mason, OH	01/29/2003	01/27/2003
50,721	CPM Electronic Industries (Wkrs)	Roseville, MI	01/29/2003	01/22/2003
50,722	Bickford Woodworking Products, Inc. (Comp)	Monmouth, ME	01/29/2003	01/23/2003
50,723	The Rival Company (Wkrs)	Sweet Springs, MO	01/29/2003	01/28/2003
50,724	Zimmerman Sign Company (Comp)	Longview, TX	01/29/2003	01/28/2003
50,725	Maxtor Corporation (Comp)	Shrewsbury, MA	01/29/2003	01/06/2003
50,726	Accuride International (Comp)	Santa Fe Spring, CA	01/29/2003	01/29/2003
50,727	United Defense (Comp)	York, PA	01/29/2003	01/28/2003
50,728	Delco Remy America, Inc. (UAW)	Anderson, IN	01/29/2003	01/27/2003
50,729	Rockshox, Inc. (Comp)	Colorado Spring, CO	01/29/2003	01/24/2003
50,730	PPG (Wkrs)	Troy, MI	01/29/2003	01/23/2003
50,731	Protectoseal Company (The) (IAMAW)	Bensenville, IL	01/29/2003	01/27/2003
50,732	Delphax Technologies, Inc. (Comp)	Minnetonka, MN	01/29/2003	01/27/2003
50,733	Nidec America Corporation (Comp)	Canton, MA	01/30/2003	01/29/2003
50,734	Genesis Designs (Comp)	Bend, OR	01/30/2003	01/29/2003
50,735	Kincaid Furniture Co., Inc. (Comp)	Lenoir, NC	01/30/2003	01/27/2003
50,736	Isola Laminate Systems (Comp)	LaCrosse, WI	01/30/2003	01/27/2003
50,737	Austin Powder Company (OR)	Bend, OR	01/30/2003	01/29/2003
50,738	Alcoa (Comp)	Massena, NY	01/30/2003	01/17/2003
50,739	Canron Construction Corporation (Wkrs)	Conlin, NY	01/30/2003	01/29/2003
50,740	Argus Services, Inc. (Comp)	Libby, MT	01/30/2003	01/21/2003
50,741	Consolidated Freightways, Inc. (MN)	Shoreview, MN	01/30/2003	01/29/2003
50,742	Tweel Home Furnishing (NJ)	Newark, NJ	01/30/2003	01/24/2003
50,743	Comp Air (Comp)	Sidney, OH	01/30/2003	01/16/2003
50,744	Warren Fabricating Corporation (Wkrs)	Niles, OH	01/30/2003	01/28/2003
50,745	Monaco Coach Corporation (OR)	Bend, OR	01/30/2003	01/29/2003
50,746	CSI Employment Services (IA)	Mt. Pleasant, IA	01/30/2003	12/10/2002
50,747	Temp Associates (IA)	Mt. Pleasant, IA	01/30/2003	12/10/2002
50,748	F/V Aldebaran (Comp)	Ketchikan, AK	01/30/2003	01/28/2003
50,749	Kimberly C. Peterson (Comp)	Kodiak, AK	01/30/2003	01/24/2003
50,750	F/V Roeboat (Comp)	Togiak, AK	01/30/2003	01/23/2003
50,751	F/V Anuskat (Comp)	Manokotak, AK	01/30/2003	01/21/2003
50,752	F/V Todd Andrew (Comp)	Togiak, AK	01/30/2003	01/23/2003
50,753	F/V Rainbow (Comp)	Manokotak, AK	01/30/2003	01/21/2003
50,754	F/V Areil Rochelle (Comp)	Manokotak, AK	01/30/2003	01/21/2003
50,755	F/V Centurion (Comp)	Manokotak, AK	01/30/2003	01/21/2003
50,756	F/V Camelot (Comp)	Togiak, AK	01/30/2003	01/23/2003
50,757	F/V Desiree Marie III (Comp)	Togiak, AK	01/30/2003	01/23/2003
50,758	F/V Maryna J. (Comp)	NakNek, AK	01/30/2003	01/24/2003

## APPENDIX—Continued

[Petitions Instituted Between 01/27/2003 and 01/31/2003]

TA-W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
50,759	Cape Menemikof (Comp)	Dillingham, AK	01/30/2003	01/27/2003
50,760	Joseph Wassily (Comp)	Clark's Point, AK	01/30/2003	01/21/2003
50,761	Nick J. Timurphy (Comp)	Dillingham, AK	01/30/2003	01/27/2003
50,762	Jerrold Wayne Braswell (Comp)	Dillingham, AK	01/30/2003	01/27/2003
50,763	Pfizer (CT)	Groton, CT	01/31/2003	01/30/2003
50,764	Permagrain Products, Inc. (Wkrs)	Karhaus, PA	01/31/2003	01/30/2003
50,765	Irving Forest Products (PACE)	Ashland, ME	01/31/2003	01/30/2003
50,766	Vishay Sprague Sanford (Comp)	Sanford, ME	01/31/2003	01/30/2003
50,767	Delta Airlines (Wkrs)	Atlanta, GA	01/31/2003	01/31/2003
50,768	F/V Maya Ann (Comp)	Anchorage, AK	01/31/2003	01/23/2003
50,769	Magic Fish Company (Comp)	False Pass, AK	01/31/2003	01/29/2003

[FR Doc. 03-5411 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-50,311]

**Relizon, Newark, OH; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 12, 2002 in response to a worker petition filed by a company official on behalf of workers at Relizon, Newark, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of February 2003.

**Richard Church,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5416 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[NAFTA-7622]

**Eaton Corporation, Rochester Hills, MI; Notice of Termination of Investigation**

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was

initiated on October 14, 2002 in response to a petition filed on behalf of workers at Eaton Corporation, Rochester Hills, Michigan.

The petitioners have requested that the petition be withdrawn. Consequently, the petition has been terminated.

Signed at Washington, DC, this 13th day of February, 2003.

**Linda G. Poole,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5413 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment and Training Administration**

[NAFTA-7616]

**Oneida Limited Silversmiths, Sherrill, NY; Notice of Termination of Investigation**

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 8, 2002, in response to a petition filed on behalf of workers at Oneida Limited Silversmiths, Sherrill, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of February, 2003.

**Linda G. Poole,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03-5412 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-30-P

**DEPARTMENT OF LABOR****Employment Standards Administration****Proposed Collection; Comment Request****ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed 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 program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Economic Survey Schedule (WH-1). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before May 6, 2003.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution

Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, E-mail [hbell@fenix2.dol-esa.gov](mailto:hbell@fenix2.dol-esa.gov). Please use only one method of transmission for comments (mail, fax, or Email).

#### SUPPLEMENTARY INFORMATION

##### I. Background

Sections 5, 6(a)(3) and 8 of the Fair Labor Standards Act (FLSA), administered by the Wage Hour Division, provide that covered, nonexempt employees in American Samoa may be paid a minimum wage rate established by a special industry committee. The committee is to recommend to the Secretary of Labor the highest minimum wage rate (not to exceed the rate required under section 6(a)(1) of the FLSA) that it will not substantially curtail employment in the industry and will not give any industry in American Samoa a competitive advantage over any other industry in the United States outside of American Samoa. The Secretary of Labor must submit to the industry committee economic data to enable the committee to recommend the industry wage rates. The Economic Survey Schedule (WH-1) is a voluntary use form completed by employers in American Samoa to disclose certain economic data concerning their establishment.

This information collection is currently approved for use through August 31, 2003.

##### 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 estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

##### III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to gather information necessary to prepare the required economic report to be used by the committee to set industry wage rates in American Samoa.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Economic Survey Schedule.

*OMB Number:* 1215-0028.

*Agency Number:* WH-1.

*Affected Public:* Business or other for-profit and State, Local or Tribal Government.

*Total Respondents:* 55.

*Total Responses:* 55.

*Time per Response:* 45 minutes.

*Frequency:* Biennially.

*Estimated Total Burden Hours:* 41.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 3, 2003.

**Sue Blumenthal,**

*Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 03-5409 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-27-P

#### DEPARTMENT OF LABOR

##### Employment Standards Administration

##### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed 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 program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Wage Statement (WH-501 (English) and WH-501S (Spanish)). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before May 6, 2003.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, E-mail [hbell@fenix2.dol-esa.gov](mailto:hbell@fenix2.dol-esa.gov). Please use only one method of transmission for comments (mail, fax, or E-mail).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and its regulations 29 CFR part 500 requires that each Farm labor contractor, agricultural employer, and agricultural association that employs any migrant or seasonal worker, make, keep, and preserve itemized records for three years for each worker. These records include the basis on which earnings are paid, the number of piece work units earned, if applicable, the number of hours worked, the total pay period earnings, the specific sums withheld and the purpose of each sum withheld, and the net pay. It is also required that an itemized written statement of this information be provided to each worker each pay period. The WH-501 (English) and WH-501S (Spanish) are optional forms which an employer may use for this purpose. This information collection is currently approved for use through August 31, 2003.

##### 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 estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to determine compliance with applicable provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). While use of the forms is optional, disclosure and maintenance of the information is required by MSPA.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Wage Statement.

*OMB Number:* 1215-0148.

*Agency Number:* WH-501 (English) and WH-501S (Spanish).

*Affected Public:* Farms; Business or other for-profit; Individuals or households.

*Total Respondents:* 1.4 million.

*Total Responses:* 34 million.

*Time per Response:* 1 minute.

*Frequency:* Recordkeeping; Third party disclosure, Reporting on occasion.

*Estimated Total Burden Hours:* 566,667.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 3, 2003.

#### Sue Blumenthal,

*Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 03-5410 Filed 3-6-03; 8:45 am]

BILLING CODE 4510-27-P

## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

#### Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

##### Volume I:

##### Connecticut

CT020001 (Mar. 1, 2002)

CT020004 (Mar. 1, 2002)

CT020005 (Mar. 1, 2002)

##### Massachusetts

MA020001 (Mar. 1, 2002)

MA020002 (Mar. 1, 2002)

MA020003 (Mar. 1, 2002)

MA020005 (Mar. 1, 2002)

MA020007 (Mar. 1, 2002)

MA020012 (Mar. 1, 2002)

MA020013 (Mar. 1, 2002)

MA020017 (Mar. 1, 2002)

MA020018 (Mar. 1, 2002)

MA020019 (Mar. 1, 2002)

MA020020 (Mar. 1, 2002)

MA020021 (Mar. 1, 2002)

##### Maine

ME020001 (Mar. 1, 2002)

ME020002 (Mar. 1, 2002)

ME020005 (Mar. 1, 2002)

##### New Jersey

NJ020002 (Mar. 1, 2002)

NJ020003 (Mar. 1, 2002)

NJ020005 (Mar. 1, 2002)  
 New York  
 NY020003 (Mar. 1, 2002)  
 Rhode Island  
 RI020001 (Mar. 1, 2002)  
 Vermont  
 VT020001 (Mar. 1, 2002)  
 VT020011 (Mar. 1, 2002)

*Volume II*

Virginia  
 VA020018 (Mar. 1, 2002)  
 VA020025 (Mar. 1, 2002)  
 VA020026 (Mar. 1, 2002)  
 VA020076 (Mar. 1, 2002)  
 VA020080 (Mar. 1, 2002)  
 VA020084 (Mar. 1, 2002)

*Volume III*

Florida  
 FL020017 (Mar. 1, 2002)  
 FL020045 (Mar. 1, 2002)  
 FL020103 (Mar. 1, 2002)

Georgia  
 GA020004 (Mar. 1, 2002)  
 GA020036 (Mar. 1, 2002)  
 GA020053 (Mar. 1, 2002)

Kentucky  
 KY020002 (Mar. 1, 2002)  
 KY020004 (Mar. 1, 2002)  
 KY020007 (Mar. 1, 2002)  
 KY020029 (Mar. 1, 2002)

Mississippi  
 MS020055 (Mar. 1, 2002)  
 MS020056 (Mar. 1, 2002)

*Volume IV*

Illinois  
 IL020010 (Mar. 1, 2002)  
 IL020002 (Mar. 1, 2002)  
 IL020003 (Mar. 1, 2002)  
 IL020004 (Mar. 1, 2002)  
 IL020005 (Mar. 1, 2002)  
 IL020007 (Mar. 1, 2002)  
 IL020008 (Mar. 1, 2002)  
 IL020009 (Mar. 1, 2002)  
 IL020011 (Mar. 1, 2002)  
 IL020012 (Mar. 1, 2002)  
 IL020013 (Mar. 1, 2002)  
 IL020014 (Mar. 1, 2002)  
 IL020015 (Mar. 1, 2002)  
 IL020016 (Mar. 1, 2002)  
 IL020017 (Mar. 1, 2002)  
 IL020018 (Mar. 1, 2002)  
 IL020026 (Mar. 1, 2002)  
 IL020040 (Mar. 1, 2002)  
 IL020041 (Mar. 1, 2002)  
 IL020049 (Mar. 1, 2002)

Indiana  
 IN020002 (Mar. 1, 2002)  
 IN020004 (Mar. 1, 2002)  
 IN020005 (Mar. 1, 2002)  
 IN020006 (Mar. 1, 2002)  
 IN020007 (Mar. 1, 2002)

Ohio  
 OH020002 (Mar. 1, 2002)  
 OH020023 (Mar. 1, 2002)  
 OH020028 (Mar. 1, 2002)  
 OH020029 (Mar. 1, 2002)  
 OH020037 (Mar. 1, 2002)

*Volume V*

Iowa  
 IA020008 (Mar. 1, 2002)  
 IA020024 (Mar. 1, 2002)  
 IA020031 (Mar. 1, 2002)  
 IA020037 (Mar. 1, 2002)

Kansas  
 KS020002 (Mar. 1, 2002)  
 KS020007 (Mar. 1, 2002)  
 KS020008 (Mar. 1, 2002)  
 KS020013 (Mar. 1, 2002)  
 KS020015 (Mar. 1, 2002)  
 KS020017 (Mar. 1, 2002)  
 KS020018 (Mar. 1, 2002)  
 KS020019 (Mar. 1, 2002)  
 KS020020 (Mar. 1, 2002)  
 KS020021 (Mar. 1, 2002)  
 KS020023 (Mar. 1, 2002)  
 KS020026 (Mar. 1, 2002)  
 KS020028 (Mar. 1, 2002)  
 KS020029 (Mar. 1, 2002)  
 KS020035 (Mar. 1, 2002)

Texas  
 TX020010 (Mar. 1, 2002)

*Volume VI*

Alaska  
 AK020001 (Mar. 1, 2002)

Colorado  
 CO020002 (Mar. 1, 2002)  
 CO020003 (Mar. 1, 2002)  
 CO020004 (Mar. 1, 2002)  
 CO020005 (Mar. 1, 2002)  
 CO020007 (Mar. 1, 2002)

Idaho  
 ID020001 (Mar. 1, 2002)  
 ID020002 (Mar. 1, 2002)  
 ID020013 (Mar. 1, 2002)  
 ID020014 (Mar. 1, 2002)

Oregon  
 OR020002 (Mar. 1, 2002)

Washington  
 WA020001 (Mar. 1, 2002)  
 WA020002 (Mar. 1, 2002)  
 WA020007 (Mar. 1, 2002)

Wyoming  
 WY020008 (Mar. 1, 2002)  
 WY020009 (Mar. 1, 2002)  
 WY020023 (Mar. 1, 2002)

*Volume VII*

California  
 CA020001 (Mar. 1, 2002)  
 CA020002 (Mar. 1, 2002)  
 CA020004 (Mar. 1, 2002)  
 CA020009 (Mar. 1, 2002)  
 CA020013 (Mar. 1, 2002)  
 CA020019 (Mar. 1, 2002)  
 CA020023 (Mar. 1, 2002)  
 CA020025 (Mar. 1, 2002)  
 CA020027 (Mar. 1, 2002)  
 CA020028 (Mar. 1, 2002)  
 CA020029 (Mar. 1, 2002)  
 CA020030 (Mar. 1, 2002)  
 CA020031 (Mar. 1, 2002)  
 CA020033 (Mar. 1, 2002)  
 CA020035 (Mar. 1, 2002)  
 CA020036 (Mar. 1, 2002)  
 CA020037 (Mar. 1, 2002)

Hawaii  
 HI020001 (Mar. 1, 2002)

**General Wage Determination Publication**

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This

publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printed Office site at <http://www.access.gpo.gov/davisbacon>. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27 day of February 2003.

**Carl J. Poleskey,**  
*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 03-5119 Filed 3-6-03; 8:45 am]

**BILLING CODE 4510-27-M**

**NATIONAL SCIENCE FOUNDATION****Advisory Committee for mathematical and Physical Sciences; Notice of Meeting**

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Mathematical and Physical Sciences (66).  
*Date/Time:* April 3, 2003, 8 a.m.-6 p.m. April 4, 2004, 8 a.m.-3 p.m.  
*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.  
*Type of Meeting:* Open.

*Contact Person:* Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292-8807.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

*Agenda:*

Briefing on current status of Directorate. Update and Discussion of MPS Long-term Planning Activities.

Review by MPSAC of Committee of Visitors Report for The Division of Physics.

Meeting of MPSAC with Divisions within MPS Directorate.

*Summary Minutes:* May be obtained from the contact person listed above.

Dated: March 4, 2003.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. 03-5426 Filed 3-6-03; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-313 and 50-368]

### Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Renewed Facility Operating License (FOL) No. DPR-51 and FOL No. NPF-6, issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One (ANO), Units 1 and 2 (ANO-1 and ANO-2), respectively, located in Pope County, Arkansas.

The proposed amendments would allow the licensee to use the spent fuel crane (L-3 crane) to lift heavy loads in excess of 100 tons. Specifically the licensee is requesting approval to use the upgraded L-3 crane for loads up to a total of 130 tons.

The amendment application was submitted on an exigent basis because the need for a license amendment was identified as a result of recent discussions between the licensee and NRC staff. The licensee had previously believed that prior NRC approval was not required to use the upgraded L-3 crane for heavy loads in excess of 100 tons. Approval to use the upgraded L-3 crane on an exigent basis is necessary for several reasons, including: (1) Numerous activities associated with

loading and un-loading the cask are required to be demonstrated by the user prior to the first usage with spent fuel, in accordance with the certificate of compliance for the new spent fuel storage cask system; (2) prior to the certificate-required demonstrations, detailed checkout of the equipment and sufficient training, including on-the-job use of the equipment, must occur to provide assurance of craft and supervisory proficiency; (3) there is insufficient space in the ANO-2 spent fuel pool and dry storage racks to store all of the fuel required for the fall 2003 ANO-2 refueling outage, unless at least one cask is loaded; (4) another cask needs to be loaded prior to the refueling outage to avoid having to perform an in-core shuffle of control element assemblies; and (5) the loading of one more cask (total of three) prior to the fall refueling outage, combined with storage spaces recovered as a result of installation of the new neutron poison panels, will ensure capability of full core discharge to the spent fuel pool following the refueling outage. The licensee provided a detailed timetable of the above activities which demonstrates over the next seven months the complexity involved with managing the spent fuel pool inventories. In addition, the licensee believes that the need to optimize pool storage space, the increased impact on the ANO-2 spent fuel pool activity management, and the possible constraints described above, creates a significant plant cost and fuel control concern. Therefore, the licensee has requested the proposed amendment be issued by March 31, 2003.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The potential load carrying capability of the new L-3 crane has been increased from 100 tons to 130 tons. The transporting of a spent fuel cask is the maximum load that the crane is designed to handle. The process for transporting of a cask is essentially unchanged from that previously performed. Once a cask is loaded with spent fuel it is lifted from the cask loading pit, transported to the hatch, and lowered to the railroad bay. This arrangement is such that the cask is never carried over the spent fuel pool. The transport height of the cask has been increased to a minimum of 1.5 feet and the impact limiters used under the previous cask transport process have been eliminated. Because the crane is single failure proof, a postulated cask drop is no longer a credible event; therefore, no [a]ffects on plant operation are anticipated to occur and the structural integrity of the spent fuel cask will not be impaired.

The probability of a load drop is reduced from that previously analyzed since the crane is single failure proof and the likelihood of a drop is no longer considered credible. If a portion of the L-3 lifting devices malfunction or fail, the crane system is designed such that the load will move a limited distance downward prior to backup restraints becoming engaged. An increased minimum transport height (1.5 feet) is established to accommodate this design feature. [A single malfunction or failure of a portion of the crane will prevent the load from being dropped. This will allow additional restrictions such as impact limiters to be removed. The radiological consequences will not be increased.] The impact on the spent fuel contained in the cask has been analyzed under an assumed dropped cask event and has been determined to be within design basis limits. Heavy loads are restricted from being moved over the spent fuel pools in accordance with ANO technical specifications.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The ANO Safety Analysis Reports (SARs) have previously analyzed the drop of a cask up to 100 tons. This was as a result of a potential spent fuel cask drop event. The cask load has been increased to 130 tons under the new single failure proof L-3 crane design for heavier casks being employed at ANO. This increased load could provide a more severe impact on safety related equipment that exists in areas below the load path if a load drop event were to occur. However, to ensure that no safety related equipment or control rooms are impacted, the construction of a single failure proof crane mitigates the potential for a more severe consequence to that already analyzed

in the ANO SARs, since a load drop event is not considered credible.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?  
*Response:* No.

The L-3 crane has been upgraded to comply with the single failure proof requirements of NUREG-0554, Single Failure Proof Cranes for Nuclear Power Plants and Revision 3 of NRC approved Ederer Topical Report EDR-1 dated October 8, 1982. To comply with the requirements of the topical report the crane was modified to provide additional load carrying capability and additional safety features to prevent a cask drop event. The safety margins provided by the new crane design have either remained the same or increased to ensure adequate safety margin to prevent failure of the crane or any lifting devices associated with the lifting of a spent fuel cask.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal**

**Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 2003, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject FOLs and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,<sup>1</sup> which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland, and available electronically on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no

<sup>1</sup> The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20885 published April 29, 2002."

significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 24, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents

Access and Management System's (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, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated in Rockville, Maryland, this 28th day of February, 2003.

For the Nuclear Regulatory Commission.

**Thomas W. Alexion,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-5352 Filed 3-6-03; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

[IA 02-049]

### **In the Matter of Mr. Donald Hinman; Order Prohibiting Involvement in NRC-Licensed Activities**

#### **I**

Mr. Donald Hinman (Mr. Hinman) was formerly Operations Manager of United Evaluation Services (UES) (Licensee), also previously known as Accurate Technologies Incorporated. UES was the holder of Byproduct Nuclear Material License No. 29-28358-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized UES to possess and use sealed sources for use in industrial radiography and depleted uranium for shielding material. The license, which was issued on November 16, 2001, was due to expire on November 30, 2011, but was subsequently terminated on January 6, 2003.

#### **II**

On September 25, 2001, an event occurred at the McShane facility in Baltimore, Maryland, involving a radiation injury to one of the Licensee's radiographers. This event was discussed with the Licensee on October 4, 2001. During the discussions, the NRC learned that the radiographer received a very significant radiation exposure to his hands in excess of regulatory limits (at a minimum, approximately 250-300 rem) while performing radiography at that facility. Since the facility was located in Maryland, an NRC Agreement State, the activities related to that

exposure were within the jurisdiction of the State of Maryland.

Although this event occurred while the radiographer was performing activities in an NRC Agreement State, the same equipment was possessed and used pursuant to an NRC license. Therefore, NRC inspections were conducted at the Licensee's facilities in New Jersey during October 2001. Subsequent inspections were also conducted in November 2001 and in May 2002. In addition, the NRC Office of Investigations conducted an investigation, between October 31, 2001, and August 14, 2002, of the Licensee's activities. Based on the inspection and investigation, the NRC has determined, among other things, that Mr. Hinman participated in the creation of false records, allowed an uncertified radiographer to conduct radiography without the presence of a certified radiographer, deliberately conducted radiography at an unauthorized location, and knowingly transported a radiography device without an end cap cover. Specifically, Mr. Hinman:

1. Participated in the creation of a false radiographer annual refresher training examination, dated September 1, 2001 (later changed to September 4, 2001). The examination, which was required to be maintained in accordance with 10 CFR 34.79, was inaccurate because it was not completed by the radiographer whose name was on the examination and it was not completed on the date indicated on the examination. Mr. Hinman's actions in causing this violation were deliberate because he directed an individual to take the exam for the radiographer. Mr. Hinman testified to the NRC, during an enforcement conference conducted on November 19, 2002, that he asked an assistant radiographer to take a refresher training examination for the radiographer on or about October 9, 2001. In addition, that assistant radiographer testified to the NRC, during an enforcement conference conducted on December 12, 2002, that Mr. Hinman asked him to take the test for the radiographer on or about October 9, 2001.

2. Deliberately conducted radiography at a non-licensed location (the licensee's facility located in Beachwood, New Jersey) on at least one occasion (January 18, 2002). The licensee's Beachwood facility was not an approved location to conduct radiography in accordance with 10 CFR 34.41(b). Mr. Hinman admitted to the NRC, during an enforcement conference conducted on November 19, 2002, that he performed radiography at that non-licensed location in Beachwood, New Jersey, and that he

knew at the time that he should not have done the radiography at this location because it was not a location authorized for radiography on the NRC license.

3. Knowingly transported a radiography camera from Tinton Falls, New Jersey, to Baltimore, Maryland, without an end cap. The end cap is required during transport in accordance with 10 CFR 34.20(c)(3). Mr. Hinman admitted to the NRC, during interviews with OI, that he transported (and used) the radiography camera during the week of September 24–28, 2001, and at the time, the camera did not have a required end cap in place, and he knew he could not use or transport the equipment without the end cap.

### III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. Based on the above, the NRC has concluded that Mr. Hinman, as the Operations Manager for the Licensee, violated 10 CFR 30.10. The violations are significant because during the conduct of radiography, there is potential to cause serious harm or injury if unqualified persons are involved in the performance of radiography.

### IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to maintain information that is complete and accurate in all material respects. Although the NRC has not found evidence that Mr. Hinman, who was also a radiographer, had deliberately violated any requirements while performing licensed activities as a radiographer, Mr. Hinman's deliberate violation of Commission regulations as the Operations Manager raises serious questions as to whether he can be relied upon to manage, supervise, or oversee any licensed activities to assure compliance with NRC requirements, including the requirement to maintain complete and accurate information.

Consequently, I lack the requisite reasonable assurance that the management, oversight, or supervision of licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Hinman were permitted at this time to be involved in the management,

oversight, or supervision of NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Mr. Hinman be prohibited from any management, oversight, or supervision of persons involved in NRC-licensed activities for a period of one year from the date of this Order. If Mr. Hinman is currently involved in the management, oversight, or supervision of NRC-licensed activities at any NRC licensed facility, Mr. Hinman must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

### V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. Donald Hinman is prohibited from managing, overseeing, or supervising NRC-licensed activities or individuals while they are engaged in licensed activities, including (but not limited to) the duties of a Radiation Safety Officer, for one (1) year effective from the issuance of this Order, except that Mr. Hinman may supervise an assistant radiographer when acting as a radiographer engaging in NRC licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Donald Hinman is currently involved in the management, oversight, or supervision of NRC-licensed activities, Mr. Hinman must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Hinman of good cause.

### VI

In accordance with 10 CFR 2.202, Donald Hinman must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in

writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order, and shall set forth the matters of fact and law on which Mr. Hinman or other person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Hinman if the answer or hearing request is by a person other than Mr. Hinman. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Assistant General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than Mr. Hinman requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).<sup>1</sup>

If a hearing is requested by Mr. Hinman or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final twenty

<sup>1</sup> The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

(20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 28th day of February, 2003.

**Carl J. Paperiello,**

*Deputy Executive Director for Materials, Research, and State Programs.*

[FR Doc. 03-5487 Filed 3-6-03; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[IA 02-048]

### In the Matter of Ms. Linda Monro; Order Prohibiting Involvement in NRC- Licensed Activities

#### I

Ms. Linda Monro (Ms. Monro) was formerly Assistant Radiation Safety Officer (RSO) of United Evaluation Services (UES) (Licensee), also previously known as Accurate Technologies Incorporated. UES was the holder of Byproduct Nuclear Material License No. 29-28358-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorized UES to possess and use sealed sources for use in industrial radiography and depleted uranium for shielding material. The license, which was issued on November 16, 2001, was due to expire on November 30, 2011, but was subsequently terminated on January 6, 2003.

#### II

On September 25, 2001, an event occurred at the McShane facility in Baltimore, Maryland, involving a radiation injury to one of the Licensee's radiographers. This event was discussed with the Licensee on October 4, 2001. During the discussions, the NRC learned that the radiographer received a very significant radiation exposure to his hands in excess of regulatory limits (at a minimum, approximately 250-300 rem) while performing radiography at that facility. Since the facility was located in Maryland, an NRC Agreement State, the activities related to that exposure were within the jurisdiction of the State of Maryland.

Although this event occurred while the radiographer was performing activities in an NRC Agreement State, the same equipment was possessed and used pursuant to an NRC license.

Therefore, NRC inspections were conducted at the Licensee's facilities in New Jersey during October 2001. Subsequent inspections were also conducted in November 2001 and in May 2002. In addition, the NRC Office of Investigations conducted an investigation, between October 31, 2001, and August 14, 2002, of the Licensee's activities. Based on the inspection and investigation, the NRC has determined, among other things, that Ms. Monro deliberately backdated or created false records of activities conducted at the facilities before the NRC inspection was initiated in October 2001. Specifically, Ms. Monro:

1. Created a Radiation Report, dated September 8, 2001, which indicated that Ms. Monro was the radiographer of record when radiography was performed on that date in Paulsboro, New Jersey. The report, which was required to be maintained pursuant to 10 CFR 34.71, was inaccurate in that the radiography was actually performed by another individual (who was not certified to perform radiography) rather than Ms. Monro. Ms. Monro's actions in creating this inaccurate report were deliberate in that Ms. Monro admitted, during an enforcement conference conducted on November 19, 2002, that she was not at the Paulsboro site on that date, and she knew, at the time she completed the inaccurate record, that she was not at the Paulsboro site on that date; testimony of other licensee employees confirmed that Ms. Monro did not perform radiography at the Paulsboro site on that date; and Ms. Monro testified to OI, during an interview on April 11, 2002, that she was not working with the Licensee from late August 2001 until September 18, 2001, and therefore she could not have performed radiography for the Licensee on September 8, 2001.

In addition, Ms. Monro created a Sign Out Log entry, dated September 8, 2001, which indicated that Ms. Monro was the radiographer using the exposure device to perform radiography work on that date. The Sign Out Log, which was required to be maintained pursuant to 10 CFR 34.85, was inaccurate in that the radiography survey was not performed by Ms. Monro. Ms. Monro's actions in creating this inaccurate record were deliberate in that Ms. Monro admitted, during an enforcement conference conducted on November 19, 2002, that she created the Sign Out Log record to support that she had performed the radiography on September 8, 2001, and the evidence shows she knew she had not performed the radiography on that date.

2. Created a Radiation Report, dated September 9, 2001, which indicated that Ms. Monro was the radiographer of record when radiography was performed on that date in Linden, New Jersey. The report, which was required to be maintained pursuant to 10 CFR 34.71, was inaccurate in that the radiography was actually performed by another individual rather than Ms. Monro. Ms. Monro's actions in creating this inaccurate report were deliberate in that Ms. Monro testified to OI that she was not working with the Licensee from late August 2001 until September 18, 2001, and therefore she could not have been performing radiography for the licensee on September 9, 2001. Further, another licensee employee testified that he performed the radiography at that location on that date, and Ms. Monro was not present. The evidence also shows she knew she had not performed the work on that date when she created the Radiation Report.

3. Created a Quarterly Field Audit record, dated September 8, 2001, which indicated that Ms. Monro conducted an audit of an assistant radiographer who was performing licensed activities at the Paulsboro site on September 8, 2001. The record, which was required to be maintained pursuant to 10 CFR 34.79, was inaccurate in that Ms. Monro was not at the Paulsboro site on that date. Ms. Monro's actions in creating this inaccurate record were deliberate in that Ms. Monro admitted, during an enforcement conference conducted on November 19, 2002, that she was not at the Paulsboro site on that date, and she knew at the time she completed the record that she had not conducted the audit.

4. Created a Radiation Monitoring Equipment Quarterly Inspection, Inventory and Assignment Log, dated September 10, 2001, which indicated that Ms. Monro completed a quarterly inspection of the licensee's radiation monitoring equipment. The log, which was required to be maintained pursuant to 10 CFR 34.73, was inaccurate in that Ms. Monro did not complete an inspection/inventory of the equipment on that date. Ms. Monro's actions in creating this inaccurate log were deliberate in that Ms. Monro admitted, during an interview with the OI investigator on April 11, 2002, that she signed the Log (which indicated that she conducted the inspection/inventory) even though she believed that it was conducted by someone other than herself; and Ms. Monro also testified to OI, during that interview on April 11, 2002, that she was not working with the Licensee from late August 2001 until September 18, 2001, and therefore she

could not have conducted the inspection/inventory on September 10, 2001.

### III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. Based on the above, the NRC has concluded that Ms. Monro, as the Assistant RSO of UES, violated 10 CFR 30.10. The violations are significant because the potential exists to cause serious harm or injury if unqualified persons are involved in the performance of radiography.

### IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to maintain information that is complete and accurate in all material respects. Although the NRC has not found evidence that Ms. Monro, who was also a radiographer, had deliberately violated any requirements while performing licensed activities as a radiographer, Ms. Monro's deliberate violation of Commission regulations as the Assistant RSO raises serious questions as to whether she can be relied upon to manage, supervise, or oversee any licensed activities to assure compliance with NRC requirements, including the requirement to maintain complete and accurate information.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Linda Monro were permitted at this time to be involved in the management, supervision, or oversight of NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Ms. Monro be prohibited from any management, supervision, or oversight of persons involved in NRC-licensed activities for a period of one year from the date of this Order. If Ms. Monro is currently involved in the management, supervision, or oversight of NRC-licensed activities at any NRC licensed facility, Ms. Monro must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

### V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. Linda Monro is prohibited from managing, supervising, or overseeing NRC-licensed activities or individuals while they are engaged in licensed activities, including (but not limited to) the duties of a Radiation Safety Officer, for one (1) year effective from the issuance of this Order, except that Ms. Monro may supervise an assistant radiographer when acting as a radiographer engaging in NRC licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Linda Monro is currently involved in the management, supervision, or oversight of NRC-licensed activities, Ms. Monro must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Monro of good cause.

### VI

In accordance with 10 CFR 2.202, Linda Monro must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Monro or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Ms. Monro if the answer or hearing request is by a person other than Ms. Monro. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Assistant General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than Ms. Monro requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).<sup>1</sup>

If a hearing is requested by Ms. Monro or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 28th day of February, 2003.

**Carl J. Paperiello,**

*Deputy Executive Director for Materials, Research, and State Programs.*

[FR Doc. 03-5488 Filed 3-6-03; 8:45 am]

**BILLING CODE 7590-01-P**

<sup>1</sup> The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-266 and 50-301]

**Nuclear Management Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Nuclear Management Corporation, LLC (the licensee), to withdraw its February 28, 2002, application for proposed amendment to Facility Operating License No. No. DPR-24 and DPR-27 for the Point Beach Nuclear Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

The proposed change would have modified Technical Specification (TS) 1.1, "Definitions," "CREFS Actuation Instrumentation," TS 3.4.16, "RCS Specific Activity," TS 3.7.9, "CREFS," and TS 3.7.13, "Secondary Specific Activity." The proposed change would have also deleted TS 3.9.3, "Containment Penetrations." The accident source term used in the selection of the design-basis offsite and control room dose analysis would have been replaced by the implementation of an alternative source term.

The Commission had previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on April 15, 2002 (67 FR 18646). However, by letter dated January 24, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 28, 2002, and the licensee's letter dated January 24, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/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 email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated in Rockville, Maryland, this 24th day of February, 2003.

For the Nuclear Regulatory Commission.  
**Deirdre W. Spaulding,**  
*Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03-5351 Filed 3-6-03; 8:45 am]

BILLING CODE 7590-01-P

**PENSION BENEFIT GUARANTY CORPORATION****Proposed Submission of Information Collection for OMB Review; Comment Request; Customer Satisfaction Surveys and Focus Groups****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Notice of intention to request extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend its approval of a collection of information under the Paperwork Reduction Act. The purpose of the information collection, which will be conducted through focus groups and surveys over a three-year period, is to help the PBGC assess the efficiency and effectiveness with which it serves its customers and to design actions to address identified problems. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by May 6, 2003.**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or delivered to Suite 340 at the above address.**FOR FURTHER INFORMATION CONTACT:** Thomas H. Gabriel, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)**SUPPLEMENTARY INFORMATION:** An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The PBGC intends to request that OMB extend its approval, for a three-year period, of a generic collection of information consisting of customer satisfaction focus groups and surveys (OMB control number 1212-0053;

expires 6/30/2003). The information collection will further the goals of Executive Order 12862, Setting Customer Service Standards, which states the Federal Government must seek to provide "the highest quality of service delivered to customers by private organizations providing a comparable or analogous service."

The PBGC uses customer satisfaction focus groups and surveys to find out about the needs and expectations of its customers and assess how well it is meeting those needs and expectations. By keeping these avenues of communication open, the PBGC can continually improve service to its customers, including plan participants and beneficiaries, plan sponsors and their affiliates, plan administrators, pension practitioners, and others involved in the establishment, operation and termination of plans covered by the PBGC's insurance program. Because the areas of concern to the PBGC and its customers vary and may quickly change, it is important that the PBGC have the ability to evaluate customer concerns quickly by developing new vehicles for gathering information under this generic approval.

Participation in the focus groups and surveys will be voluntary. The PBGC will consult with the Office of Management and Budget regarding each specific information collection during the approval period.

The PBGC estimates that the annual burden for this collection of information will total 2,500 hours for 9,500 respondents.

The PBGC is specifically seeking public comments to:

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

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

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

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

Issued at Washington, DC, this 3rd day of March 2003.

**Stuart A. Sirkin,**

*Director, Corporate Policy and Research  
Department, Pension Benefit Guaranty  
Corporation.*

[FR Doc. 03-5516 Filed 3-6-03; 8:45 am]

**BILLING CODE 7708-01-P**

10230, New Executive Office Building,  
Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03-5434 Filed 3-6-03; 8:45 am]

**BILLING CODE 7905-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47419; File No. SR-AMEX-  
2002-36]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change To Establish Resolution Times for Uncompared Transactions

February 27, 2003.

#### I. Introduction

On April 22, 2002, American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-AMEX-2002-36 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 4, 2002.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The resolution of uncompared trades (sometimes referred to as "DKs") has gone through substantial revision as the nature of trade comparison has changed. In 1966, standardized forms were adopted for the timely and efficient resolution of DKs. The primary responsibility for DK resolution at that time was entrusted to floor members.<sup>3</sup> In 1978, the time limit for replying to a DK notice was set at 3:45 p.m. on trade date plus three business days ("T+3") or prior to 10 a.m. on trade date plus five business days ("T+5") if a specialist or independent member was involved. Upon a change in the opening to 9:30 a.m. in 1985, members were then required to reply to a DK notice involving a specialist or independent member prior to 9:30 a.m. on T+5.

A result of, among other things, the Commission's 1987 Market Break

Report<sup>4</sup> was a major initiative to shorten the comparison process. One development was the implementation in 1990 of Amex's Intra-Day Comparison system ("IDC").<sup>5</sup> In 1990, Amex also implemented Rule 719, Comparison of Exchange Transactions, which required that any transactions effected on Amex be compared or otherwise closed out by Amex's close of business on the business day following the day of the contract.<sup>6</sup> Amex adopted further rule changes in 1991 to formalize the operational procedures for full implementation of Amex's electronic equity trade comparison facility.<sup>7</sup> Among the new rules adopted in 1991 was Rule 731, Resolution of Uncompared Transactions, that expressly required that member organizations resolve uncompared trades no later than 3 p.m. on T+1 or 3:30 p.m. on T+1 if an agent was involved.

Because of the inherent risks to the settlement process from uncompared trades, Amex believes it should have the flexibility to change the time periods for the resolution of DKs. For example, market conditions and systemic changes may require Amex to implement different cut-off time periods for the resolution of DKs depending on the particular product, such as stocks, bonds, exchange-traded funds ("ETFs"), or trust-issued receipts ("TIRs"). Accordingly Amex proposes to amend Rule 731 to allow Amex to establish DK resolution time periods for equities, bond, ETFs, and TIRs as appropriate.

Specifically, the proposed rule change will amend Rule 731 by providing Amex flexibility in determining (1) cut-off times and dates for member organizations to make any necessary additions, deletions, or changes to their DK data and (2) cut-off times for resolution and acceptance of DKs remaining uncompared in the system.

<sup>4</sup> Commission, Division of Market Regulation, The October 1987 Market Break (February 1988).

<sup>5</sup> Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 (June 7, 1990), [SR-Amex-90-01] (order approving IDC for post-trade processing of transactions in equity securities).

<sup>6</sup> Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 (April 5, 1990), [SR-Amex-89-05] (order permanently approving rule requiring regular way trades be compared or closed out by close of business on T+1). In 1994, the Commission approved Amex's proposed rule change which required trade date submission of comparison data. Exchange Act Release No. 34298 (July 1, 1994), 59 FR 35397 (July 11, 1994), [SR-Amex-94-13]. Today Rule 719(a) requires members and member organizations to submit comparison data to their clearing firm for any transaction executed on Amex within two hours of the trade.

<sup>7</sup> Exchange Act Release No. 29157 (May 2, 1991), 56 FR 21510 (May 9, 1991), [SR-Amex-90-16] (order approving rule detailing mechanics of resolving uncompared equity trades through IDC).

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

(1) *Collection title:* Gross Earnings Report.

(2) *Form(s) submitted:* BA-11.

(3) *OMB Number:* 3220-0132.

(4) *Expiration date of current OMB clearance:* 04/30/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 516.

(8) *Total annual responses:* 516.

(9) *Total annual reporting hours:* 237.

(10) *Collection description:* Section 7(c)(2) of the Railroad Retirement Act requires a financial interchange between the OASDHI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information is used in determining the amount which would place the OASDHI trust funds in the position they would have been if railroad service had been covered by the Social Security and FIC Acts.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 46916, (November 26, 2002), 67 FR 72241 (December 4, 2002).

<sup>3</sup> A separate rule for uncompared options trades, Rule 970, was adopted when options commenced trading at the Amex in 1975. Rule 970 sets forth the procedures for settling uncompared options trades through the Rejected Option Transaction Notice.

The proposed rule change also will adopt Commentary .08 to Rule 731 that extends the applicability of the rule to portfolio depository receipts, index fund shares, and TIRs orders to buy or sell a security where the price is derivatively based upon another security or index of securities.<sup>8</sup> The proposed Commentary also provides that Amex may establish separate times to review and resolve DKs in these products.

### III. Discussion

Section 6(b)(5) of the Act requires that the rules of an exchange are designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.<sup>9</sup> The proposed rule change permits Amex flexibility in establishing time periods for resolution of DKs and extends the application of the rule to additional types of securities that previously had not been covered by the rule. This flexibility should enable Amex to address issues in its comparison process that may arise from market conditions or from various products trading on Amex. In so doing, Amex should be able to improve its ability to resolve uncompleted trades, which in turn will improve the clearance and settlement of securities trading on Amex. For the reasons set forth above, the Commission believes that the AMEX's rule change is consistent with the exchange's obligations under the Act.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-AMEX-2002-36) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

<sup>8</sup> Orders to buy or sell an option will continue to be covered by Rule 950(f) and the applicable Commentary to Rule 950.

<sup>9</sup> 15 U.S.C. 78(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47420; File No. SR-NQLX-2003-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC, Relating to Revised Reporting Requirements for Exchange for Physical Trades

February 27, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on February 11, 2003 Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NQLX also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications on February 6, 2003 under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> ("CEA").<sup>4</sup>

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX proposes to adopt a change to its Rule 420(b) relating to the reporting, submission, and dissemination of trade information concerning exchange for physical trades.<sup>5-7</sup> The proposed change

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> Telephone conversation between Kathleen Hamm, Senior Vice President of Regulation and Compliance, NQLX, and Ian K. Patel, Attorney, Division of Market Regulation ("Division"), Commission on February 24, 2003.

<sup>5-7</sup> An exchange for physical trade occurs between two parties where the first party sells, and the second party buys, the related physical (e.g., the common stock underlying a security futures contract) while simultaneously the first party buys, and the second party sells, an appropriate number of futures contracts, known as the "futures leg" of the transaction. See NQLX Rule 420(a)(2). Exchange for physical trades allow certainty of execution at one place and in one transaction for the two parties to the transaction instead of requiring the parties to execute multiple transactions across several exchanges, which inherently creates risk that one market will move before the entire transaction can be executed. Generally, on futures exchanges, exchange for physical trades are negotiated and effected by parties outside the centralized market, and the exchange reports the futures leg as either transferred, newly created, or offset. Johnson and Hazen, *Commodities Regulation* § 1.03[3] (3d ed. 2002). The CEA and the regulations of the CFTC both recognize exchange for physical trades as properly executed outside the centralized market.

would allow the reporting and dissemination of information related to exchange for physical trades effected by sophisticated and experienced customers (i.e., "wholesale customers") during hours other than trading hours for the futures leg of the transaction on the next trading day. As for exchange for physical trades effected for customers other than those meeting the definition of wholesale customers, there would be no change to the reporting requirements and those transactions would still need to be transacted during trading hours on the exchange and reported as soon as practicable but not longer than 30 minutes after the arranging of the transaction. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

Rule 420 Exchange for Physical Trades

\* \* \* \* \*

(b) Information Recording, Submission, and Dissemination

(1) No change.

(2) As soon as practicable but no later than (i) 30 minutes after *effecting* an Exchange for Physical Trade *during trading hours on Market Days* or (ii) 15 minutes after the opening of trading for the Futures Leg on the first Market Day after effecting an Off-Hours Exchange for Physical Trade, the Member—when the transaction is between a Member and a Customer—and the Member selling the Futures Leg—when the transaction is between two Members unless otherwise mutually agreed to by the two Members—must submit through the ATS the following information concerning the Exchange for Physical Trade:

(i) to (xii) No change.

(xiii) quantity of the Related Physical, [and]

(xiv) to (xv) No change.

(3) No change.

(4) After sending the confirmation for the Exchange for Physical [t]Trade, NQLX will disseminate through the ATS the following information:

(i) to (vi) No change.

(5) to (7) No change.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on

Commodity Exchange Act § 5(b)(3), 7 U.S.C. 7a-1 (2000) and CFTC Regulation § 1.38, 17 CFR 1.38; see *Id.*

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

Simultaneously with this filing, NQLX submitted to and certified with the CFTC, proposed rule changes to NQLX Rules 101(a)(79) and 420(a). These proposed changes would allow members and persons associated with members to effect exchange for physical trades for sophisticated and experienced customers (known as "wholesale customers"<sup>8</sup>) during hours other than trading hours for the futures leg of the transaction.<sup>9</sup> NQLX states that its general rule provisions on exchange for physical trades (NQLX Rule 420(a)), as well as its proposed changes to those provisions and the related definition of wholesale customers (NQLX Rule 101(a)(79)), do not fall within the categories of changes required to be submitted to the Commission for publication.<sup>10</sup> However, to implement the proposed changes to Rules 101(a)(79) and 420(a), NQLX proposes adopting a change to its Rule 420(b) relating to the reporting, submission, and dissemination of trade information for exchange for physical trades.<sup>11-13</sup>

The proposed rule change to NQLX Rule 420(b) would require a member to report trade information on exchange for physical trades effected after the close of trading for wholesale customers within 15 minutes after the opening of trading on the next trading day. As for exchange for physical trades effected for customers other than those meeting the

<sup>8</sup> NQLX Rule 101(a)(79), as amended would revise the definition of wholesale customer to require that a customer receive notification from a Member that the customer is not only qualified to participate in block trades, but is also qualified to participate in exchange for physical trades at times other than during trading hours on market days for the futures leg.

<sup>9</sup> The rules of other futures exchanges allow exchange for physical trades to be effected after the close of trading and reported shortly after opening of trading the following trading day. See e.g., New York Futures Exchange Rule 303(e)(5)(iii)(2); Coffee, Sugar & Cocoa Exchange Rule 3.06(e)(iii)(2).

<sup>10</sup> 15 U.S.C. 78s(7)(A).

<sup>11-13</sup> NQLX previously submitted its Rule 420(b) to the Commission for publication as part of its rules related to the establishment of audit trails necessary or appropriate to facilitate coordinated market surveillance. Securities Exchange Act Release No. 46774, (November 5, 2002) 67 FR 68895, 68897 (November 13, 2002); see also 15 U.S.C. 78f(h)(3)(J).

definition of wholesale customers or effected for any customer during trading hours, there would be no change to the reporting requirements and those transactions would still need to be transacted during trading hours on the exchange and reported as soon as practicable but not longer than 30 minutes after the arranging of the transaction. The remaining proposed changes to Rule 420(b) correct typographical errors.

2. Statutory Basis

NQLX files this proposed rule change pursuant to Section 19(b)(7) of the Act.<sup>14</sup> NQLX believes that the proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,<sup>15</sup> including the requirement that trading in a listed security futures contract is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.<sup>16</sup> NQLX further believes that its proposed rule change complies with the requirements under Section 6(h)(3) of the Act<sup>17</sup> and the criteria under Section 2(a)(1)(D)(i) of the CEA,<sup>18</sup> as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>19</sup> in general, and Section 6(b)(5) of the Act,<sup>20</sup> in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NQLX 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*

NQLX neither solicited nor received written comment on the proposed rule change.

<sup>14</sup> 15 U.S.C. 78s(b)(7).

<sup>15</sup> Public Law 106-554, 114 Stat. 2763 (2000).

<sup>16</sup> See Section 6(h)(3)(H) of the Act, 5 U.S.C. 78f(h)(3)(H).

<sup>17</sup> 15 U.S.C. 78f(h)(3).

<sup>18</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Concurrent with the filing of the proposed rule change with the SEC, NQLX has filed on February 6, 2003 a written certification with the CFTC under Section 5c(c)<sup>21</sup> of the CEA and CFTC Regulation Part 40.6<sup>22</sup> in which NQLX certifies that it believes that its proposed changes to Rule 420 as well as Rule 101(a)(79) comply with the CEA. Proposed changes to Rules 101(a)(79) and 420 are effective on February 7, 2003, the day after their filing with the CFTC.

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.<sup>23</sup>

**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](mailto: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 NQLX. All submissions should refer to File No. SR-NQLX-2003-04 and should be submitted by March 28, 2003.

<sup>21</sup> 7 U.S.C. 7a-2(c).

<sup>22</sup> 17 CFR 38.4.

<sup>23</sup> 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5425 Filed 3-6-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47417; File No. SR-Phlx-2002-61]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Amend Options Floor Procedure Advice A-13 To Include Violations for Failure To Obtain Approval To Disengage the NBBO Feature in the Exchange's Minor Rule Plan

February 27, 2003.

On October 4, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Phlx Option Floor Procedure Advice ("OFPA") A-13, Auto Execution Engagement/Disengagement Responsibility, to include in the Exchange's minor rule violation enforcement and reporting plan ("Minor Rule Plan")<sup>3</sup> violations for failure to obtain the necessary approvals prior to disengagement of the National Best Bid/Best Offer ("NBBO") Feature of the Exchange's Automated Options Market System ("AUTOM").<sup>4</sup> The Exchange's NBBO Feature automatically executes orders at the NBBO for certain options designated by the Phlx's Options Committee as eligible for the NBBO Feature ("automatic step-up options"), provided that the NBBO does not differ

from the specialist's bid or offer by more than the "step up parameter."<sup>5</sup> Currently, engagement and disengagement of the NBBO Feature is governed solely by Phlx Rule 1080(c)(i), and violations are referred to the Business Conduct Committee ("BCC").

The Exchange proposed to amend OFPA A-13 to restate from Phlx Rule 1080(c)(i) the conditions for using the NBBO Feature, including the requirement to obtain approval to disengage the NBBO Feature, and to include a fine schedule for failure to obtain such approval. Specifically, the proposed fine schedule is as follows: First occurrence, \$250; second occurrence, \$500; third occurrence, \$1,000; fourth occurrence and thereafter, sanction discretionary with the BCC. The proposed fine schedule would be implemented on a one-year running basis. The BCC also would have discretion concerning sanctions for any violations should they be deemed egregious by the Exchange's Enforcement Department and referred directly to the BCC pursuant to Exchange Rule 960.2.

On November 7, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>6</sup> The proposed rule change, as amended, was published in the **Federal Register** on January 22, 2003.<sup>7</sup> The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

The Commission has carefully reviewed the proposal and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of section 6 of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act<sup>10</sup> in that it provides a procedure whereby member

organizations can be disciplined appropriately in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds that the proposed rule change is consistent with the requirements of sections 6(b)(7)<sup>11</sup> and 6(d)(1)<sup>12</sup> of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with Rule 19d-1(c)(2) under the Act,<sup>13</sup> which governs minor rule violations plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's Minor Rule Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's Minor Rule Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Phlx will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's Minor Rule Plan, on a case by case basis, or if a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Phlx-2002-61), as amended, is approved.

<sup>24</sup> 17 CFR 200.30-3(a)(75).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange's Minor Rule Plan, codified in Exchange Rule 970, includes Floor Procedure Advices with accompanying fine schedules.

<sup>4</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

<sup>5</sup> For a complete description of the NBBO Feature, see Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 (December 14, 2000) (order partially approving SR-Phlx-00-93).

<sup>6</sup> See letter from Rick Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Commission, dated November 6, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx fixed nonsubstantive typographical errors in its rule text, and added a cross-reference to Phlx Rule 960.2 in the purpose section of its proposal.

<sup>7</sup> See Securities Exchange Act Release No. 47166 (January 10, 2003), 68 FR 3077.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(6).

<sup>11</sup> 15 U.S.C. 78f(b)(7).

<sup>12</sup> 15 U.S.C. 78f(d)(1).

<sup>13</sup> 17 CFR 240.19d-1(c)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5423 Filed 3-6-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47424; File No. SR-Phlx-2003-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

February 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to establish its options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROT's") for the period from February through April 2003, for the top 120 options based on volume statistics from October, November, and December 2002,<sup>3</sup> as set forth on the ROT Equity Option Payment for Order Flow Charges Schedule. The Phlx intends to implement the fees for trades settling on

February 1, 2003, through April 30, 2003. The rate levels have remained unchanged: the top-ranked option is charged a fee of \$1.00 per contract, the next 49 options are charged a fee of \$0.50 per contract, and the fee for the remaining options in the top 120 is set at \$0.00.

The Phlx's ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Phlx 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

The Phlx recently filed with the Commission to reinstate its payment for order flow program.<sup>4</sup> Pursuant to the Phlx's current program, Phlx ROTs are assessed a payment for order flow fee on the top 120 most actively traded equity options, on a per-contract, per-options issue basis, as set forth on Phlx's ROT Equity Option Payment for Order Flow Charges Schedule, subject to certain exceptions.<sup>5</sup>

##### 1. Purpose

The purpose of the proposed rule change is to establish the payment for order flow fees for trades settling on or after February 1, 2003, through April 30, 2003, for the applicable top 120 options. The Phlx will file with the Commission a proposed rule change to address changes to the Phlx's fee schedule for subsequent time periods. No other changes to the Phlx's payment for order

<sup>4</sup> See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

<sup>5</sup> The payment for order flow fee does not apply to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. Indeed, because the primary focus of the program is to attract order flow from customers, the payment for order flow fee is not imposed on the above-specified transactions. Also, the payment for order flow fee does not apply to index or foreign currency options.

flow program are being made at this time.

##### 2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act<sup>6</sup> and in particular furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in that it is an equitable allocation of reasonable fees among Phlx members.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx neither solicited or received written comments with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and rule 19b-4(f)(2) thereunder.<sup>9</sup> Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78(s)(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Phlx's payment for order flow fee is assessed on ROTs on the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring periods for the top 120 options are calculated every three months. For example, for the period from February through April 2003, the measuring period for the top 120 options is based on volume statistics from October, November and December 2002. For the period from May through July 2003, the measuring period for the top 120 options will be based on volume statistics from January, February and March 2003. This cycle is scheduled to continue every three months, with a separate proposed rule change filed for each three-month period.

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 the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-04 and should be submitted by March 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5424 Filed 3-6-03; 8:45 am]

BILLING CODE 8010-01-P

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Commission has scheduled a public hearing on its proposed amendments for the amendment cycle ending May 1, 2003. Witnesses will be invited to testify by the Commission on issues specified by the Commission prior to the hearing. Tentative topics include implementation of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, and changes to § 2A1.4 (Involuntary Manslaughter). Further information regarding the public hearing will be provided by the Commission on its Web site at <http://www.ussc.gov>.

**DATES:** The Commission has scheduled a public hearing for March 25, 2003, at 3:15 p.m., at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002-8002.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4500.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day

of May each year pursuant to 28 U.S.C. 994(p). Additional information pertaining to the proposed amendments for the amendment cycle ending May 1, 2003, may be accessed through the Commission's Web site at <http://www.ussc.gov>.

**Authority:** 28 U.S.C. 994(x); USSC Rules of Practice and Procedure 3.4, 4.4, 4.5.

**Diana E. Murphy,**

*Chair.*

[FR Doc. 03-5430 Filed 3-6-03; 8:45 am]

BILLING CODE 2211-01-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-02-12148]

### Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee; Meeting

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given that the Department of Transportation (DOT) Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet for the second time in a public session on April 7-8, 2003, at the Embassy Suites Hotel, Crystal City—National Airport, 1300 Jefferson Davis Highway, Arlington, VA 22202, (703) 979-9799, FAX: (703) 892-8121. The purpose of the Committee is to recommend to the Department the type and level of electronic security that should be used for the transmission and storage of drug testing information, to assess the type of format and methodology that would be appropriate, and to recommend the level and type of electronic signature technology that would support the procedures used in the DOT drug and alcohol program. The Committee held its first meeting on June 18-19, 2002 in Washington, DC. A list of the committee members and a copy of the first meeting's transcripts are available in the docket posted on the Internet at <http://dms.dot.gov/search/>; the docket number is 12148.

**FOR FURTHER INFORMATION CONTACT:** Don Shatinsky or Minnie McDonald, Office of Drug and Alcohol Policy and Compliance (ODAPC), Office of the Secretary, Department of Transportation at voice (202) 366-3784, fax (202) 366-3897.

**SUPPLEMENTARY INFORMATION:** Since the beginning of drug testing, the DOT has sought ways to reduce the significant amount of paper documentation generated for the forensic accountability of drug test results. We are now in an era of various electronic capabilities that can further reduce the paper work burden. The transportation industry is asking us to move more in that direction. We want to accommodate this request, but we want to make sure that the integrity and confidentiality requirements of the program are maintained.

The Department made modest changes when 49 CFR Part 40 was updated and republished on April 19, 2000. We permitted greater use of faxes and scanned computer images for reporting test results. Additionally, for negative test results we permitted laboratories to send electronic reports to MROs, provided the laboratory and MRO ensured that the information is accurate and can be transmitted in such a manner as to prevent unauthorized access or release while it is transmitted or stored.

The Department believes that the increased use of electronic reporting is both inevitable and beneficial. At the same time, we want to make sure that there are good, consistent minimum standards for the use of this technology, in order to protect the important integrity and confidentiality requirements of the program. For these reasons, DOT established the Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee. The purpose of the Committee is to recommend regulatory modifications it deems necessary if Part 40 is to accommodate newer electronic technology. The Committee will assess the current status of electronic security technology and will make recommendations about consistent minimum standards for its use in the transmission and storage of drug testing results. Additionally, the Committee will examine the formats and methodologies used in transmitting electronic information, as well as the concept, parameters, and procedures used in implementing electronic signature technology within the framework of the DOT drug and alcohol testing program. The Committee will advise DOT regarding these findings. The Department anticipates that, following the receipt of the Committee's final recommendations, DOT will propose changes to Part 40 through a notice of proposed rulemaking that will result in minimum standards for security in transmission and storage of drug testing information and would

<sup>10</sup> 17 CFR 200.30-3(a)(12).

result in a more widespread use of electronic technology in the program.

The Committee held its first public meeting on June 18–19, 2002 in Washington, DC. The first meeting was used to introduce the Committee Members, review the purpose of the Committee, and to review some of the issues that the Committee needs to address as part of the process to develop appropriate recommendations to the DOT. Presentations from the major sections of interested stake holders were conducted by Committee members, invited guests, and by the general public. A complete transcription of all discussions during the two days is available at the above-cited internet web site. Additionally, three sub-committees composed of Committee members were established to research, develop, and provide information to the whole Committee at its next meeting. These sub-committees addressed the following three areas: 1. Format of electronic reports; 2. security of electronic transmission and digital signatures; and 3. storage security of electronic information. This second meeting will focus on specific findings, issues, and recommendations of the sub-committees related to these three areas. Opportunity will be available for the general public to also make comments related to the information presented by the committee members.

Tentative agenda: Monday, April 7, 2003, 8:30 a.m.–12 p.m.: General presentations by the sub-committee chairpersons, 12 p.m.–1:15 p.m.: Lunch, 1:15 p.m.–3:30 p.m.: Continued presentations, 3:30 p.m.–5 p.m.: Public Comments or Presentations, 5 p.m.: End of First Day. Tuesday, April 9, 2003, 8:30 a.m.–12 p.m.: Discussion of Options and Future Committee Actions, 12 p.m.: Closing Comments, 2 p.m.: End of Meeting. A final agenda will be available to the public prior to the beginning of the meeting.

The meeting will be open to the public on a first-come first-seated basis. Anyone needing special accommodations for persons with disabilities, please notify Minnie McDonald at (202) 366–3784 at least two weeks prior to the meeting.

Members of the public wishing to file a written statement with the DOT Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee may do so by submitting comments by mail or by delivering them to the Docket Clerk, Attn: Docket No. OST–02–12148, Department of Transportation, 400 7th Street, SW., Room PL401, Washington, DC, 20590. Comments may also be faxed to the Docket Clerk at (202) 493–2251.

Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. For the convenience of persons wishing to review the docket, it is requested that paper comments be sent in triplicate in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Comments may be reviewed at the above address from 9 a.m. through 5 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: <http://dms.dot.gov/submit/>. The public may also review docket comments electronically (docket number is 12148). The following web address provides instructions and access to the DOT electronic docket: <http://dms.dot.gov/search/>. Please use only one method for submission of your comments. Please do not send duplicates by submitting a written and an electronic version.

There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment in writing to Minnie McDonald, ODAPC, at (202) 366–3784, FAX (202) 366–3897, or e-mail address: [minnie.mcdonald@ost.dot.gov](mailto:minnie.mcdonald@ost.dot.gov) two weeks prior to the meeting. Your notification should contain your name and corporate designation, consumer affiliation, or government designation. Please include your address, telephone number and e-mail in case there is reason to contact you regarding your presentation. Those wanting to make a verbal statement should also include a short statement describing the topic to be addressed. Requestors will ordinarily be allowed up to 10 minutes to present a topic, however, the time may be limited depending on the number of requestors. If you have submitted a written statement to the docket, there is no need to subsequently duplicate this information by an oral presentation.

The Committee meeting will be recorded and transcribed. Within a short time after the meeting, copies of the transcripts will be available on the DOT electronic docket.

**DATES AND TIME:** The Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet in open session on April 7, 2003, from 8:30 a.m. to 5 p.m. and on April 8, 2003, from 8:30 a.m. to 2 p.m.

**ADDRESSES:** The meeting will take place at the Embassy Suites Hotel, Crystal

City—National Airport, 1300 Jefferson Davis Highway, Arlington, VA 22202, (703) 979–9799, FAX: (703) 892–8121. The hotel is close to the Pentagon City and Crystal City METRO stops and can be reached via the blue or yellow lines. Attendees, other than Committee members, who need lodging may obtain a discounted room rate directly from the hotel by referring to the “DOT Federal Advisory Committee” meeting. The hotel reservation telephone number is (800) 362–2779. A limited number of rooms will be available at the discounted rate and reservations must be made by March 14, 2003.

Dated: March 4, 2003.

**Kenneth C. Edgell,**

*Acting Director, Office of Drug and Alcohol Policy and Compliance, Department of Transportation.*

[FR Doc. 03–5626 Filed 3–5–03; 2:09 pm]

**BILLING CODE 4910–62–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE–2003–07]

#### Petitions for Exemption; Summary of Petitions Received

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

**ACTION:** Notice of petitions 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 certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. 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 27, 2003.

**ADDRESSES:** Send comments on any 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–2000–XXXX at the beginning of your comments. If you

wish to receive confirmation that 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:** Denise Emrick (202) 267-5174, 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 March 4, 2003.

**Richard D. McCurdy,**

*Acting Assistant Chief Counsel for Regulations.*

#### Petitions for Exemption

*Docket No.:* FAA-2003-14563.  
*Petitioner:* AirTran Airways, Inc.  
*Section of 14 CFR Affected:* 14 CFR 93.123.

*Description of Relief Sought:* To permit AirTran Airways to operate certain slots at Ronald Reagan National Airport (DCA), authorized by exemption only, that are currently utilized by America West Airlines, which has announced that it is eliminating its DCA/Columbus, Ohio service.

[FR Doc. 03-5453 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2003-08]

#### Petitions for Exemption; Dispositions of Petitions Issued

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

**ACTION:** Notice of dispositions of prior petitions.

**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 the dispositions of certain petitions previously received.

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.

**FOR FURTHER INFORMATION CONTACT:** Mike Brown, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267-7653.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC on March 4, 2003.

**Richard D. McCurdy,**

*Acting Assistant Chief Counsel for Regulations.*

#### Dispositions of Petitions

*Docket No.:* FAA-2002-13892.  
*Petitioner:* JAMCO America, Inc.  
*Section of 14 CFR Affected:* 14 CFR 21.325(b)(3).  
*Description of Relief Sought/*

*Disposition:*

To permit JAMCO to issue export airworthiness approvals for Class II and Class III products manufactured and located at JAMCO's facilities in Tokyo, Japan.

*Grant, 1/03/2003, Exemption No. 7549A.*

*Docket No.:* FAA-2000-8286.  
*Petitioner:* Raytheon Aircraft Company.

*Section of 14 CFR Affected:* 14 CFR 21.325(b)(3).  
*Description of Relief Sought/*

*Disposition:*

To permit Raytheon to obtain airworthiness approval tags for its Hawker model parts under 21.21 and 21.203, and export those Class II and Class III parts located at certain facilities outside of the United States.

*Grant, 1/03/2003, Exemption No. 6720C.*

[FR Doc. 03-5454 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

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

**ACTION:** Notice of RTCA Special Committee 194 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

**DATES:** The meeting will be held March 25-27, 2003, starting at 12 p.m.

**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 194 meeting. The agenda will include:

- March 25:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve Minutes of Previous Meeting, Working Group Reports)
  - Status of Controller-Pilot Data Link Communication (CPDLC) Program
  - Status of changes to the SC-194 Terms of Reference
  - Working Group (WG)-1, Plans and Principles document for final review and comment (FRAC) status and comment resolution
  - WG reports
  - Other Business
- March 26:
  - Working Group Meetings as scheduled by WG Leaders
- March 27:
  - Closing Plenary Session (Review Agenda, Working Group Reports, Other Business, Date and Place of Next Meeting)

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 statement 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.

Issued in Washington, DC, on February 20, 2003.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 03-5456 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****RTCA Special Committee 197:  
Rechargeable and Starting Batteries**

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

**ACTION:** Notice of RTCA Special Committee 197 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 197: Rechargeable and Starting Batteries.

**DATES:** The meeting will be held March 18–20, 2003, starting at 9 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 197 meeting. The agenda will include:

- March 18
  - Opening Session (Welcome and Introductory Remarks, Review of Agenda)
  - Examine Milestones/Identify Goals/Develop Work Program/What is Minimum Operational Performance Standards (MOPS) and Who Uses It?
    - Review of Submitted comments
    - Review SC–197 MOPS Draft
- March 19
  - Continuation of Review of SC–197 MOPS Draft
- March 20
  - Proposed Schedule for Subsequent Meetings
  - Other Business
  - Closing Session (Establish Agenda for Next Meeting, Date and Place of Next Meeting)

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.

Issued in Washington, DC, on February 20, 2003.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 03–5457 Filed 3–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****RTCA Special Committee 135/  
EUROCAE Working Group 14:  
Environmental Conditions and Test  
Procedures for Airborne Equipment**

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

**ACTION:** Notice of RTCA Special Committee 135/EUROCAE Working Group 14 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

**DATES:** The meeting will be held March 18–20, 2003 starting at 10 a.m.

**ADDRESSES:** The meeting will be held at EUROCAE, 17, Rue Hamelin, Cedex 15, Paris, France 75116.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>; (2) Francis Grmal, at EUROCAE in Paris; Tel: 33–1–45–05–7188.

**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 135 meeting. The agenda will include:

- March 18
  - Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting)
  - Appointment of the Function of WG–14 Security
  - Recall of the ED–14/DO–160 Update Process
  - Status of the Update Proposals. Particular Cases—IMA, EED's and PED's
  - Subgroup Meetings (Address General Issues and Table of Proposed Changes, Identify Associated Tasks and Planning)
    - SG–1: Climatic and Mechanic
    - SG–2: Electric and Electromagnetic
- March 19
  - Continue Subgroup Meetings

- March 20

- Closing Plenary Session (Debrief of Subgroup Meetings, New/Unfinished Business, Date and Place of Next Meeting)

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.

Issued in Washington, DC, on February 20, 2003.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 03–5458 Filed 3–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent To Rule on Application  
To Impose and Use the Revenue From  
a Passenger Facility Charge (PFC) at  
Long Beach Municipal Airport  
(Daugherty Field), Long Beach, CA**

**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 and use the revenue from a PFC at Long Beach Municipal Airport (Daugherty Field) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before April 7, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Edward Shikada, Director of Public Works at the following address, City of Long Beach, 333 West Ocean Blvd., Long Beach, CA 90802. Air carriers and foreign air carriers may submit copies of written comments previously provided

to the City of Long Beach under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:**

Ruben Cabalbag, Airports Program Engineer, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261, Telephone (310) 725-3630. 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 and use the revenue from a PFC at Long Beach Municipal Airport (Daugherty Field) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 6, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Long Beach 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 May 8, 2003.

The following is a brief overview of the impose and use PFC application number 03-02-C-00-LGB:

*Level of proposed PFC:* \$3.00.

*Propose charge effective date:* June 1, 2003.

*Proposed charge expiration date:* July 1, 2009.

*Total estimated PFC revenue:* \$30,306,984.

*Brief description of the proposed project(s):* Airfield pavement rehabilitation—Runway 12/30, airfield pavement, terminal area improvements, airport security—security system upgrade, aircraft rescue and firefighting vehicles.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Non-scheduled/on-demand air carriers.

Any person may inspect the application 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 application in person at the City of Long Beach.

Issued in Lawndale, California, on February 6, 2003.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 03-5460 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Arcata/Eureka Airport, Eureka, CA**

**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 and use a PFC at Arcata/Eureka Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before April 7, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allen Campbell, Public Works Director, County of Humboldt, at the following address: 1106 Second Street, Eureka, CA 95501. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Humboldt under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlyns Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303, Telephone: (650) 876-2806. 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 and use the revenue from a PFC at Arcata/Eureka Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 19, 2003, the FAA determined that the application to impose and use the revenue from PFC submitted by the County of Humboldt

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 May 21, 2003.

The following is a brief overview of the impose and use application No. 03-06-C-00-ACV:

*Level of proposed PFC:* \$4.50.

*Proposed charge effective date:* July 1, 2003.

*Proposed charge expiration date:* October 1, 2005.

*Total estimated PFC revenue:* \$643,000.

*Brief description of the proposed projects:* Master Plan updates for Arcata/Eureka, Kneeland, Dinsmore, Murray Field, Rohnerville/Fortuna and Garberville Airports; Letz Avenue Bluff Repair; Security enhancements including: install terminal and access gate lock system, video surveillance equipment, security monitoring building and construct general aviation ramp; purchase Pilot Weather Data Super-Unicom Equipment; purchase runway/taxiway sweeper; replace VASI with PAPI equipment.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt.

Issued in Lawndale, California, on February 19, 2003.

**Ellsworth L. Chan,**

*Acting Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 03-5459 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Proposed Change to Paragraph 63, Aircraft Build From Spare and/or Surplus Parts in FAA Order 8130.2E, Airworthiness Certification of Aircraft and Related Products**

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

**ACTION:** Notice of availability.

**SUMMARY:** After reviewing current policy it has been noted that changes are

needed to better standardize compliance with Title 14 Code of Federal Regulations (14 CFR) chapter 1, subchapter C. This notice announces the availability of a proposed change to paragraph 63 of FAA Order 8130.2E for review and comment. The purpose of this change is to revise guidance and instructions on issuing a standard airworthiness certificate (under § 21.183d) for an aircraft assembled from spare and/or surplus parts when the aircraft has a TC issued under § 21.21, § 21.27, or § 21.29.

**DATES:** Comments submitted must be received no later than April 7, 2003.

**ADDRESSES:** Copies of proposed change can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production and Airworthiness Division, AIR-200, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Loyal Woodworth, Federal Aviation Administration, Production and Airworthiness Division, AIR-200, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-8361. E-mail address: [loyal.woodworth@faa.gov](mailto:loyal.woodworth@faa.gov).

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to comment on the proposed change listed in this notice, by submitting such written data, views, or arguments as they desire to the aforementioned address. Comments must be marked "Comments to Order 8130.2E changes to paragraph 63." The Director, Aircraft Certification Service, will consider all communications received on or before the closing date, before issuing the final change. Comments received on the proposed change may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on February 20, 2003.

**Frank P. Paskiewicz,**  
Manager, Production and Airworthiness  
Division, AIR-200.

[FR Doc. 03-5455 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Agency Information Collection Activities: Submission for OMB Review

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice and request for  
comments.

**SUMMARY:** The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** notice with a 60-day public comment period on this information collection on September 24, 2002. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 14, 2003.

**ADDRESSES:** You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

#### **SUPPLEMENTARY INFORMATION:**

*Title:* Highway Performance  
Monitoring System (HPMS) Field  
Manual.

*Abstract:* The HPMS data that is collected is used for management decisions that affect transportation, such as estimates of future highway needs of the Nation and assessments of the highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program by providing miles, lane-miles and travel components of apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined.

*Respondents:* State governments of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, and the four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

*Estimated Total Annual Burden:* The estimated average burden per response for the annual collection and processing of the HPMS data is 1,368 hours for the

States, the District of Columbia and the Commonwealth of Puerto Rico; and 19 hours for each of the four territories. The estimated total annual burden for all respondents is 71,212 hours.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert Rozycki, 202-366-5059, Department of Transportation, Federal Highway Administration, Policy Service Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

*Electronic Access:* Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202-512-1661. Internet users may reach the **Federal Register's** home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 7, 2003.

**James R. Kabel,**

Chief, Management Programs and Analysis  
Division.

[FR Doc. 03-5443 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Agency Information Collection Activities: Submission for OMB Review

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice and request for  
comments.

**SUMMARY:** The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** notice with a 60-day public comment period on this information collection on September 24, 2002. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 21, 2003.

**ADDRESSES:** You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

**SUPPLEMENTARY INFORMATION:**

*Title:* A Guide to Reporting Highway Statistics.

*Abstract:* A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling statistical data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formulas that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics and Our Nation's Highways. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, The Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance Report to Congress, which contrasts present status to future investment needs.

*Respondents:* State and local governments of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, and the four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

*Estimated Total Annual Burden:* The estimated total annual burden for all respondents is 42,206 hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Howard, 202-366-0170, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels (HPPI-10), Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m.,

Monday through Friday, except Federal holidays.

*Electronic Access:* Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202-512-1661. Internet users may reach the **Federal Register's** home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 7, 2003.

**James R. Kabel,**

Chief, Management Programs and Analysis Division.

[FR Doc. 03-5444 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-22-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**Agency Information Collection Activities: Submission for OMB Review**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** notice with a 60-day public comment period on this information collection on May 14, 2002. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 14, 2003.

**ADDRESSES:** You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality,

usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

**SUPPLEMENTARY INFORMATION:**

*Title:* Environmental Streamlining: Measuring the Performance of Stakeholders in the Transportation Project Development Process.

*Abstract:* The U.S. Department of Transportation (DOT), FHWA, has contracted with the Gallup Organization to conduct a survey of professionals associated with transportation and resource agencies in order to gather their views on the workings of the environmental review process for transportation projects and how the process can be streamlined. The purpose of the survey is to: (1) Collect the perceptions of agency professionals involved in conducting the decision-making processes mandated by the National Environmental Policy Act (NEPA) and other resource protection laws in order to develop benchmark performance measures; and (2) identify where the performance of the process might be improved by the application of techniques for streamlining.

*Respondents:* Approximately 675 professionals/officials from transportation and natural resource agencies.

*Frequency:* This is a one-time survey.

*Estimated Total Annual Burden*

*Hours:* The total estimated annual burden is 338 hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kreig Larson, 202-366-2056, Planning and Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

*Electronic Access:* Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202-512-1661. Internet users may reach the **Federal Register's** home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 7, 2003.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. 03-5445 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration (RSPA)

[Docket No. RSPA-98-4470]

#### Pipeline Safety: Meetings of the Pipeline Safety Advisory Committees

**AGENCY:** Office of Pipeline Safety, Research and Special Programs Administration, DOT.

**ACTION:** Notice; Meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

**SUMMARY:** Meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) will be held from Tuesday, March 25 to Thursday, March 27, 2003, at the Hyatt Arlington Hotel, Arlington, VA. OPS will provide briefings on pending rulemakings and regulatory initiatives. The advisory committees will discuss and vote on various proposed rulemakings and associated risk assessments.

**ADDRESSES:** Members of the public may attend the meetings at the Hyatt Arlington Hotel, 1325 Wilson Boulevard, Arlington, VA. The exact location and room number for this meeting will be posted on the OPS web page approximately 15 days before the meeting date at <http://ops.dot.gov>.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493-0967, not later than March 18, 2003, on the topic of the statement and the length of the presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to

the docket electronically. To do so, log onto the following Internet Web address: <http://dms.dot.gov>. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should reference docket number RSPA-98-4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493-0967.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Whetsel, OPS, (202) 366-4431 or Richard Hurliaux, OPS, (202) 366-4565, regarding the subject matter of this notice.

**SUPPLEMENTARY INFORMATION:** The TPSSC and THLPSSC are statutorily mandated advisory committees that advise the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) on proposed safety standards for gas and hazardous liquid pipelines. These advisory committees are constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1). The committees consist of 15 members—five each representing government, industry, and the public. The TPSSC and THLPSSC are tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Federal law requires that OPS submit cost-benefit analyses and risk assessment information on proposed safety standards to the advisory committees. The TPSSC and/or THLPSSC evaluate the merit of the data and methods used within the analyses, and when appropriate, provide recommendations relating to the cost-benefit analyses.

On Tuesday, March 25, 2003, from 12:30 p.m. to 4:30 p.m. EST, the Technical Hazardous Liquid Pipeline

Safety Standards Committee (THLPSSC) will meet. The preliminary agenda includes a briefing and committee vote on the Notice of Proposed Rulemaking, "Recommendations to Change Hazardous Liquid Pipeline Safety Requirements." In addition, OPS will brief the THLPSSC on the following topics:

1. Revision to Hazardous Liquid Pipeline Annual Report.
2. National Pipeline Mapping System.
3. Gathering Lines.

On Wednesday, March 26, 2003, from 9 a.m. to 6 p.m. EST, the THLPSSC and the TPSSC will meet in joint session. The preliminary agenda includes a briefing and peer review of the Pipeline Research and Development Plan. OPS will provide the Committee with briefings on the following topics:

1. Pipeline Communication and Public Education Programs.
2. Alternative Mitigation Measures.
3. Pipeline Integrity Management—Partial Issues.
4. Damage Prevention, Common Ground Alliance and Nationwide Toll-Free Number (# Dig).
5. Operator Qualification Compliance.
6. Pipeline Security.
7. Office of Pipeline Safety Initiatives.

On Thursday, March 27, 2003, from 9 a.m. to 6 p.m. EST the TPSSC will meet. A major portion of the meeting will include a briefing on the NPRM, Pipeline Integrity Management for Gas Transmission Pipelines in High Consequence Areas (HCAs) and of the Cost Benefit Analysis. The TPSSC will vote on the Cost Benefit Analysis of Pipeline Integrity Management for Gas Transmission Pipelines in HCAs and on the NPRM, "Further Regulatory Review: Gas Pipeline Safety Standards." Additional briefings will be provided on the following topics:

1. National Pipeline Mapping System.
2. Cost-Benefit Study of Excess Flow Valve Installation on Gas Service Lines
3. Gas Gathering Line Issues

**Authority:** 49 U.S.C. 60102, 60115.

Issued in Washington, DC on March 4, 2003.

**Richard D. Hurliaux,**

*Manager, Regulations, Office of Pipeline Safety.*

[FR Doc. 03-5448 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration**

[Docket RSPA-03-14455; Notice 1]

**Cost-Benefit Study of Excess Flow Valve Installation on Gas Service Lines**

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

**ACTION:** Notice of study availability and request for public comments.

**SUMMARY:** This notice seeks comments from the public on a cost-benefit study of mandatory installation of excess flow valves (EFVs) on all new and renewed gas distribution service lines. This study was performed by the Volpe National Transportation Systems Center (Volpe) at the request of RSPA's Office of Pipeline Safety (OPS) in response to a recommendation by the National Transportation Safety Board (NTSB).

**DATES:** Comments on this notice must be received by May 6, 2003 to ensure consideration.

**ADDRESSES:** Interested persons are invited to submit comments in duplicate to the Research and Special Programs Administration, U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590-0001 or by e-mail to [dms.dot.gov](mailto:dms.dot.gov). Comments must identify the docket number of this notice. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard.

A copy of the report and all comments in Docket No. RSPA-03-14455 may be reviewed at the Dockets Facility between 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. The docket may also be accessed electronically over the Internet at [dms.dot.gov](http://dms.dot.gov).

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, U.S. Department of Transportation (DOT), RSPA/OPS, 400 Seventh Street, SW, Washington, DC 20950, telephone (202) 366-6205, or by e-mail [marvin.fell@rspa.dot.gov](mailto:marvin.fell@rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:** Federal pipeline safety regulations do not require the installation of Excess Flow Valves (EFVs) on service lines. However, if an EFV is installed on a single residence service line, the regulations set minimum performance standards for these valves. These performance standards provide that an EFV must function properly up to the maximum operating pressure at which the valve is rated and at all temperatures reasonably expected in the operating environment of the service line. Furthermore, the EFV must not close when the pressure is less than the manufacturer's minimum specified operating pressure and the flow rate is below the manufacturer's minimum specified closure rate. The performance standards are found at 49 CFR 192.381.

The Federal pipeline safety regulations also require operators of gas distribution pipelines to notify certain service line customers of the availability of EFVs for installation at the customer's expense. The notification requirements only apply for newly installed or replaced single-family residential gas service lines operating at not less than 10 pounds per square inch gauge (psig). The notification requirements are found at 49 CFR 192.383.

The written notification must include information on the safety benefits of EFVs and on the costs associated with the installation, maintenance, and operation of EFVs. An operator is not required to notify its customers about EFV installation when (1) EFVs meeting the performance standards in 49 CFR 192.381 are not commercially available to the gas distribution pipeline operator, (2) prior experience indicates that contaminants in the service lines could interfere with the proper operation of an EFV, or (3) special situations make it impractical for the operator to notify a service line customer before replacing a service line. The notification requirements do not apply if an operator voluntarily installs EFVs in new and renewed gas service lines.

On July 7, 1998, leakage from a natural gas distribution service line caused a gas explosion and fire in the South Riding subdivision, Loudoun County, Virginia. The accident resulted in one death, three injuries, destruction of one house, and damage to five houses. The NTSB accident investigation revealed that gas had accumulated in the basement of a house, where it probably was ignited by a water heater pilot light. A hole in the 1/2-inch polyethylene gas service line to the house was the most likely source of the gas. The NTSB determined that the flow rate per hour from the hole in the gas

service line was more than adequate to activate an EFV. The NTSB concluded that the explosion and fire would not have occurred had an EFV been installed in the service line to interrupt gas flow.

As a result of its investigation, the NTSB issued Recommendation P-01-2. It urges RSPA to require the installation of EFVs in all new and renewed services serving any type of customer—residential, commercial, or industrial. This includes installation of EFVs in new and renewed gas services operating at less than 10 psig, if appropriate EFVs are commercially available.

OPS engaged Volpe to conduct a study that estimates the benefits and costs associated with implementation of NTSB Safety Recommendation P-01-2. This study examined whether the benefits resulting from mandatory installation of EFVs on all new and renewed gas distribution service lines would exceed the costs. The full study is available in Docket Number RSPA-03-14455 or on the OPS Web page at [ops.dot.gov](http://ops.dot.gov).

OPS invites comments on all aspects of the Volpe study, and in particular, would like comments on the following questions:

- (1) Are the assumptions used in performing this study clear and correct?
- (2) Is the data used in the study adequate to support the conclusions of the report?
- (3) Are the uncertainties of this study clearly explained?
- (4) Are the conclusions drawn from this study reasonable?
- (5) Are the sensitivity analyses adequate?
- (6) Are there other issues regarding EFVs and EFV installation not considered in the study?
- (7) Are there regulatory or non-regulatory alternatives to mandatory EFV installation on new and renewed service lines that are as effective in reducing risks to the public?

Issued in Washington, DC on March 4, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*  
[FR Doc. 03-5449 Filed 3-6-03; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Form 1040 TeleFile and Form 8855-V, TeleFile Payment Voucher**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040—TeleFile and Form 8855-V, TeleFile Payment Voucher.

**DATES:** Written comments should be received on or before May 6, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the Internet [CAROL.A.SAVAGE@irs.gov](mailto:CAROL.A.SAVAGE@irs.gov), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 1040—TeleFile and TeleFile Payment Voucher (Form 8855-V).

*OMB Number:* 1545-1277.

*Form Number:* 1040—TeleFile and Form 8855-V.

*Abstract:* Certain Form 1040EZ filers are given the option of using a simplified method of filing their tax return by telephone. The taxpayer enters certain minimal items of information on the TeleFile Tax Record and calls the IRS with a touch-tone telephone. The automated system figures the tax and any refund or balance due while the taxpayer is still on the phone.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Responses:* 4,678,000.

*Estimated Time Per Respondent:* 1 hour, 31 minutes.

*Estimated Total Annual Burden Hours:* 7,133,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03-5463 Filed 3-6-03; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Forms 4461, 4461-A, and 4461-B**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461-A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461-B, Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

**DATES:** Written comments should be received on or before May 6, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622-3945, or through the Internet [CAROL.A.SAVAGE@irs.gov](mailto:CAROL.A.SAVAGE@irs.gov), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461-A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461-B, Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

*OMB Number:* 1545-0169.

*Form Numbers:* Forms 4461, 4461-A, and 4461-B.

*Abstract:* The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

*Current Actions:* There are no changes being made to these forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 5,250.

*Estimated Time Per Respondent:* 20 hours, 49 minutes.

*Estimated Total Annual Burden Hours:* 109,298.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03-5465 Filed 3-6-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8271

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8271, Investor Reporting of Tax Shelter Registration Number.

**DATES:** Written comments should be received on or before May 6, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Investor Reporting of Tax Shelter Registration Number.

*OMB Number:* 1545-0881.

*Form Number:* 8271.

*Abstract:* All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their tax return from a tax shelter required to be registered under Internal Revenue Code section 6111 must report the tax shelter registration number to the IRS. Form 8271 is used for this purpose. The IRS uses the information provided on Form 8271 to identify the tax shelter from which the benefits are claimed and to determine if any compliance actions are needed.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

*Estimated Number of Responses:* 297,500.

*Estimated Time Per Respondent:* 41 minutes.

*Estimated Total Annual Burden Hours:* 205,275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03-5466 Filed 3-6-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8811

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

**DATES:** Written comments should be received on or before May 6, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the Internet

(CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

*OMB Number:* 1545-1099.

*Form Number:* 8811.

*Abstract:* Current regulations require real estate mortgage investment conduits (REMICs) to provide Forms 1099 to true holders of interests in these investment vehicles. Because of the complex computations required at each level and the potential number of nominees, the ultimate investor may not receive a Form 1099 and other information necessary to prepare their tax return in a timely fashion. Form 8811 collects information for publishing by the IRS so that brokers can contact REMICs to request the financial information and timely issue Forms 1099 to holders.

*Current Actions:* There are no changes being made to Form 8811 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 1,000.

*Estimated Time Per Response:* 5 hr., 7 min.

*Estimated Total Annual Burden Hours:* 5,110.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03-5467 Filed 3-6-03; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Friday,  
March 7, 2003**

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## **Part II**

### **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 660  
Magnuson-Stevens Act Provisions;  
Fisheries off West Coast States and in the  
Western Pacific; Pacific Coast Groundfish  
Fishery; Annual Specifications and  
Management Measures; Final Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 021209300-3048-02; I.D. 112502C]

RIN 0648-AQ18

**Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the 2003 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California. Final specifications include the levels of the acceptable biological catch (ABC) and optimum yields (OYs). Commercial OYs (the total catch OYs reduced by tribal allocations and by amounts expected to be taken in recreational and compensation fisheries) described herein are allocated between the limited entry and open access fisheries. Management measures for 2003 are intended to prevent overfishing, rebuild overfished species, minimize incidental catch and discard of overfished and depleted stocks, provide equitable harvest opportunity for both recreational and commercial sectors, and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations to the extent practicable.

**DATES:** Effective March 1, 2003, until the 2004 annual specifications, unless modified, superseded, or rescinded through a publication in the **Federal Register**.

**ADDRESSES:** Copies of the Final Environmental Impact Statement (FEIS) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220. Copies of the Record of Decision (ROD) final regulatory flexibility analysis (FRFA) and the Small Entity Compliance Guide are available from D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS,

7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070.

**FOR FURTHER INFORMATION CONTACT:**

Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736; and e-mail: yvonne.dereynier@noaa.gov, becky.renko@noaa.gov or Svein Fougner (Southwest Region, NMFS), phone: 562-980-4000; fax: 562-980-4047; and e-mail: svein.fougner@noaa.gov.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This final rule also is accessible via the Internet at the Office of the Federal Register's website at [http://www.access.gpo.gov/su\\_docs/aces/aces140.htm](http://www.access.gpo.gov/su_docs/aces/aces140.htm). Background information and documents are available at the NMFS Northwest Region website at <http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm> and at the Council's website at <http://www.pcouncil.org>.

**Background**

A proposed rule to implement the 2003 specifications and management measures for Pacific Coast groundfish was published on January 7, 2003 (68 FR 936). NMFS requested public comment on the proposed rule through February 7, 2003. During the comment period on the proposed rule, NMFS received five letters of comment, which are addressed later in the preamble to this final rule. See the preamble to the proposed rule for additional background information on the fishery and on this rule.

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires that fishery specifications for groundfish be annually evaluated and revised, as necessary, that OYs be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the Federal Register and made effective by January 1, the beginning of the fishing year. To ensure that new 2003 fishery management measures were effective January 1, 2003, NMFS published an emergency rule announcing final management measures for January-February 2003 (68 FR 908, January 7, 2003). Annual specifications for 2003 and management measures for March-December 2003 were proposed in a separate rule, also published on January 7, 2003.

Specifications and management measures announced in this rule for 2003 are designed to rebuild overfished stocks through constraining direct and incidental mortality, to prevent overfishing, and to achieve as much of

the OYs as practicable for more abundant groundfish stocks managed under the FMP.

**Comments and Responses**

During the comment period for the 2003 specifications and management measures, which ended on February 7, 2003, NMFS received five letters of comment. These letters of comment were received opposing different portions of the rule: two from non-governmental organizations representing environmental interests, two from an association of seafood processors, and one from the government of Canada.

*Comments on Harvest Specifications and Overfished Species Rebuilding*

*Comment 1:* The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that overfished species be rebuilt within as short a time as possible. For a number of overfished West Coast groundfish species, rebuilding periods have been designated as the maximum time possible without any analysis as to why this time frame is warranted. Further, the Council and NMFS are overdue in preparing formal rebuilding plans (in the form of an FMP, an FMP amendment, or Federal regulations) for the nine overfished groundfish species.

*Response:* In relevant part, the Magnuson-Stevens Act requires that rebuilding periods be as short as possible, taking into account the status and biology of the overfished stocks, and the needs of fishing communities, and not exceed ten years except in cases where the biology of the stock requires more time to rebuild (as is true of most of the nine overfished groundfish stocks). Under the National Standard Guidelines that implement the Magnuson-Stevens Act, the maximum times to rebuild are: 1) for stocks that can be rebuilt within ten years with no fishing, ten years, and 2) for stocks that cannot be rebuilt within ten years with no fishing, the time to rebuild in the absence of fishing, plus one mean generation. In establishing rebuilding periods, the Council and NMFS endeavor to meet the conservation requirements (National Standard 1) while taking into account the needs of fishing communities (National Standard 8).

The proposed rule defined the rebuilding parameters for each species, including: that portion of the stock that has been designated as overfished; the biomass estimate from the most recent assessment; the maximum allowable time to rebuild (TMAX); rebuilding target (TTARGET) years (must have at

least a 50 percent probability of rebuilding within the specified time); the probability of rebuilding within the maximum permissible time period (P<sub>MAX</sub>); and the harvest measures that are being adopted to keep the total fishing mortality (typically expressed as the fishing mortality rate) within the specified OYs that will achieve T<sub>TARGET</sub>. Policy makers only have control over three of these parameters: T<sub>TARGET</sub>, P<sub>MAX</sub> and the fishing mortality rate. NMFS disagrees that rebuilding periods have been designated as the maximum time possible. With the exception of bocaccio rockfish (see response to Comment 2 regarding need for a sustainability analysis), there are no T<sub>TARGET</sub> periods that are at or above T<sub>MAX</sub> for the overfished rockfish species.

The Council is currently preparing Amendment 16, which establishes the process and standards for rebuilding plans and incorporates rebuilding measures into the FMP. Overfished species are currently managed under interim rebuilding strategies, and it is not expected that the final rebuilding plans will differ substantially in their basic biological parameters, taking into account any changes that would be made as a result of new data on overfished stocks' parameters. Thus, overfished species are not disadvantaged by not having formal rebuilding plans at this time.

*Comment 2:* NMFS has proposed a 20 mt OY for the badly overfished bocaccio rockfish. This harvest level fails to meet the rebuilding requirements of the Magnuson-Stevens Act because it would allow only a 50 percent chance of rebuilding bocaccio within 170 years. NMFS admits that this bocaccio harvest level violates its National Standard Guidelines and claims that the Guidelines do not address the bocaccio situation. Although we believe that the National Standard Guidelines themselves violate the Magnuson-Stevens Act, NMFS cannot simply dismiss those Guidelines.

*Response:* In the revised bocaccio rebuilding analysis prepared following the June 2002 Council meeting, the bocaccio stock failed to have a 50 percent probability of rebuilding by T<sub>MAX</sub>, even in the absence of fishing. NMFS subsequently prepared a sustainability analysis for bocaccio rockfish to determine the fishing rates that would lead to no further decline in abundance over a specified time frame. The sustainability analysis shows that a harvest level of  $\leq 20$  mt would provide a 50 percent probability for the stock to rebuild in 170 years, with a high probability ( $\leq 80$  percent) of no further

decline in the spawning biomass over the next 100 years. The southern bocaccio rockfish stock has suffered poor recruitment during the warm water conditions that have prevailed off Southern California since the late 1980s. If a period of good recruitment occurs, the stock could be expected to rebuild much faster than estimated.

The National Standard Guidelines do not address the situation where NMFS concludes that a stock cannot rebuild by T<sub>MAX</sub>, even with zero fishing mortality. Therefore, NMFS has determined that the National Standard Guidelines do not provide sufficient guidance for the bocaccio rockfish situation and instead has looked directly to the Magnuson-Stevens Act for guidance. Section 304(e)(4)(A)(i) states that a rebuilding period shall "be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem."

NMFS believes that the Magnuson-Stevens Act requires that the Council and NMFS meet the conservation needs of the stock (National Standard 1), and also consider the needs of fishing communities (National Standard 8). In balancing these considerations NMFS has determined that zero fishing mortality is not required for this situation. Zero fishing mortality would seriously adversely affect fishers and communities in California south of Cape Mendocino because commercial fisheries (including fisheries for non-groundfish species) and recreational fisheries that incidentally catch bocaccio would be severely curtailed or closed altogether for many years into the future.

*Comment 3:* NMFS violates the Magnuson-Stevens Act by proposing the same cowcod OY as in previous years. NMFS has not adequately assessed whether the amount of cowcod discard that is occurring is above or below the 4.8 mt OY. Finally, NMFS has failed to address the fact that its prohibition of cowcod landing and retention is not being complied with in practice the FEIS shows 0.8 mt of cowcod landed in 2001, the first year in which cowcod retention and landings were prohibited.

*Response:* NMFS believes that the ABC/OY alternatives presented in the FEIS represent a reasonable range of alternatives. Under each alternative, a full suite of ABC/OYs for all managed species were considered. For cowcod, where no new stock assessment information was available, the outcome

and projections from the previous assessments (the best scientific information) and rebuilding analyses were carried over into the new fishing year.

The cowcod OY is based on a constant fishing mortality rate rebuilding strategy that is approximately 1 percent of the population (See Council documents: Revised Rebuilding Plan for West Coast Cowcod Exhibit C.10 Attachment 3, June 2001.) As new assessments are prepared for cowcod and as the stock recovers, the annual OY will increase in direct proportion to the biomass. These rates are consistent with the long term rebuilding goals defined for the individual species and recommended by the Council.

NMFS agrees that further analysis is needed to fully understand how prohibiting bottom fishing activities in two Cowcod Conservation Areas in the Southern California Bight (estimated to be the most important habitats for cowcod) and no retention regulations coastwide affect the total mortality of cowcod. Despite these uncertainties, NMFS anticipates that efforts to minimize bocaccio fishing-related mortality south of Cape Mendocino will provide further protection for cowcod, which have a similar latitudinal and depth distribution and reside in similar habitats as bocaccio. These measures include: the elimination of all directed bocaccio rockfish retention; new depth based management measures that will prohibit groundfish-directed bottom trawl; reduced limited entry fixed gear and open access fishing opportunities in the depths where bocaccio are most commonly found; and the closure of the California recreational fisheries south of 40°10' N. lat. from January through June 2003.

Data collected by observers in the commercial fishery support this opinion. From September 1, 2001 to August 31, 2002, prior to implementing the rockfish conservation area, a total of 322 lb (146 kg) of cowcod were weighed by NMFS observers on limited entry trawl trips, south of 40°10' N. lat., where some groundfish was retained. When expanded to account for sub-sampling of some tows, the estimated total cowcod catch on these observed trips is 751 lb (341 kg), in association with 745,162 lb (338 mt) of retained groundfish. Using the average tow depth recorded by the observers as the measure of fishing depth, 95 percent of the weighed cowcod and 93 percent of the expanded cowcod catch occurred on tows within the depth ranges upon which the 2003 rockfish conservation area is based. No attempt has been made yet to extrapolate these results to the

entire limited entry trawl fleet, in terms of either the total amount or depth distribution of all cowcod bycatch. However, they may serve as a general indicator of the depth-distribution of cowcod bycatch and the potential effectiveness of the conservation area.

The source of all 1,764 lb (800 kg) of cowcod landings in 2001 is unclear at this time. A small amount (100 lb, 45 kg) of the cowcod appear to have been retained during NMFS survey cruises where research catch is sold to offset the survey costs. The remainder is most likely attributable to fishers mis-identifying the species and landing them as part of other market categories. When those categories are sampled for species composition and cowcod are found, the ratio of pounds of cowcod to total pounds is then applied to the entire market category for that sampling unit (gear/period/port group) to estimate the total amount of cowcod that were landed. The cowcod landings in 2002 were further reduced over 2001.

*Comment 4:* One commenter stated that the OY for darkblotched rockfish was too low because it was based on an 80 percent probability of rebuilding by T<sub>max</sub>, suggesting that a 60 percent probability of rebuilding by that date was a reasonable standard for meeting rebuilding requirements. Conversely, another commenter stated that the OY level for darkblotched was too high because it is higher than catch limits that were in force in 2001. This second commenter also notes that the 2003 specifications claim a higher likelihood of rebuilding than claimed in the 2002 specifications.

*Response:* The goals of rebuilding programs are to achieve the population size and structure that will support MSY within a specified time period while minimizing to the extent practicable, the social and economic impacts associated with rebuilding, including adverse impacts on fishing communities.

NMFS guidance on rebuilding plans specifies that the minimum possible time to rebuild is the time to rebuild in the absence of fishing. For darkblotched rockfish, the minimum time to rebuild is 14 years (2014). The mean generation time for darkblotched rockfish is 33 years, therefore the maximum allowable time to rebuild would be 47 years (2047). In determining the target rebuilding time period NMFS guidance recommends that the target rebuilding time be shorter than the maximum allowable time. The recommended default in section 3.4 of the technical guidance document (Technical Guidance On the Use of Precautionary Approaches to Implementing National

Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act NOAA Technical Memorandum NMFS-F/SPO-11 July 17, 1998) is that the target rebuilding time not exceed the midpoint between the minimum and maximum possible rebuilding times (T<sub>mid</sub>).

A draft rebuilding analysis was prepared in May 2001 and presented to the Council at its June 2001 meeting. This draft analysis was revised by NMFS in August 2001 and was adopted by the Council at its September 2001 meeting. The new analysis indicated that the stock was more depleted than originally estimated (12 percent vs 22 percent of unfished biomass,) and that the stock could not be rebuilt within 10 years as was previously thought. Therefore, the OYs since 2002 reflect an extended rebuilding trajectory.

The 2002 OY of 168 mt, was based on a 70 percent probability of rebuilding the stock to MSY by T<sub>MAX</sub>. This is equivalent to a T<sub>TARGET</sub> of 2034. The 2003 OY of 172 mt is based on the rebuilding analysis, which has a 80 percent probability of rebuilding the stock to MSY by T<sub>MAX</sub>. This is equivalent to a T<sub>TARGET</sub> of 2030. The Council recommended and NMFS agrees, that an OY of 172 mt for 2003 provides a reasonable balance between the length of time for rebuilding the stock and the adverse economic impacts to the limited entry trawl sector. The projected darkblotched biomass increase results in a higher OY even though the rebuilding time is shorter.

*Comment 5:* The OY for Pacific ocean perch (POP) is too low because it was based on a 70 percent probability of rebuilding by T<sub>target</sub>. A 60 percent probability of rebuilding by that date is a reasonable standard for meeting rebuilding requirements.

*Response:* In 2001 the POP rebuilding analysis was updated with the most recent scientific information. In 2002, the OY of 350 mt reflected a 70 percent probability of rebuilding by the year 2042. For 2003, three OYs based on the most recent rebuilding analysis and corresponding to 50, 70, and 80 percent probabilities of rebuilding the stock by the year 2041 were presented to the Council. The Council recommended OY of 377 mt which corresponds to a 70 percent probability of rebuilding the stock by 2041. This OY was chosen because it was consistent with the interim rebuilding strategy adopted by the Council in prior years.

NMFS agrees with the Council's recommendation, and believes that increasing the OY for POP to a level that corresponds to a 60 percent probability of rebuilding the stock by 2041 provides

little if any benefit to fishers. Because POP is a slope species and is found in similar areas as darkblotched rockfish, measures to protect darkblotched rockfish reduce the availability of POP to the commercial fishery. The best available data on December 31, 2002 indicates that only about 50 percent of the available OY for POP was landed in 2002. With the 2003 conservation areas, there will likely be fewer opportunities for vessels to directly or indirectly take POP, therefore there would be no benefit to fishers from raising the OY.

*Comment 6:* The yelloweye rockfish OY is 63 percent higher than in 2002. While the agency suggests that yelloweye rockfish is in better shape than it was a year ago, the higher OY results in a rebuilding period that is 15 years longer than it would have been under 2002 harvest levels.

*Response:* For 2002, the ABC for yelloweye rockfish was set in acknowledgment that this stock would be designated as overfished and was based on the recommendation from the stock assessment author and the Stock Assessment Review Panel that reviewed the assessment. The Council adopted a total catch OY for yelloweye rockfish that was based on a precautionary adjustment of 50 percent of the specified ABC.

On January 11, 2002, yelloweye rockfish was declared overfished (67 FR 1555). At the Council's June 2002 meeting, an initial yelloweye rockfish rebuilding analysis, based on the 2001 assessment, was prepared and presented. The development of rebuilding measures for yelloweye rockfish was hampered in this process because this assessment did not cover waters off the coast of Washington. In August 2002, an updated assessment was completed in order to incorporate data from Washington, an important area of yelloweye rockfish abundance, and to incorporate newly available age data.

The assessment update concluded that the coastwide yelloweye rockfish spawning female biomass was at 24.1 percent of its unfished biomass at the beginning of 2002. This is in contrast to the 2001 assessment that estimated that yelloweye rockfish was at about 7 percent of its unfished biomass in waters off northern California and at 13 percent of its unfished biomass in waters off Oregon. A new rebuilding analysis was prepared following completion of the 2002 assessment. Due to the less depleted stock status and higher productivity estimated by the updated assessment, the rebuilding period is shorter than had been initially estimated. The estimated year to rebuild

in the absence of fishing is 2027, while the target rebuilding year associated with a 22 mt OY for 2003 is 2052(TMID). Selecting an OY that corresponds to TMID is consistent with NMFS guidance on rebuilding plans.

NMFS believes that the Magnuson-Stevens Act requires that the Council and NMFS meet the conservation needs of the stock (National Standard 1), and also consider the needs of fishing communities (National Standard 8). A lower rebuilding OY, which would further reduce the potential income of the fishers is not required.

*Comment 7:* One commenter stated that the sablefish should be set higher, at 8,187 mt, which would be based on recruitment changes affected by environmental conditions, the default MSY proxy, and the Council's harvest control rule. Failing to base the sablefish OY on environmental conditions ignore the best available science, which show that environmental conditions affect stock status. Conversely, another commenter stated that the sablefish OY is 30 percent higher than that recommended by the Council's Allocation Committee, saying that the higher amount is not justified.

*Response:* The SSC indicated that the medium and high OYs were relatively risk-prone and advised the Council that caution should be used when setting the 2003 harvest levels. The 5,000 mt OY, as recommended by the Council's ad hoc Allocation Committee, was consistent with the Scientific and Statistical Committee (SSC) recommendation because it addressed uncertainty in the assessment relating to the different states of nature.

After deliberations, the Council recommended OY of 6,500 mt which is a 7,455 mt OY, based on a 40/10 adjustment to the ABC, with an additional 1,000 mt precautionary reduction. The Council based its recommendation on the SSC's advice to be precautionary because of assessment uncertainties, and because the sablefish biomass is within the precautionary range. While the OY is higher than that recommended by the Allocation Committee, this OY is still considered to be risk averse rather than risk neutral. NMFS agrees with the Council's recommendation.

*Comment 8:* One commenter stated that the whiting OY is too low and is set at a harvest rate that is more conservative than the Council's default rate, which is unjustified. Another commenter stated that the OY is contrary to the scientific advice of the U.S. Canada Review Panel. A third commenter stated that the whiting OY was higher than recommended by the

Council's SSC and that setting the higher OY was unjustified.

*Response:* In estimating the current biomass, NMFS used a medium level recruitment assumption of a recent (1999) large year class. The medium recruitment level was considered to be risk neutral. The U.S. ABC of 188,000 mt is 80 percent of the coastwide ABC. The U.S. whiting OY is 148,200 mt which is 80 percent of the coastwide OY (185,325 mt) and is based on the application of an F45% harvest rate, reduced by the Council's default rebuilding 40–10 harvest rate policy. Under the 40–10 harvest rate policy, the OYs of stocks that are below B40% abundance are set at increasingly more conservative rates the farther they are below B40%.

The SSC advised the Council to be precautionary when setting the Pacific whiting OY and not increase it over the 2002 harvest level (U.S. OY for 2002 was 129,600 mt) until a new assessment was conducted. However, the Council indicated that the medium harvest level, 148,200 mt (13 percent increase over 2002), based on the 2003 projected biomass with an F45% harvest rate proxy was sufficiently precautionary, because the risk neutral medium recruitment assumption and a more conservative harvest rate proxy were applied. The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the biomass to forecast the amount of harvest available to the fishery. Because of expected whiting biomass growth in the coming years, this will result in a short-term increase in the OY. However, the more precautionary harvest rate proxy is expected to increase the rebuilding rate and reduce the risk of declining back into an overfished state because whiting is a highly productive species.

The Joint Canada-U.S. Review Panel on the Stock assessment of the Coastal Pacific Hake/Whiting stock met in February 2002 and prepared a report, which was used by the Council and SSC in recommending the Pacific whiting harvest levels for 2002. While both U.S. and Canadian review panel members had a common interest in conducting sound technical review, they had different responsibilities in terms of the type of advice expected by the Council and Canadian Department of Fisheries and Oceans. Specifically, the review panel recommended changing the harvest rate to an F45% harvest rate and selecting the harvest level bounded by the low and medium recruitment scenarios for the 1999 year-class. This was a risk adverse policy recommendation that was not adopted

by the Council for the reasons previously stated.

*Comment 9:* NMFS has failed to compensate for overharvest in past years' fisheries in proposing harvest limits for 2003. In its proposed rule at 68 FR 953, NMFS discussed overfishing that had occurred in 2001, but not in 2002, claiming that landings data was not available at the time of the publication of the proposed rule. A full month has passed since the end of 2002, therefore, NMFS will violate the Magnuson-Stevens Act if it fails to consider 2002 catch data in making its final decision on the 2003 specifications.

*Response:* Each year since 2000, NMFS has provided a brief report within the preamble to the proposed rule on whether overfishing occurred on any groundfish species in the last year for which data was available. This report is not a required part of the preamble to the specifications and is simply provided as an update for the public. The commenter has taken a sentence from that report and revised its context so as to accuse the agency of failing to consider 2002 data in crafting specifications and management measures for 2003. The Council and its participating state and Federal agencies consider all available data, including catch data from the current fishing year when devising specifications and management measures for the upcoming fishing year.

To the extent that they were available, data from fisheries conducted during 2002 were used in evaluating 2003 management options for all fleets targeting groundfish. Inseason comparison of trawl bycatch projections with reported landings during the first four months of 2002 resulted in adjustments to the expected target species landings of vessels within the 2003 model. Additionally, because trawl landings of bocaccio during the first four months exceeded the total bycatch projected for that timespan, bocaccio bycatch rates were increased for modeling the 2003 trawl fishery. Recommendations for management of the fixed gear, daily trip limit fishery for sablefish also incorporated landings during the first four months of 2002, in conjunction with catch rates over the previous three years. Early season landings in the recreational and commercial fixed gear fisheries for nearshore rockfish were included in evaluating 2003 management, along with recent years' landings. However, in the region north of 40°10' N. lat., participation is usually low early in the year due to bad weather. As a result, landings during this period are of

limited use in evaluating the overall adequacy of measures adopted for the entire year. While recreational and commercial fixed gear vessels are usually more active in the region south of 40°10' N. lat. early in the year, these groundfish fisheries were closed during two of the first four months of 2002, restricting their usefulness. As data for May and June became available during the summer, they were examined, and incorporated into 2003 projections where appropriate.

In this letter of comment, the commenter refers to the Quota Species Monitoring (QSM) system, asserting that this system collects and reports data within about two weeks of landings and is used for inseason management. This comment expresses a common confusion between the best available science and the most recently available science. The QSM system provides estimates of total landings for managed species that are used for inseason fishery monitoring to show managers general fishery trends, such as whether a particular species is being landed at higher or lower amounts than the previous year or cumulative limit period. QSM data is not used in stock assessments because assessments require more accurate and specific landings data, data that comes from fishtickets. Data from fishtickets is also needed and used to predict individual vessel behavior within different management scenarios. Information from fishtickets, which detail the landings of individual vessels, is not available until several months after the landings recorded by those fish tickets were made. Accurate landings data from fishtickets represents the best available scientific information about how landings of the different groundfish species are distributed between various ports coastwide. Landings levels predicted by the QSM system represent only the most recently available information on general landings trends and cannot substitute for the accuracy and specificity of fishticket landings data.

Stock assessments conducted during 2002 were initiated very early in the year, and were completed by April. Catches are specified in the models on an annual basis, and given the Council's ability to respond to early trends through use of inseason adjustments, it would not have been appropriate to have modified the models' assumptions regarding expected 2002 catch, based on only 2 months of landings data.

*Comment 10:* We disagree with NMFS's statement that "[N]ew legislative mandates . . . gave highest priority to preventing overfishing and

rebuilding overfished stocks." National Standard 1 requires fisheries management measures to prevent overfishing "while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."

*Response:* The Magnuson-Stevens Act contains ten National Standards that characterize the nation's primary objectives for Federal fisheries management. National Standard 1 reads as follows: "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." National Standard 8 reads as follows: "Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize the adverse economic impacts on such communities." Balancing these two national standards is at the heart of the challenge faced by NMFS and the Council in managing West Coast groundfish fisheries. National Standard 8 does recognize the importance of fishing communities, but it makes that recognition while reminding managers of their obligation to prevent overfishing and rebuild overfished stocks.

#### **Bycatch and Discard**

*Comment 11:* The 2003 groundfish management measures are a complex combination of trip limits and depth-based closures; however, the agency lacks much of the scientific information needed to ensure the success of this management scheme. The agency must establish an accurate accounting system to measure total catch and must establish a monitoring system to measure the depths at which the different species are caught. We fully endorse the use of vessel monitoring systems (VMS) to both enforce depth-based closures and to provide much-needed data on the catch locations for particular species.

*Response:* NMFS agrees. The groundfish management measures are certainly complex and will require monitoring systems to both enforce regulations and to provide scientific information on the effectiveness of the regulations at protecting overfished groundfish species. NMFS is investigating VMS units and preparing its computer database facilities for

receiving and organizing VMS data. The agency expects to soon publish a proposed rule that would set out requirements for all limited entry vessels that fish for groundfish to carry VMS. These proposed regulations would undergo public review and comment while the burden of increased public reporting duties associated with VMS were also under public review and Office of Management and Budget review under the Paperwork Reduction Act. If NMFS approves final VMS regulations for implementation, the agency expects that this system would provide much-needed data on the locations and depths at which vessels fish. Such information would be subject to Magnuson-Stevens Act confidentiality restrictions, but is expected to be very useful to NMFS enforcement and science centers. Data from the groundfish observer program and from the VMS program are expected to notably improve NMFS scientific information on West Coast groundfish and groundfish fishing activities. Data from the NMFS observer program will enhance the agency's ability to estimate the total catch of not only bycatch species, but target species, as well. Appropriate application of observer discard data to entire fleets requires substantial data review and modeling; this work is now underway.

*Comment 12:* Three commenters discussed the current model for bycatch analysis and suggested that NMFS needs to update and improve the data used in that analysis. In particular, the commenters were critical of the use of trawl logbook data in the current bycatch analysis, saying that the data is old and does not accurately reflect current fishing patterns. Commenters also suggested that NMFS incorporate observer data into its bycatch rate analyses, and use that data to check its bycatch rate assumptions for 2003. One of these commenters further noted that the bycatch model only addresses the trawl fisheries and asked that NMFS conduct a review of its data sources on fishing-related mortality and update the FMP to specify the types of data needed to improve estimates of total mortality.

*Response:* NMFS agrees that the bycatch model needs to be updated and needs to incorporate observer data, and the agency and the Council are working toward those ends. On January 27-29, 2003, the Council's SSC sponsored a workshop to review the bycatch model and the data sources for that model. The SSC plans to evaluate the report of the workshop review panel at its March 2003 meeting, which will be held concurrently with the Council's March 9-14, 2003 in Sacramento, California,

and provide the Council with its recommendations at the April 2003 Council meeting. NMFS believes that this SSC review is an important step toward improving the bycatch model to better support groundfish management.

NMFS agrees that observer data from the new NMFS West Coast groundfish observer program needs to be incorporated into the bycatch model. Before using the data for inseason management, NMFS must first review the data for potential sources of bias and, in conjunction with the SSC, determine the most appropriate methods for incorporating the new data into the bycatch model. On January 30, 2003, NMFS released its first report on observer program data. The observer program began in August 2001 and this new report provides data from the August 2001 through August 2002 period. NMFS Northwest Fisheries Science Center is currently determining how best to integrate the new observer data into the model. Results from the first year of the observer program's activities are available online as the West Coast Groundfish Observer Program Initial Data Report and Summary Analyses at <http://www.nwfsc.noaa.gov/fram/Observer/databyreport.htm>.

NMFS also agrees that logbook data should not be a primary data source for the bycatch rates used in the model, although the agency notes that logbook and fish ticket data are likely to remain integral to projecting fleet behavior within the bycatch model. One commenter noted that fishing strategies have changed since the 1999 logbook data used in the model became available. While it is true that fishing strategies have changed, the 1999 logbook data are used to show co-occurrence between the more abundant targeted stocks and overfished stocks during a period when fishing was less restricted. Fishery managers need to know how co-occurrence ratios looked during less restrictive fishing periods in order to better craft fishing restrictions that will reduce interceptions of overfished species. Another commenter noted that logbooks only show the beginnings of tow locations, not the direction and duration of the tows. NMFS and the Council need more accurate information on where trawl vessels are fishing throughout their tows. However, individual trawl tows may last for hours and encompass a wide range of depths. Consequently, even complete information regarding the path of any tow would not eliminate all ambiguity on where particular species were caught. NMFS also needs more information on the fishing

locations of the non-trawl and recreational fleets in addition to improvements in trawl fishing location data. If NMFS is able to approve the VMS system regulations discussed above in the response to Comment 11, the agency expects that its data on the locations and depths at which vessels fish will be markedly improved. While the VMS regulations would initially apply to limited entry vessels fishing for West Coast groundfish, NMFS anticipates expanding these requirements to commercial passenger fishing vessels (recreational charter boats) and to the open access groundfish fleet.

NMFS agrees that the current bycatch model only addresses the groundfish trawl fleet. During development of the model, bycatch rate data were unavailable for other fleets that catch groundfish. The NMFS observer program is collecting data from non-trawl fishery participants. As more data become available, it is the agency's intent to expand the bycatch model to include other gear types. With respect to the comment that NMFS needs to conduct a review of its data sources on fishing-related mortality, NMFS refers the public to the NMFS Northwest Fisheries Science Center's 2002 Groundfish Research Plan in 2002, which is available online at <http://www.nwfsc.noaa.gov/fram/GFresearchplan.htm>. Among other things, the Groundfish Research Plan provides planning goals for investigating bycatch and discard, and how these contribute to total groundfish mortality.

*Comment 13:* NMFS has refused to seriously consider the alternative of managing the fishery under a system of discard caps, under which the fishery would be closed if a certain amount of discard occurred.

*Response:* NMFS has refused to seriously consider the alternative of managing the fishery under a system of discard caps, under which the fishery would be closed if a certain amount of discard occurred.

"Discard caps" generally refers to a management tool whereby an entire fishery, or fishing by an individual vessel, is halted when discard quotas for designated species are reached. Administration of such a system requires real-time information on discards as the fishery progresses, either through comprehensive, direct observation by fishery observers, or by a combination of observer and landings data that can be extrapolated to yield a reliable estimate of discards. While NMFS has not "refused to seriously consider" managing the Pacific Coast

groundfish fishery with a discard caps program, there is no data collection system in place, nor is there likely to be in the near future, on which to base a system of discard caps. NMFS will be analyzing discard caps more fully in its Supplemental Programmatic Environmental Impact Statement, a preliminary draft of which should be available for public review in late summer 2003.

West Coast groundfish management uses a similar management tool that has been adapted to account for the relatively data poor conditions in the West Coast groundfish fishery. The bycatch model, which is currently under scientific review as discussed earlier in this section, estimates the amounts of overfished species that will be taken in fisheries targeting more abundant stocks. These estimates are stratified over the months of the year, because historic data has shown that groups of groundfish species are taken in different combinations at different times of the year. Estimated bycatch and discard of overfished species is monitored through the catch and landings levels of targeted species. For example, NMFS will monitor the amounts of Dover sole and sablefish landed to estimate the amount of darkblotched rockfish discard in that sector of the fishery. Darkblotched rockfish is a deepwater rockfish species incidentally taken with Dover sole and sablefish. The Council recommends adjustments to the trip limits and/or closures of different sectors of the fishery if the OYs for overfished species are estimated to be approached. In 2002, for example, the Council learned at its June meeting that it had not accounted for darkblotched rockfish taken south of 40°10' N. lat. when it developed the 2002 specifications and management measures. To prevent the deepwater fisheries from exceeding the darkblotched rockfish OY, the Council reduced trip limits for deepwater species in July and August and recommended area closures in waters where darkblotched rockfish is commonly found for September-December. NMFS implemented the Council's July-August recommendation, but found in investigating its September-December recommendation that darkblotched rockfish are more likely to be taken by vessels targeting deepwater species in September than in the summer or winter months. Thus, NMFS closed deepwater trawl fisheries in September and implemented area closures for October-December via an emergency rule.

NMFS began its observer program in August 2001 and, as mentioned above,

has just reported its first results. However, the observer program does not have the resources to provide observer data to managers for real-time fishery management. The agency expects that integrating observer data into the bycatch model and recalibrating the model with that data will significantly improve NMFS and Council ability to estimate bycatch and discard in the West Coast groundfish fishery. These changes will still not allow NMFS to implement a discard cap management program, which as mentioned earlier, requires real-time observer program data. No one management tool is suitable for all fisheries, thus NMFS and the Council must craft management tools suitable to the West Coast groundfish fisheries and to the scientific information available on West Coast groundfish and groundfish fisheries. As suggested by another commenter in Comment 12, NMFS should be evaluating its data sources on bycatch and discard and setting goals for improving both data gathering and data evaluation through models like the bycatch model. In this manner, the agency will improve its ability to craft management tools specific to the groundfish fishery and its needs.

*Comment 14:* The same commenter that stated that NMFS had failed to consider discard caps also stated that NMFS has failed to establish adequate bycatch assessment requirements for the fishery. This commenter noted that there are no bycatch assessment requirements contained in the proposed specifications.

*Response:* The groundfish specifications and management measures annually set harvest limits and management measures that constrain the fisheries such that they are permitted to achieve harvest levels for more abundant stocks while still ensuring that harvest levels for protected stocks are not exceeded. As discussed earlier in this section, OYs of more abundant stocks are often not reached because harvest is constrained or closed to protect overfished stocks. In any case, the annual specifications and management measures process is not intended to address every aspect of groundfish fishery management. However, it is incorrect to assert that NMFS has failed to address bycatch assessment requirements altogether simply because bycatch assessment requirements are not part of the annual specifications and management measures regulatory package. Bycatch assessment requirements are part of NMFS's permanent Federal regulations at 50 CFR part 660.360, implemented at 66 FR 20609, April 24, 2001, which

provide groundfish observer program requirements and regulations for the West Coast groundfish fishery. For further information on the West Coast groundfish observer program, the observer coverage plan, and the first year of groundfish observer program data, please see: <http://www.nwfsc.noaa.gov/fram/observer/datareport.htm>.

*Comment 15:* One commenter stated that NMFS has failed to take adequate account of the bycatch occurring in the pink shrimp and prawn fisheries, in order to ensure that total mortality of overfished groundfish species does not exceed the level necessary to meet overfished species rebuilding requirements. A second commenter expressed concern about the potential bycatch of several overfished species in the spot prawn trawl fisheries. This commenter also noted that these are not federally-managed species and that therefore, the NMFS expectation that the spot prawn trawl fisheries will close in 2003 may not be correct. If the spot prawn trawl fisheries are not closed, NMFS and the Council may have underestimated overfished species bycatch in those fisheries.

*Response:* The second commenter is correct in saying that the pink shrimp and spot prawn trawl fisheries are state-managed fisheries. Each of the three coastal states has a seat on the Council, however, and is an active partner in coastwide efforts to protect overfished groundfish fisheries. Oregon (Department of Fish and Wildlife) (ODFW) has been cooperating with the Oregon shrimp fleet to experiment with different types of Bycatch Reduction Devices (BRDs) since 1994. Vessels participating in state pink shrimp trawl fisheries are now required to carry BRDs to participate in those fisheries, significantly reducing their groundfish and other finfish bycatch. NMFS particularly appreciates the initiative the states and the pink shrimp industry have taken to design and test these BRDs, allowing a lucrative fishery to remain open while still reducing its bycatch of overfished groundfish species.

In all three states, spot prawn is taken with pot gear, a gear with very low bycatch rates, and has also been targeted with trawl gear. Washington State has eliminated its spot prawn trawl fishery. Oregon has three vessels participating in the spot prawn trawl fishery, which it had allowed as an experimental fishery. ODFW employees have indicated that this experimental use of trawl gear would end as of January 1, 2004. NMFS understands that the California Fish and Game Commission (Commission) is

deliberating whether to continue to allow spot prawn trawling. The possibility that California may not close its spot prawn trawl fishery is of great concern to NMFS. NMFS has sent a letter to the Commission reminding it that California Department of Fish and Game employees participating in the Council process had estimated California's commercial fishery catch of bocaccio on the assumption that the spot prawn trawl fishery would no longer exist in 2003. In that letter, NMFS told the Commission that if it did not prohibit fishing for spot prawns with trawl gear, NMFS and the Council would be forced to consider additional constraints on California groundfish fisheries to offset the bycatch expected if the spot prawn trawl fishery continues. In addition, if the spot prawn trawl fishery were to occur, it would be prohibited in the trawl Rockfish Conservation Areas (RCAs).

*Comment 16:* For several fisheries, NMFS and the Council have underestimated the amount of bocaccio bycatch that may be expected to occur, particularly: the open access fisheries, the California set gillnet fisheries, the limited entry flatfish trawl fishery, and the California halibut trawl fishery.

*Response:* The commenter details several points where data on the above-listed fisheries may be insufficient to properly estimate bycatch or where historic bycatch estimates are higher than the bycatch levels expected in 2003. In discussing the open access fisheries, the commenter notes that bocaccio landings by the open access fleet were higher in 1999 (22.8 mt) than estimated for all fisheries in 2003. Bocaccio were declared overfished in March 1998, with the first management measures to reduce bocaccio take introduced in 2000. Since bocaccio was declared overfished along with lingcod and Pacific ocean perch, six other West Coast groundfish species have been declared overfished. West Coast groundfish management in 2003 is radically different from that of 1999. NMFS has used 1999 logbook data as a reference to how overfished species interact with more abundant species during a relatively less restrictive fishing regime. The 2003 fishery management regime is considerably more restrictive than that of 1999 and 1999 bocaccio landings are not an accurate estimate of bocaccio harvest expected to occur in 2003. Limited entry and open access commercial fisheries and recreational groundfish fisheries have been under ever more restrictive management regimes in each year since 1999, such that 2003 management measures include more restrictive trip

limits for co-occurring species, shorter season lengths, higher bycatch rate assumptions, and large-scale RCAs where groundfish fishing is prohibited or otherwise restricted.

In the commenter's discussion of the California set gillnet fishery, the commenter assumes higher bycatch levels than those estimated by NMFS by comparing historic fishery data (1996–1999) with those estimates. As the commenter notes, several new fishery restrictions have been implemented by California and by NMFS since those years. It is not reasonable to expect that overfished species catch and discard levels will be the same under the 2003 management regime as they were under the significantly less restrictive management regimes of the late 1990s.

In discussing the limited entry flatfish trawl fishery, the commenter compares estimates of bocaccio bycatch from a California application for an exempted fishing permit (EFP) to estimates of the bocaccio bycatch in the limited entry flatfish trawl fishery. California has decided not to pursue this EFP. Nonetheless, estimates of overfished species bycatch for EFPs are intended to be some relatively high, liberal amount that would allow the EFP to remain open for as long as possible without jeopardizing rebuilding and do not necessarily reflect expected bycatch amounts. Estimates of bycatch in directed fisheries are based on the bycatch model, which looks at historical co-occurrence rates between the more abundant targeted stocks and overfished species. Further, directed limited entry trawling would occur within a more restricted area than had been planned for the flatfish EFP, which would tend to lower bycatch rates for that directed fishery.

The commenter's concerns with the California halibut fishery are of interest to NMFS and the Council. The Council has received conflicting reports on the type and level of bycatch occurring in this fishery. NMFS notes that California halibut trawling would be under the same conservation area restrictions as limited entry trawling, which are designed to move trawlers away from areas where bocaccio commonly occur. These area restrictions are expected to result in lower incidental bocaccio take in the California halibut trawl fisheries. In its review of bycatch and discard data sources, NMFS will be looking at information on all fisheries in which groundfish are taken, including the California halibut open access trawl fisheries.

### Comments on Fisheries Regulations

*Comment 17:* One commenter stated that the groundfish conservation areas are not closed to all fishing, providing the example that some trawling is allowed in the trawl RCAs and that some nontrawl gear fishing is allowed in the nontrawl gear RCAs. This commenter stated that NMFS has failed to justify providing these exceptions to the conservation area restrictions. Another commenter wrote to support depth-based management in general.

*Response:* NMFS appreciates the opportunity to clarify this situation. The State of California has created the California Rockfish Conservation Area (CRCA), which is an area south of 40°10' N. lat. that is closed to fishing for groundfish between 50 fm (91 m) and 150 fm (274 m). The CRCA has several exceptions for different gears in different areas and an additional closure in the northern portion of the CRCA to protect darkblotched rockfish north of 38° N. lat. California proposed this CRCA to the Council and the Council adopted the regulatory provisions of the CRCA for recommendation to NMFS as part of its 2003 groundfish management measures package. NMFS felt that a large closed area with several open areas inside it would be both confusing to the public and inconsistent with the Council's management recommendations for waters north of 40°10' N. lat. Thus, NMFS has implemented a trawl-specific rockfish conservation area (RCA) that is bounded between 50 and 250 fm (91 and 457 m) from 40°10' N. lat. south to 38° N. lat., between 50 fm and 150 fm (91 and 274 m) from 38° N. lat. south to 34°27' N. lat., and between 100 fm and 150 fm (183 and 274 m) from 34°27' south to the U.S. border with Mexico. Within that Federal RCA, the only trawling permitted is pink shrimp trawling with BRDs. These regulations have the same effect as the California recommendation to close all trawling south of 40°10' N. lat., except that pink shrimp trawling with BRDs would be allowed and that trawling inshore of 50 fm (91 m) would be allowed between 40°10' N. lat. and 34°27' N. lat. and inshore of 100 fm (183 m) south of 34°27' N. lat. and except that trawling would further be prohibited between 150 fm (274 m) and 250 fm (457 m) between 40°10' N. lat. and 38° N. lat. The NMFS regulations for conservation areas south of 40°10' N. lat. are consistent with those for north of 40°10' N. lat. in that the regulations implement different closed areas for trawl and nontrawl vessels.

The commenter correctly notes that some nontrawl gear fishing is permitted

in nontrawl gear conservation areas. Albacore and salmon fishing with hook-and-line gear are permitted in the conservation areas. Bottom longline fisheries like the nontreaty halibut fishery, where overfished groundfish species are more likely to be taken, will be prohibited within the nontrawl conservation areas. The conservation areas are not closed areas wherein all fishing of any type is prohibited; rather, they are conservation areas wherein fishing activities expected to take overfished species are prohibited or restricted.

*Comment 18:* We object to fisheries regulations that prohibit the possession of fish in excess of trip limits and that force vessels to continuously offload their catch. Prohibiting the possession of fish in excess of trip limits puts processors in jeopardy of citation. Processors must often offload fish in order to determine whether trip limits have been exceeded and how to deal with that excess fish. We suggest that possession of fish in excess of trip limits be permitted in cases where state or Federal officials are alerted to that possession within 96 hours of the start of the possession.

*Response:* Federal groundfish regulations have prohibited the "taking and retaining, possessing or landing" of groundfish in excess of trip limits since the 1980s. Federal regulations do not require vessels to continuously offload their catch; rather, the regulations require that once offloading is begun, all fish on board the vessel be recorded on the same landings receipt and/or fish ticket. Processors are not in any more jeopardy of prosecution for possession of trip limit overages than they ever have been. NMFS and state enforcement officers will continue to expect fishers and processors to report trip limit overages and to forfeit those overages to the state in which they are landed. Possession of trip limit overages, whether reported or not, is a violation of Federal law, but enforcement of that prohibition is dealt with far differently for those persons who are found to have possessed such overages without reporting them. NMFS and state enforcement continue to need an avenue for prosecuting fishers and processors that retain trip limit overages without reporting and forfeiting those overages. Although the agency appreciates the commenter's concern for the ability of processors to comply with Federal law, NMFS will not be loosening this Federal restriction.

*Comment 19:* The trawl trip limit table for north of 40°10' N. lat. lists an incorrect trip limit for yellowtail rockfish when taken as bycatch in the

flatfish fisheries. The currently listed limit of 3,000 lb (1,361 kg) per month should be 30,000 lb (13,608 kg) per month. Trip limit tables discussed and adopted at the Council's September meeting showed incidental yellowtail rockfish catch levels of 30,000 lb (13,608 kg) per month. NMFS changed this catch limit after the Council meeting with no public scrutiny and no economic analysis of the effects of the change.

*Response:* In its motion on groundfish management measures, the Council adopted the limited entry trawl trip limits shown in the Council's Exhibit C.3.v., Supplemental GMT report, at pages 4–5. Unfortunately, that table is unclear on the trip limit for yellowtail rockfish when taken as bycatch in the flatfish fisheries. The table shows the yellowtail rockfish limit when taken in the flatfish fisheries as “3,000?” The Council never clarified this limit in its motion, but the Council's post-meeting newsletter mistakenly listed the limit as 30,000 lb (13,608 kg) per month, perhaps based on the 2002 yellowtail rockfish limit in the winter flatfish fisheries, which was 30,000 lb (13,608 kg) per 2 months.

NMFS has reviewed January-April 2002 trawl vessel-month landings of yellowtail rockfish in combination with flatfish. A vessel-month represents the landings activities of a single vessel in a single month. In 97 percent of the vessel-months in which flatfish were landed during January-April 2002, the amount of yellowtail rockfish associated with those flatfish landings was less than 3,000 lb (1,361 kg) and it was zero pounds (0 kg) over 80 percent of the time. Given the lack of clarity in the table the Council used for its recommendations and the fact that the 3,000 lb (1,361 kg) per month limit accommodated 97 percent of all yellowtail landings in association with flatfish in January-April 2002, NMFS does not believe that an increase to 30,000 lb (13,608 kg) per month is warranted at this time. The Council will have an opportunity to review groundfish trip limits and other management measures at its April 7–11, 2003 meeting in Vancouver, Washington.

*Comment 20:* The management measures authorize considerable midwater trawling, but NMFS has failed to explain which overfished species may be negatively affected by midwater trawling and what those effects might be. Apparently the agency believes that midwater trawling will not increase the mortality of overfished species beyond the levels necessary to rebuild those species as quickly as possible.

*Response:* As detailed in the Council's FEIS for this action, the vast majority of midwater trawling for groundfish off the West Coast targets Pacific whiting. Other than Pacific whiting, there are small allowances for yellowtail and widow rockfish when taken with midwater gear in association with Pacific whiting. There may also be directed yellowtail and widow rockfish fisheries with midwater gear in November-December 2003, if total catch estimates for these and associated stocks show that these fisheries may be held without risk of exceeding the OYs of any species. These fisheries will not proceed if there are not sufficient portions of the OYs remaining to accommodate expected catch. NMFS does expect that midwater trawling will result in widow rockfish, an overfished species, being caught and landed. However, NMFS does not expect that the take of widow rockfish in the midwater trawl fisheries will jeopardize the rebuilding plan for widow rockfish because management measures for 2003 have been designed to keep estimated total widow rockfish mortality in directed fisheries and as bycatch below the widow rockfish OY.

NMFS regularly documents bycatch in the midwater trawl fisheries. The total catch by species in the at-sea whiting fishery has been monitored by observers since 1991. Each vessel currently carries two observers, so virtually all hauls are directly sampled and are figured into the total catch estimates. NMFS provides an aggregation of at-sea whiting bycatch in an annual report provided to the public at the April Council meeting. EFPs are used in the shorebased whiting fishery and the vast majority of shorebased landings are landed unsorted, with a census of the catch taken upon landing. Port samplers also monitor shorebased whiting processing facilities. The State of Oregon reports on bycatch in the coastwide shorebased whiting fishery in an annual report, which is available online at <http://hmsc.oregonstate.edu/odfw/finfish/wh/index.html>. As documented in these reports, bycatch of overfished species other than widow rockfish is at trace levels (fewer than 0.01 kg per mt of whiting taken.)

*Comment 21:* NMFS failed to consider an obvious management measure to ban the use and carrying of large footrope trawl gear, rather than simply banning the landing of shelf rockfish by vessels carrying that gear. Large footrope trawl gear may affect deeper-water species, which may be low-mobility, long-lived species that are more vulnerable to the acute and chronic physical disturbance of trawling. NMFS has failed to support

its implicit conclusion that large footrope trawling will not impact deeper-water overfished species such as darkblotched rockfish.

*Response:* The commenter has incorrectly characterized NMFS regulations. Large footrope gear may be used only seaward of the trawl RCAs and vessels are prohibited from taking, retaining, possessing or landing shelf and nearshore rockfish and/or lingcod when large footrope gear is on board the vessel. While prohibiting the use of large footrope gear even seaward of the conservation areas could improve enforceability of the regulations, NMFS concluded that the benefit provided by allowing the harvest of Dover sole, sablefish, and thornyheads in areas of lowest bycatch of overfished species outweighed enforcement difficulties.

NMFS disagrees with the commenter's assertion that the agency has implicitly concluded that large footrope trawling in deeper waters will not impact deeper-water species. NMFS fully expects that fishing activities in deeper waters will result in deeper water species being harvested. This expectation is illustrated by the trip limits provided for deepwater species such as Dover sole, sablefish, and thornyheads. NMFS has been clear and open in stating its expectation that fishing activities will result in fish harvest. In fact, the series of trip limits and area management implemented by this rule are intended to control where and when that harvest occurs. NMFS has also been clear in its intent to manage deepwater fisheries so that their interaction with overfished deepwater species, darkblotched rockfish and Pacific ocean perch, is minimized. As discussed at length in the preamble to the proposed rule for this action, the northern trawl RCA in particular was designed to move fishing away from depths where these two species congregate, which is why it extends out to 250 fm (457 m) from 38° N. lat. to the U.S. border with Canada.

*Comment 22:* We oppose the new management measure that prohibits vessels from having more than one type of trawl gear on board and from having both trawl gear and nontrawl gear on board. This prohibition is costly, duplicative, and unnecessary because there are already groundfish landings limits based on the types of trawl gear on board.

*Response:* NMFS discussed this public request with representatives from the Council's Enforcement Consultants, who had originally requested the measure to restrict vessels to carrying only a single gear type on board. The Enforcement Consultants concluded

that the combination of restrictions on the species of groundfish that could be landed with small versus large footrope gear and the requirement that vessels fishing with large footrope gear operate offshore of the 250 fm (457 m) depth contour would remove opportunities and incentives for vessels to fish for small footrope species with large footrope gear. NMFS and Enforcement Consultants representatives also agreed with the commenter that there was likely no enforcement benefit in prohibiting the carrying of both trawl and non-trawl gear on board at the same time. However, NMFS and the Enforcement Consultants representatives were still concerned about allowing vessels to carry trawl gear permitted for use within the conservation areas on board with trawl gear prohibited from use within the conservation areas, primarily because these gears are indistinguishable by enforcement officers flying over vessels fishing within the conservation areas. Therefore, the prohibition against more than one type of trawl gear on board has been modified such that vessels fishing within a conservation area with allowable trawl gear may not carry any other type of trawl gear on board.

*Comment 23:* The proposed rule incorrectly states that the California recreational fisheries south of 40°10' N. lat will be closed entirely from January through June 2003, when in fact they will be open in January and February for California scorpionfish from shore to the 20 fm (37 m) depth contour. Bocaccio may be caught incidentally in these fisheries for California scorpionfish, thus recreational fishery management measures should account for this potential mortality source.

*Response:* NMFS agrees that the preamble to the proposed rule incorrectly stated that all recreational groundfish fisheries would be closed January-June, neglecting to mention the January-February opening for California scorpionfish. The agency's misstatement in the proposed rule preamble, however, does not indicate new and/or unaccounted-for recreational fishing activity because this scorpionfish fishing activity was accounted for in the Council's development of recreational fisheries restrictions.

The commenter raises an issue that is of concern to NMFS, improving estimates of catch and discard in the recreational fisheries. In 2000–2002, California's recreational fisheries management measures were not restrictive enough to adequately constrain the fishery's bocaccio catch. In all three years, commercial fisheries had

to be closed or severely limited in order to limit the overall take of bocaccio. Neither NMFS nor the State of California now have a recreational fishery catch monitoring system that satisfactorily characterizes catches in these fisheries to allow inseason monitoring and regulations revisions. However, NMFS is working with all three states to revise the current Marine Recreational Fisheries Statistical Survey so that it is more responsive to fishery management needs.

#### Changes from the Proposed Rule

This final rule is revising Pacific Coast Groundfish Specifications and Management Measures for March–December 2003 set forth in the proposed rule published in the Federal Register on January 7, 2003 (68 FR 936). This final rule includes changes made in a correction notice to the Specifications and Management Measures implemented via emergency rule for January–February 2003 (FR 68 4719, January 30, 2003). Changes to the emergency rule included: clarification of commercial and recreational trip limits, a re-ordering of Yelloweye Rockfish Conservation Area coordinates, and revisions to Rockfish Conservation Area boundary coordinates. Because vessels may now, in some circumstances, have more than one type of trawl gear on board, NMFS is reinstating the 2002 regulation that provides that the most constraining trip limit for the gear on board applies to landings made on that trip.

In addition, this final rule makes changes as a result of public comments. In response to public comments, NMFS has revised the prohibition set out in the proposed rule against the carrying of more than one type of trawl gear and/or trawl gear and non-trawl gear on board at the same time. Under modified (14)(b)(iv), vessels will be permitted to carry both trawl and non-trawl gear on board at the same time, but when fishing within a conservation zone with allowable trawl gear will not be permitted to carry any other type of trawl gear on board. Vessels fishing offshore or shoreward of the conservation areas will be permitted to carry both small footrope and large footrope bottom trawl gear on board at the same time.

Tables 3–5 have been modified to provide minor editorial revisions and also clarifications to: the trawl trip limit for yellowtail rockfish; the allowance for mid-water trawl vessels to fish for whiting in the conservation area during the primary whiting season; the minor slope rockfish limit in the North so that splitnose rockfish is clearly

incorporated within that complex. Regulations for open access exempted trawl fisheries have been revised to clarify that no trawling for spot prawn may take place within the trawl RCAs, regardless of whether groundfish is retained during fishing.

Recreational fisheries regulations have been revised to better clarify that bocaccio, cowcod, canary, and yelloweye rockfish are prohibited species south of 40°10' N. lat. and to more clearly tie recreational fishing regulations to Federal regulations designating the coordinate boundaries of the Cowcod Conservation Areas. Federal recreational fisheries regulations for California north of 40°10' N. lat. have been revised to match more restrictive state recreational regulations for bocaccio. In particular, minimum size limits for the total length and filet length of retained bocaccio were added. The California state regulation has minimum size limits for bocaccio that did not change between 2002 and 2003. Federal recreational regulations for bocaccio in the north had the same minimum size limits as California for 2002, but neglected to include those size limits in the 2003 proposed recreational regulations. These size limits are included in this final rule. A limited recreational fishery for bocaccio may exist north of 40°10' N. lat. because the bocaccio stock north of 40°10' N. lat. is genetically distinct from the overfished bocaccio stock south of 40°10' N. lat. as detailed in the 1999 stock assessment by McCall et al.

The Federal regulations at 50 CFR 660.302 provide definitions for different terms used in groundfish regulation and management. In this final rule, NMFS is revising the definition of "Trip Limit," so that the definition at 50 CFR 660.302 better matches the definition at Section IV.A.(1) of this document. NMFS has also added new definitions for the terms "Trawl Fishing line" and "Footrope" to clarify gear regulations at 50 CFR 660.322, which discuss trawl footrope restrictions.

At 50 CFR 660.304(d), the coordinates listed in the proposed rule for the Yelloweye Rockfish Conservation Area were correct but were listed in the incorrect order such that they did not form a recognizable "C" shape as described. For the final rule, NMFS has re-ordered the coordinates so that they correctly outline this conservation area.

The States of Washington and California submitted revisions to the coordinates designating the boundary lines to the trawl and non-trawl RCAs. Changes effective with the correction document to the emergency rule affected the following boundary lines:

50 fm (91 m) depth contour between 40°10' N. lat. and 34°27' N. lat., 60 fm (110 m) depth contour between 40°10' N. lat. and 34°27' N. lat., 100 fm (183 m) depth contour north of 40°10' N. lat., 100 fm (183 m) depth contour south of 34°27' N. lat., 150 fm (274 m) depth contour south of 40°10' N. lat., and the Winter Petrale Boundary. NMFS is implementing additional changes to RCA boundary coordinates through this final rule. The following boundary lines are affected by these revisions: 60 fm (110 m) depth contour between 40°10' N. lat. and 34°27' N. lat., 75 fm (137 m) depth contour north of 40°10' N. lat., 100 fm (183 m) depth contour north of 40°10' N. lat., 150 fm depth contour south of 40°10' N. lat., 150 fm (274 m) depth contour between 46°16' N. lat.

and 38° N. lat. which may be implemented inseason during 2003, and 250 fm (457 m) depth contour north of 38° N. lat. used during cumulative periods 2–5. Additionally, the State of California plans to submit revisions to the boundary line coordinates for the line approximating the 50 fm (91 m) depth contour south of 40°10' N. lat. and to the Winter Petrale Boundary north of 40°10' N. lat. These changes to boundary coordinates were intended to make the boundary lines more closely approximate the depth contours they are intended to designate. Regulatory language describing the RCAs has been revised to better emphasize that while RCAs are generally described by fathom lines, the actual boundaries are defined by latitude-longitude coordinates. When

fishing off the West Coast, fishers must comply with the boundaries of the RCAs as designated by the coordinates, not the fathom curves.

#### **I. Final Specifications**

Final fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management), and the allocation of commercial OYs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

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Table 1a. 2003 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (Oys), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commer- cial OY (Total Catch)	Allocations total catch			
	Vancou- ver a/	Colum- bia	Eureka	Monte- rey	Concep- tion	Total Catch			Limited Entry	Open Access		
										Mt	%	Mt
ROUND FISH												
Lingcod b/			841			841	651	284	230	81.0	54	19.0
Pacific Cod	3,200			c/		3,200	3,200	3,200	--	--	--	--
Pacific Whiting d/			188,000			188,000	148,200	121,200	--	--	--	--
Sablefish e/ (north of 36°)		8,209			--	8,209	6,500	5,767	5,225	90.6	542	9.4
Sablefish f/ (south of 36°)		--			441	441	294	294	--	--	--	--
FLATFISH												
Dover sole g/			8,510			8,510	7,440	7,318	--	--	--	--
English sole	2,000			1,100		3,100	na	-	-	-	-	-
Petrale sole h/	1,262		500	800	200	2,762	na	-	-	-	-	-
Arrowtooth flounder			5,800			5,800	na	-	-	-	-	-
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	-	-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)							OY (Total catch)	Commer- cial OY (Total Catch)	Allocations total catch				
	Vancou- ver	Colum- bia	Eureka	Mont- erey	Concep- tion	Total Catch	Limited Entry			Open Access	Mt	%	Mt	%
ROCKFISH:														
Pacific Ocean Perch j/	689			--		689	377	374	--	--	--	--		
Shortbelly k/		13,900				13,900	13,900	13,900	--	--	--	--		
Widow l/		3,871				3,871	832	781	757	97.0	23	3.0		
Canary m/		272				272	44	23	20	87.7	2.8	12.3		
Chilipepper n/		c/		2,700		2,700	2,000	1,985	1,106	55.7	879	44.3		
Bocaccio o/		c/		198		198	≤20	14	8	52.7	6	44.3		
Splitnose p/		c/		615		615	461	461	--	--	--	--		
Yellowtail q/		3,146		c/		3,146	3,146	2,717	2,492	91.7	226	8.3		
Shortspine thornyhead r/ north of 34°27'			1,004			1,004	955	941	939	99.7	3	0.27		
Longspine thornyhead s/ north of 36°		2,461		--		2,461	2,461	2,434	--	--	--	--		
south of 36° t/		--		390		390	195	195	--	--	--	--		
Cowcod u/		c/		19		19	2.4	0	--	--	--	--		
		c/		--	5	5	2.4	0	--	--	--	--		
Darkblotched v/			205			205	172	170		--	170	--		
Yelloweye w/			52			52	22	9.5	--	--	--	--		

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)							OY (Total catch)	Comme r-cial OY (Total Catch)	Allocations total catch		
	Vancou- ver	Colum- bia	Eureka	Mont- erey	Concep- tion	Total Catch	Limited Entry			Open Access		
							MC			%	MC	%
Minor Rockfish North x/	4,795	--	--	--	--	4,795	3,056	2,292	2,102	91.7	190	8.3
Minor Rockfish South y/	--	--	3,506	3,506	3,506	3,506	1,894	1,401	780	55.7	621	44.3
Remaining Rockfish	2,727	--	854	--	--	--	--	--	--	--	--	--
bank z/	c/	--	350	350	350	350	--	--	--	--	--	--
black aa/	615	500	--	--	1,115	1,115	--	--	--	--	--	--
blackgill bb/	c/	--	75	268	343	343	--	--	--	--	--	--
bocaccio - north	8	--	--	--	318	318	--	--	--	--	--	--
chilipepper- north	32	--	--	--	32	32	--	--	--	--	--	--
redstripe	576	--	c/	c/	576	576	--	--	--	--	--	--
sharpchin	307	--	45	45	352	352	--	--	--	--	--	--
silvergrey	38	--	c/	c/	38	38	--	--	--	--	--	--
splitnose	242	--	c/	c/	242	242	--	--	--	--	--	--
yellowmouth	99	--	c/	c/	99	99	--	--	--	--	--	--
yellowtail- south	--	--	116	116	116	116	--	--	--	--	--	--
Other rockfish cc/	2,068	--	2,652	2,652	--	--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	14,700	14,700	na	--	--	--	--	--

Table 1b. 2003 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recreational Estimate	Commercial OY for minor rockfish and HG for depth sub-groups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North x/	4,794	3,056	750	2,292	2,102	91.7	190	8.3
Nearshore		928	740	188				
Shelf		968	10	954				
Slope		1,160	0	1,156				
Minor Rockfish South y/	3,506	1,894	493	1,401	780	55.7	621	44.3
Nearshore		541	433	108				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A stock assessment that included parts of Canadian waters was done in 2000 and updated for 2001. Following the assessment, lingcod was believed to be at 15 percent of its unfished biomass coastwide. The U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total biomass for that area. The ABC of 841 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 651 mt is based on a rebuilding plan with a 60 percent probability of rebuilding the stock to Bmsy by the year 2009 (Tmax). The total catch OY is reduced by 355 mt for the amount that is estimated to be taken by the recreational fishery, 3 mt for the amount estimated to be taken during research fishing, 4.3 mt for the amount estimated to be taken in non-groundfish fisheries, and by 5.2 mt for the amount estimated to be taken in the tribal fishery, resulting in a commercial OY of 284 mt. The open access total catch allocation is 54 mt (19 percent of the commercial OY) and the open access landed catch value is 43 mt. The limited entry total catch allocation is 230 mt and the landed catch value is 184 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are estimated to land about 5.2 mt of lingcod in 2003, but do not have a specific allocation at this time.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial OY of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific whiting - The most recent stock assessment was prepared in 2002, at which time the whiting stock was believed to be below 25 percent of its unfished biomass. Whiting was declared overfished on April 15, 2002 (67 FR 18117). The U.S.-Canada ABC of 235,000 mt is based on the 2002 assessment results with the application of an Fmsy

proxy harvest rate of 45%. In estimating the current biomass, NMFS used a medium level recruitment assumption of a recent (1999) large year class. The U.S. ABC of 188,000 mt is 80 percent of the coastwide ABC. The U.S. whiting OY is 148,200 mt which is 80 percent of the coastwide OY (185,325 mt) and is based on the application of the 40-10 harvest rate policy. The total catch OY is further reduced by 25,000 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 121,200 mt. The commercial OY is allocated between the sectors with 42 percent (50,904 mt) going to the shore-based sector, 34 percent (41,288 mt) going to the catcher/processor sector, and 24 percent (29,080 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N. lat. - NMFS did a new sablefish assessment in 2001 for the area north of Point Conception (34°27'N lat.) and updated it for 2002. Following the assessment update, sablefish north of 34°27'N lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (8,459 mt) is based on environmentally driven projections with the Fmsy proxy of F45%. The ABC for the management area north of 36° N. lat. is 8,209 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N. lat. is 6,500 mt and is 97.04 percent of the OY from the surveyed area with a risk averse precautionary adjustment. The total catch OY is reduced by 10 percent (650 mt) for the tribal set aside, by 11.1 mt for compensation to vessels that conducted resource surveys, 53.0 mt for the amount estimated to be taken as research catch, and 18.5 mt for the amount estimated to be taken in non-groundfish fisheries. The remainder (5,767 mt) is the commercial total catch OY. The open access allocation is 9.4 percent of the commercial OY, resulting in an open access total catch OY of 542 mt. The limited entry total catch OY is 5,225 mt. The limited entry total catch OY is further divided with 58 percent (3,031 mt) allocated to the trawl fishery and 42 percent (2,194 mt) allocated to the non-trawl fishery. To provide for bycatch in the at-sea whiting fishery 15 mt of the limited entry trawl allocation will be set aside. Discard rates will be applied as follows: 21 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. Landed catch OYs are 2,364 mt for limited entry trawl, excluding the at-sea whiting fishery, 2,019 mt for limited entry fixed gear, 499 mt for open access, and 631 mt for the tribal fisheries.

f/ Sablefish south of 36° N. lat. - The ABC of 441 mt is the sum of 250 mt (2.96 percent of the ABC from the 2002 survey based assessment update) and 191 mt (based on historical landings). The total catch OY (294 mt) is the sum of 198 mt (2.96 percent of the OY from the 2002 update of the survey based assessment with a risk averse precautionary adjustment) and 96 mt (that portion of the ABC based on historical landings which was reduced by 50 percent to address uncertainty, due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 271 mt.

g/ Dover sole north of 34°27'N lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 62.4 mt for compensation to vessels that conducted resource surveys, 58 mt for the amount estimated to be taken as research catch, and 2 mt for estimated catch in non-groundfish fisheries resulting in commercial OY of 7,318 mt. Discards are assumed to be 5 percent, resulting in a landed catch OY of 7,006 mt.

h/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacific ocean perch (POP) was declared overfished on March 3, 1999. The ABC (689 mt) was projected from the 2000 assessment which was updated for 2001 and is based on an Fmsy proxy of F50%. The OY (377 mt) is based on a 70 percent probability of

rebuilding the stock to Bmsy by the year 2041 (Tmax). The OY is reduced by 3 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 374 mt. The landed catch value is 314 mt, and is based on a discard rate of 16 percent.

k/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and was believed to be at 24 percent of its unfished biomass. Widow rockfish was declared overfished on January 11, 2001 (66 FR 2338). The ABC (3,871 mt) is based on a F50% Fmsy proxy. The OY (832 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2039 (Tmax). The OY is reduced by 5 mt for the amount estimated to be taken as recreational catch, 1.5 mt for the amount estimated to be taken during research fishing, 0.4 mt for the amount estimated to be taken in non-groundfish fisheries, and 45 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 781 mt. The commercial OY is divided with open access receiving 3 percent (23 mt) and limited entry receiving 97 percent (757 mt). The limited entry landed catch equivalent for the open access fishery is 20 mt. The limited entry allocation is reduced by 182 mt for anticipated bycatch in the at-sea whiting fishery and an additional 30 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 488 mt. Tribal vessels are estimated to land about 45 mt of widow rockfish in 2003, but do not have a specific allocation at this time.

m/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A new assessment was completed in 2002 for canary rockfish and the stock is believed to be at 8 percent of its unfished biomass coastwide. The coastwide ABC of 272 mt is based on a Fmsy proxy of F50%. The coastwide OY of 44 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to Bmsy by the year 2076 (Tmax). The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 1 mt for the amount estimated to be taken during research fishing, 2.3 mt for the amount estimated to be taken during the tribal fisheries, and 2.5 for the amount estimated to be taken in non-groundfish fisheries, resulting in a commercial OY of 23 mt. For 2003, the total catch OY has been divided with 61 percent going to the commercial fisheries and 39 percent going to the recreational fisheries. The commercial OY is divided with open access receiving 12.3 percent (2.8 mt) and limited entry receiving 87.7 percent (20 mt). The landed catch value for the open access fishery is 2.3 mt. The limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 14 mt, which is based on a discard rate of 16 percent. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.3 mt of canary rockfish in 2003, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of F50% Fmsy proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which co-occur with bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Open access is allocated 44.3 percent (879 mt) of the commercial OY and limited entry is allocated 55.7 percent (1,106 mt) of the commercial OY. The assumed discard is 16 percent, resulting in an open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt.

o/ Bocaccio rockfish was assessed in 2002 and is believed to be at 3.6 percent of its unfished biomass. Bocaccio rockfish was declared overfished on March 3, 1999. The ABC of 198 mt is based on a F50% Fmsy proxy. The OY of  $\leq 20$  mt is based on a sustainability analysis with  $>80$  percent probability of no further decline in spawning biomass. The OY is reduced by 0.2 mt for the amount estimated to be taken during research fishing, and 5 mt for the amount estimated to be taken in the recreational

fishery, resulting in a 14 mt commercial OY. Open access is allocated 44.3 percent (6 mt) of the commercial OY and limited entry is allocated 55.7 percent (8 mt) of the commercial OY. Boccaccio retention will not be permitted in 2003. The OY will be used to accommodate discards of bocaccio rockfish resulting from incidental take in fisheries for co-occurring species.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish - Following the 2000 stock assessment, yellowtail rockfish was believed to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with the Fmsy Proxy of F50%. The OY (3,146 mt) was set equal to the ABC. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 8 mt for the amount estimated to be taken during research fishing, 5.8 mt for the amount taken in non-groundfish fisheries, and 400 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 2,717 mt. The open access allocation (226 mt) is 8.3 percent of the commercial OY. The limited entry allocation (2,492 mt) is 91.7 percent of the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 300 mt is subtracted from the limited entry landed catch allocation. An additional 100 mt is deducted for the shore-based whiting fishery. The remainder (2,092 mt) is further reduced by 16 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 1,773 mt. The open access landed catch equivalent is 189 mt. Tribal vessels are estimated to land about 400 mt of yellowtail rockfish in 2003, but do not have a specific allocation at this time.

r/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34° 27' N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy. The OY is reduced by 9 mt for the amount estimated to be taken during research fishing, by 1.6 mt for compensation to vessels that conducted resource surveys, and 3.0 mt for the amount estimated to be taken in the tribal fisheries, resulting in commercial OY of 941 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (939 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value (751 mt). There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 3 mt of shortspine thornyhead in 2003, but do not have a specific allocation at this time.

s/ Longspine thornyhead is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at a F50%. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 8.9 mt for compensation to vessels that conducted resource surveys, by 18 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 2,434 mt. To derive the landed catch equivalent of 2,020 mt, the limited entry allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34° 27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, (195 mt). There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on the rebuilding plan which has a 55 percent probability of rebuilding the stock to Bmsy by the year 2099 (Tmax). Cowcod retention will not be permitted in 2003. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

v/ Darkblotched rockfish was assessed in 2000 and was believed to be at 22 percent of its unfished biomass. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The ABC is projected to be 205 mt and is based on an Fmsy proxy of F50%. The OY of 172 mt is based on the rebuilding plan, which has a 80 percent probability of rebuilding the stock to Bmsy by the year 2047 (Tmax). For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry landed catch OY. The landed catch value for the remaining limited entry fisheries is 132 mt. The landed catch values are based on a discard rate of 20 percent.

w/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 52 mt coastwide ABC is based on an Fmsy proxy of F50%. The OY of 22 mt is based on a revised rebuilding analysis (August 2002) with a 50 percent probability of rebuilding to Bmsy by the year 2050 (Tmid). The OY is reduced by 7.7 mt for the amount estimated to be taken in the recreational fishery, 0.6 mt for the amount estimated to be taken during research fishing, 0.8 mt for the amount taken in non-groundfish fisheries, and 3 mt for the amount estimated to be taken in the tribal fisheries, resulting in a commercial OY of 9.5 mt. Tribal vessels are estimated to land about 3 mt of yelloweye rockfish in 2003, but do not have a specific allocation at this time.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. To obtain the total catch OY (3,056 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish; other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 750 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,292 mt. Open access is allocated 8.3 percent (190 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,102 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish. Tribal vessels are estimated to land about 14 mt of minor rockfish (10 mt of shelf rockfish, and 4 mt of slope rockfish) in 2003, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish", which includes species that do not have quantifiable assessments. The ABC (3,556 mt) is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. These deductions were a precautionary measures due to limited stock assessment information. The OY is reduced by 493 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,401 mt. Open access is allocated 44.3 percent (621 mt) of the commercial OY and limited entry is allocated 55.7 percent (780 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish.

z/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish -- the ABC (1,115 mt) is based on a 2000 assessment, and is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards

the minor rockfish OY in the north.

bb/ Blackgill rockfish is believed to be at 51 percent of its unfished biomass. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial *Sebastes* landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

## II. Commercial and Recreational Fisheries

Since 1994, the non-tribal commercial groundfish fishery has been divided into limited entry and open access sectors, each with its own set of allocations and management measures. Species or species group allocations between the two sectors are based on the relative amounts of a species or species group taken by each component of the fishery during the 1984–1988 limited entry permit qualification period (50 CFR 660.332). The FMP allows suspension of this allocation formula for overfished species when changes to the traditional allocation formula are needed to better protect overfished species (FMP, section 5.3.2).

Historically, groundfish species and/or species groups have not been allocated between the commercial and recreational fisheries. Fishery managers instead estimated the amount that would be taken in the recreational fisheries and set that amount aside before determining the allowable harvest for the non-tribal commercial sectors. For 2003, the Council has recommended adopting nearshore groundfish allocations between the recreational and commercial fisheries. These allocations were proposed by the States of Oregon and California for waters off their coasts north and south of 40°10' N. lat. and are intended to maintain the ratio between recreational and commercial landings 2000. Most of the fish subject to the allocation will be taken in state waters, but state-Federal management of these nearshore species is coordinated through the Council. Commercial groundfish fishing is prohibited in Washington State waters.

Groundfish species or species group allocations and set asides for the tribal and non-tribal sectors, and between the different non-tribal commercial and recreational sectors, are detailed in Tables 1a and 1b. All OYs, allocations

and set asides are expressed in terms of total catch. The limited entry/open access allocations for bocaccio, canary, darkblotched, yelloweye rockfish, and the nearshore rockfish species group would be suspended to allow the Council to better develop management measures that provide harvest opportunity for more abundant stocks while protecting overfished stocks. Estimates of trip-limit induced discards are taken "off the top" and in accordance with the bycatch and discard analysis described in the proposed rule for this action at 68 FR 953 (January 7, 2003) before setting the non-tribal sector allocations, except for estimates of sablefish discards as explained in the footnotes to Table 1a. Landed catch equivalents are the harvest goals used when adjusting trip limits and other management measures during the season. Estimated bycatch of yellowtail, widow, canary, and darkblotched rockfish in the offshore whiting fishery is also deducted from the limited entry allocations before determining the landed catch equivalents for the target fisheries for widow and yellowtail rockfish.

## III. 2003 Management Measures

Management measures for the limited entry fishery are found in Section IV. Boundary line coordinates for the RCAs are designated at paragraph IV.A.(19). Most cumulative trip limits, size limits, and seasons for the limited entry fishery are set out in Tables 3 and 4. However, the limited entry nontrawl sablefish fishery, the midwater trawl fishery for whiting, and the hook-and-line fishery for black rockfish off Washington are managed separately from the majority of the groundfish species and are not fully addressed in the tables. The management structure for these fisheries has not changed since 2002, except for the level of trip limits for sablefish and whiting, which are described in

paragraphs IV.B.(2) through (4). Similarly, management measures for the open access exempted trawl fisheries (California halibut, sea cucumber, pink shrimp, spot and ridgeback prawns) are described in paragraph IV.C.(2), separately from the open access fisheries trip limits set out in Table 5.

## IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 2003, including measures that are unchanged from 2002 and new measures.

### A. General Definitions and Provisions

The following definitions and provisions apply to the 2003 management measures, unless otherwise specified in a subsequent Federal Register document:

(1) *Trip limits*. Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(a) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time (l.t). Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) A weekly trip limit is the maximum amount that may be taken and retained, possessed, or landed per

vessel in 7 consecutive days, starting at 0001 hours l.t. on Sunday and ending at 2400 hours l.t. on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week includes days within two different months, a vessel is not entitled to two separate weekly limits during that week.

(d) A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours l.t. and end at 2400 hours l.t., are as follows, unless otherwise specified:

(i) The 2-month periods are: January 1–February 28, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

(e) As stated at 50 CFR 660.302 (in the definition of “landing”), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such.

(f) The cumulative trip limits in Section IV B. and C., including Tables 3–5, of this rule must not be exceeded.

(2) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. Fishing ahead is not allowed during or before a closed period (see paragraph IV.A.(7)). See paragraph IV.A.(9) for information on inseason changes to limits.

(3) *Weights.* All weights are round weights or round-weight equivalents unless otherwise specified.

(4) *Percentages.* Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Legal fish.* “Legal fish” means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise

specified, size limits in the commercial and recreational groundfish fisheries apply to the “total length,” which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the State where the fish will be landed.

(a) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) *“Headed” fish.* For a fish with the head removed (“headed”), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(c) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see paragraph IV. D.(1)). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(d) *Sablefish weight limit conversions.* The following conversions apply to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size for headed sablefish, which corresponds to 20 inches (51 cm) total length for whole fish, is 14 inches (36 cm).

(ii) The conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the State conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State’s official conversion factor.)

(e) *Lingcod size and weight conversions.* The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion.* For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(ii) *Weight conversion.* The conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The States’ conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that State’s official conversion factor.) If a state does not have a conversion factor for headed and gutted lingcod, or lingcod that is only gutted; the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5.

(B) *Gutted, with the head on.* The conversion factor for lingcod that has only been gutted is 1.1.

(7) *Closure.* “Closure”, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the Federal Register, offloading must begin before the time the fishery closes. The provisions at paragraph IV.A.(2) for fishing ahead do not apply during a closed period. It is unlawful to transit through a closed area with any prohibited species on board, no matter where that species was caught, except as provided for in the CCA at IV. A.(19).

(8) *Fishery management area.* The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) *Routine management measures.* Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated “routine,” which means they may be changed rapidly after a single Council meeting see 50 CFR 660.323(b). Council meetings in 2003 will be held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the Federal Register. Information concerning changes to routine

management measures is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the Federal Register.

Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the Federal Register, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) *Limited entry limits.* It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(12) *Operating in areas with different trip limits.* Trip limits for a species or a species group may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see 50 CFR 660.323(a)(1)). In 2003, the cumulative trip limit periods for the limited entry and open access fisheries are specified in paragraph IV.A(1)(d), but may be changed during the year if announced in the Federal Register.

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit)

applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(c) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(d) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10' N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line.

(i) If a vessel takes and retains minor slope rockfish north of 38° N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 38° N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor slope rockfish during that period.]

(ii) If a vessel takes and retains minor slope rockfish south of 38° N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 38° N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 38° N. lat. [Note: A vessel that takes and retains minor slope rockfish on both sides of the management line in a single cumulative limit period is subject to the more

restrictive cumulative limit for minor slope rockfish during that period.]

(iii) If a vessel takes and retains minor shelf rockfish south of 40°10' N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10' N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10' N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups. [Note: A vessel that takes and retains minor shelf rockfish on both sides of the management line in a single cumulative limit period is subject to the more restrictive cumulative limit for minor shelf rockfish during that period.]

(e) *"DTS complex."* For 2003, there are differential trip limits for the "DTS complex" (Dover sole, shortspine thornyhead, longspine thornyhead, sablefish) north and south of the management line at 40°10' N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A.(12) when making landings that include any one of the four species in the "DTS complex."

(f) *Flatfish complex.* For 2003, there are differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of the management line at 40°10' N. lat. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph IV.A.(12) when making landings that include any one of the species in the flatfish complex.

(13) *Sorting.* It is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or commercial OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, commercial optimum yield, or quota applied." This provision applies to both the limited entry and open access fisheries. (See 50 CFR 660.306(h).) The following species must be sorted in 2003:

(a) For vessels with a limited entry permit:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, rex sole, petrale sole, arrowtooth flounder, other flatfish, lingcod, sablefish, and

Pacific whiting [Note: Although both yelloweye and darkblotched rockfish are considered minor rockfish managed under the minor shelf and minor slope rockfish complexes, respectively, they have separate OYs and therefore must be sorted by species.]

(ii) North of 40°10' N. lat.—POP, yellowtail rockfish, and, for fixed gear, black rockfish and blue rockfish;

(iii) South of 40°10' N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, and Pacific sanddabs.

(b) For open access vessels (vessels without a limited entry permit):

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, Dover sole, arrowtooth flounder, petrale sole, rex sole, other flatfish, lingcod, sablefish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10' N. lat.—black rockfish, blue rockfish, Pacific ocean perch, yellowtail rockfish;

(iii) South of 40°10' N. lat.—minor shall nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish;

(iv) South of Point Conception—thornyheads.

(14) *Trawl Gear Restrictions.* Limited entry trip limits may vary depending on the type of trawl gear that is on board a vessel during a fishing trip: large footrope, small footrope, or midwater trawl gear.

(a) *Types of trawl gear.* Large footrope, small footrope, and midwater or pelagic trawl gears are defined at 50 CFR 660.302 and 660.322(b). Trawl vessels may include: those vessels registered to a limited entry permit with a trawl endorsement; any vessel using trawl gear, including exempted trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut, or sea cucumber; or any tribal vessel using trawl gear.

(b) *Cumulative trip limits and prohibitions by limited entry trawl gear type—(i) Large footrope trawl.* If Table 3 does not provide a large footrope trawl cumulative or trip limit for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group if large footrope gear is on board. It is unlawful for any vessel using large footrope gear to exceed large footrope gear limits for any species or to use large footrope gear to exceed small footrope gear or midwater trawl gear limits for any species. It is unlawful for any vessel using large footrope gear or that has large footrope trawl gear on board to fish for

groundfish shoreward of the RCAs defined at paragraph (19) of this section. The presence of rollers or bobbins larger than 8 inches (20 cm) in diameter on board the vessel, even if not attached to a trawl, will be considered to mean a large footrope trawl is on board.

(ii) *Small footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, chilipepper rockfish, widow rockfish, yellowtail rockfish, minor shelf rockfish, minor nearshore rockfish, and lingcod, as indicated in Table 3 to section IV, are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraphs IV.A.(14).

(iii) *Midwater trawl gear.* Higher yellowtail and widow rockfish cumulative trip limits are available for limited entry vessels using midwater trawl gear. Each landing that contains yellowtail or widow rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to both types of trawls during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit.

(iv) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 must not be exceeded. A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. [Example: If a vessel has large footrope gear on board, it cannot land yellowtail rockfish, even if the yellowtail rockfish is caught with a small footrope trawl.] A vessel that is trawling within a GCA with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board.

(c) *State landing receipts.* Washington, Oregon, and California will require the type of trawl gear on board to be recorded on the State landing receipt(s) for each trip or on an attachment to the State landing receipt.

(d) *Gear inspection.* All trawl gear and trawl gear components, including unattached rollers or bobbins, must be readily accessible and made available for inspection at the request of an authorized officer. No trawl gear may be removed from the vessel prior to offloading. All footropes shall be uncovered and clearly visible except when in use for fishing.

(15) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the “A” platoon, unless the “B” platoon is indicated on the limited entry permit. If a vessel is in the “A” platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. No more than one trawl permit may be registered to a vessel unless a permit is endorsed for both trawl and either longline or pot gear and is being stacked under § 660.335(c) for use in the limited entry fixed gear primary sablefish fishery. If a vessel is registered for use with more than one permit with a trawl endorsement through the fixed gear permit stacking program, then the vessel owner must designate one trawl-endorsed permit as his base trawl permit and may only fish in the platoon associated with that base trawl permit. If a limited entry trawl permit is authorized for the “B” platoon, then cumulative trip limit periods and the periods for which RCAs are applied will begin on the 16th of the month (generally 2 weeks later than for the “A” platoon), unless otherwise specified.

(a) For a vessel in the “B” platoon, cumulative trip limit periods and periods for which RCAs are applied begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2003, for the “A” platoon will be effective on January 16, 2003, for the “B” platoon. The effective date of any inseason changes to the cumulative trip limits or RCA boundary line coordinates also will be delayed for 2 weeks for the “B” platoon, unless otherwise specified.

(b) A vessel authorized to operate in the “B” platoon may take and retain, but may not land, groundfish from January 1, 2003, through January 15, 2003.

(c) A vessel authorized to operate in the “B” platoon will have the same cumulative trip limits and RCAs for the November 16, 2003, through December 31, 2003, period as a vessel operating in the “A” platoon has for the November 1, 2003, through December 31, 2003 period.

(a) For a vessel in the “B” platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, l.t., and end at 2400 hours, l.t., on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 2003, for the “A” platoon will be effective on January 16, 2003, for the “B” platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks

for the "B" platoon, unless otherwise specified.

(b) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 2003, through January 15, 2003.

(c) A vessel authorized to operate in the "B" platoon will have the same cumulative trip limits for the November 16, 2003, through December 31, 2003, period as a vessel operating in the "A" platoon has for the November 1, 2002, through December 31, 2003 period.

(16) *Permit transfers.* Limited entry permit transfers are to take effect no earlier than the first day of a major cumulative limit period following the day NMFS receives the transfer form and original permit (50 CFR 660.335(e)(3)). Those days in 2003 are January 1, March 1, May 1, July 1, September 1, and November 1, and are delayed by 15 days (starting on the 16th of a month) for the "B" platoon.

(17) *Exempted fisheries.* U.S. vessels operating under an exempted fishing permit (EFP) issued under 50 CFR part 600 are also subject to these restrictions, unless otherwise provided in the permit. EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(18) *Application of requirements.* Paragraphs IV.B. and IV.C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in Section V. The provisions in paragraphs IV.B. and IV.C. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.D. pertains to the recreational fishery.

(19) *Rockfish Conservation Areas.* For 2003, the Council has introduced several RCAs and a YRCA and has retained the CCAs used in 2001 and 2002. Collectively, any closed area intended to protect a particular groundfish species or species group or intended to protect a complex of species is referred to as a Groundfish Conservation Area. The YRCA, the CCAs, and the larger depth-based RCAs are Groundfish Conservation Areas. Larger RCAs intended to protect a complex of species, such as overfished shelf rockfish species, have boundaries defined by a series of latitude and longitude coordinates. The boundaries are intended to approximate particular depth contours, such as 100 fm (183 m), 150 fm (274 m), 250 fm (457,) etc. Different gear types or fishing sectors may have RCAs with differing boundaries.

(a) *Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates defining the boundaries of the YRCA are defined at § 660.304(d). Recreational fishing for groundfish is prohibited within the YRCA. It is unlawful for recreational fishing vessels to take, retain, possess, or land groundfish inside the YRCA.

(b) *Cowcod Conservation Areas.* The coordinates of the Cowcod Conservation Areas (CCAs) are defined at § 660.304(c). Recreational and commercial fishing for groundfish is prohibited within the CCAs, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m). It is unlawful to take and retain, possess, or land groundfish inside the CCAs, except for rockfish and lingcod taken in waters inside the 20-fathom (36.9 m) depth contour, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00'30" N. lat., and bounded on the south by the latitude line at 32°59'30" N. lat.

(c) *Limited Entry Groundfish Trawl Coastwide and Open Access Exempted Trawl South of 40°10' N. lat. Rockfish Conservation Area.* (i) The trawl RCA is closed to limited entry groundfish trawl fishing coastwide and to open access exempted trawl fishing (except for pink shrimp trawling) south of 40°10' N. lat. Fishing with limited entry groundfish trawl gear is prohibited within the trawl RCA north of 40°10' N. lat. and fishing with any trawl gear is prohibited within the trawl RCA south of 40°10' N. lat., unless that vessel is trawling for pink shrimp. Coastwide, it is unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl gear in the trawl RCA. South of 40°10' N. lat., it is unlawful to take and retain, possess, or land any species of fish taken with any type of trawl gear in the trawl RCA. Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. The above restrictions in this paragraph do not apply to vessels fishing with midwater trawl gear for Pacific whiting during the primary season, or to taking and retaining yellowtail rockfish or

widow rockfish in association with Pacific whiting caught with midwater trawl gear during the primary whiting season, or to taking and retaining yellowtail or widow rockfish with midwater trawl gear when trip limits are authorized for those species (November-December 2003.) If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery outside of the RCA. Nothing in these Federal regulations supercede any State regulations that may prohibit trawling shoreward of the 3 nm State waters boundary line.

(ii) Between the U.S. border with Canada and 40°10' N. lat., the trawl RCA is defined along its eastern, inshore boundary by latitude and longitude coordinates approximating 100 fm (183 m) in January through June and October through December, and approximating 75 fm (137 m) in July and August. Between 40°10' N. lat. and 34°27' N. lat., the trawl RCA is defined along its eastern, inshore boundary by coordinates approximating 50 fm (91 m) in January and February and 60 fm (110 m) in March through December. Between 34°27' N. lat. and the U.S. border with Mexico, along the mainland coast of California, the trawl RCA is defined along its eastern, inshore boundary by coordinates approximating 100 fm (183 m) throughout the year. Between 34°27' N. lat. and the U.S. border with Mexico, adjacent to the islands offshore of California, the trawl RCA is defined along its inshore boundary by coordinates approximating 20 fm (37 m) throughout the year. Specific coordinates that define the eastern inshore boundaries of the trawl RCA are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 38° N. lat., the trawl RCA is defined along its western, offshore boundary by latitude and longitude coordinates approximating 250 fm (457 m) in March through October, and by coordinates approximating 250 fm (457 m) with some modifications to provide open areas to allow winter petrale sole fishing in January, February, November, and December. Between 38° N. lat. and the U.S. border with Mexico, the trawl RCA is defined along its western, offshore boundary by coordinates approximating 150 fm (274 m) throughout the year. Specific boundary coordinates that define the western, offshore boundaries of the trawl RCA

are provided below at paragraph (e) of this section.

(d) *Non-Trawl Gear (Limited Entry Fixed Gear and Open Access Nontrawl Gears) Rockfish Conservation Area.* (i) The non-trawl gear RCA is closed to fishing for groundfish using non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, jig gear, pot or trap, gillnet, set net, trammel net and spear). Fishing with non-trawl gear is prohibited within the non-trawl gear RCA. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear in the non-trawl gear RCA. Limited entry fixed gear and open access non-trawl gear vessels may transit through the non-trawl gear RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear. If a vessel fishes in an RCA, it may not participate in any fishing on that trip that is inconsistent with the restrictions that apply within the RCA. For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.

(ii) Between the U.S. border with Canada and 46°16' N. lat., the non-trawl gear RCA extends to the shoreline. Between 46°16' N. lat. and 40°10' N. lat., the non-trawl gear RCA is defined along its eastern, inshore boundary by latitude and longitude coordinates approximating 27 fm (49 m) throughout the year. Between 40°10' N. lat. and the U.S. border with Mexico, the non-trawl gear RCA is defined along its eastern, inshore boundary by latitude and longitude coordinates approximating 20 fm (37 m) throughout the year, except as provided for between Point Fermin (33°42' 30" N. lat.; 118°17' 30" W. long.) and the Newport South Jetty (33°35' 37" N. lat.; 117°52' 50" W. long.) Between a line drawn due south from Point Fermin (33°42' 30" N. lat.; 118°17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33°35' 37" N. lat.; 117°52' 50" W. long.), vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line defined by coordinates approximating 50 fm (91 m) in the months of July and August. Specific coordinates that define the eastern, inshore boundaries of the non-trawl gear RCA are provided below at paragraph (e) of this section.

(iii) Between the U.S. border with Canada and 40°10' N. lat., the non-trawl gear RCA is defined along its western, offshore boundary by latitude and longitude coordinates approximating 100 fm (183 m) throughout the year.

Between 40°10' N. lat. and the U.S. border with Mexico, the non-trawl gear RCA is defined along its western, offshore boundary by coordinates approximating 150 fm (274 m) throughout the year. Specific coordinates that define the western, offshore boundaries of the non-trawl gear RCA are provided below at paragraph (e) of this section.

(e) *RCA Boundary Coordinates.* Coordinates for the specific boundaries that approximate the depth contours selected for both trawl and non-trawl gear RCAs are provided here.

(i) The 27 fm (49 m) depth contour used between 46°16' N. lat. and 40°10' N. lat. as an eastern boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:

- (1) 46°16.00' N. lat., 124°12.39' W. long.;
- (2) 46°14.85' N. lat., 124°12.39' W. long.;
- (3) 46°03.95' N. lat., 124°03.64' W. long.;
- (4) 45°43.14' N. lat., 124°00.17' W. long.;
- (5) 45°23.33' N. lat., 124°01.99' W. long.;
- (6) 45°09.54' N. lat., 124°01.65' W. long.;
- (7) 44°39.99' N. lat., 124°08.67' W. long.;
- (8) 44°20.86' N. lat., 124°10.31' W. long.;
- (9) 43°37.11' N. lat., 124°14.91' W. long.;
- (10) 43°27.54' N. lat., 124°18.98' W. long.;
- (11) 43°20.68' N. lat., 124°25.53' W. long.;
- (12) 43°15.08' N. lat., 124°27.17' W. long.;
- (13) 43°06.89' N. lat., 124°29.65' W. long.;
- (14) 43°01.02' N. lat., 124°29.70' W. long.;
- (15) 42°52.67' N. lat., 124°36.10' W. long.;
- (16) 42°45.96' N. lat., 124°37.95' W. long.;
- (17) 42°45.80' N. lat., 124°35.41' W. long.;
- (18) 42°38.46' N. lat., 124°27.49' W. long.;
- (19) 42°35.29' N. lat., 124°26.85' W. long.;
- (20) 42°31.49' N. lat., 124°31.40' W. long.;
- (21) 42°29.06' N. lat., 124°32.24' W. long.;
- (22) 42°14.26' N. lat., 124°26.27' W. long.;
- (23) 42°04.86' N. lat., 124°21.94' W. long.;
- (24) 42°00.10' N. lat., 124°20.99' W. long.;

- (25) 42°00.00' N. lat., 124°21.03' W. long.;
  - (26) 41°56.33' N. lat., 124°20.34' W. long.;
  - (27) 41°50.93' N. lat., 124°23.74' W. long.;
  - (28) 41°41.83' N. lat., 124°16.99' W. long.;
  - (29) 41°35.48' N. lat., 124°16.35' W. long.;
  - (30) 41°23.51' N. lat., 124°10.48' W. long.;
  - (31) 41°04.62' N. lat., 124°14.44' W. long.;
  - (32) 40°54.28' N. lat., 124°13.90' W. long.;
  - (33) 40°40.37' N. lat., 124°26.21' W. long.;
  - (34) 40°34.03' N. lat., 124°27.36' W. long.;
  - (35) 40°28.88' N. lat., 124°32.41' W. long.;
  - (36) 40°24.82' N. lat., 124°29.56' W. long.;
  - (37) 40°22.64' N. lat., 124°24.05' W. long.;
  - (38) 40°18.67' N. lat., 124°21.90' W. long.;
  - (39) 40°14.23' N. lat., 124°23.72' W. long.; and
  - (40) 40°10.00' N. lat., 124°17.22' W. long.;
- (ii) The 75 fm (137 m) depth contour used north of 40°10' N. lat. as an eastern boundary for the trawl RCA in the months of July and August is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°16.08' N. lat., 125°34.90' W. long.;
  - (2) 48°14.50' N. lat., 125°29.50' W. long.;
  - (3) 48°12.08' N. lat., 125°28.00' W. long.;
  - (4) 48°09.00' N. lat., 125°28.00' W. long.;
  - (5) 48°07.80' N. lat., 125°31.70' W. long.;
  - (6) 48°04.28' N. lat., 125°29.00' W. long.;
  - (7) 48°02.50' N. lat., 125°25.70' W. long.;
  - (8) 48°10.00' N. lat., 125°20.19' W. long.;
  - (9) 48°21.70' N. lat., 125°17.56' W. long.;
  - (10) 48°24.69' N. lat., 125°05.55' W. long.;
  - (11) 48°23.05' N. lat., 124°48.80' W. long.;
  - (12) 48°17.10' N. lat., 124°54.82' W. long.;
  - (13) 48°05.10' N. lat., 124°59.40' W. long.;
  - (14) 48°04.50' N. lat., 125°02.00' W. long.;
  - (15) 48°04.70' N. lat., 125°04.08' W. long.;
  - (16) 48°05.20' N. lat., 125°04.90' W. long.;

- (17) 48°06.80' N. lat., 125°06.15' W. long.;
- (18) 48°05.91' N. lat., 124°08.30' W. long.;
- (19) 48°07.00' N. lat., 124°09.80' W. long.;
- (20) 48°06.93' N. lat., 124°11.48' W. long.;
- (21) 48°04.98' N. lat., 124°10.02' W. long.;
- (22) 47°54.00' N. lat., 125°04.98' W. long.;
- (23) 47°44.52' N. lat., 125°00.00' W. long.;
- (24) 47°42.00' N. lat., 124°58.98' W. long.;
- (25) 47°35.52' N. lat., 124°55.50' W. long.;
- (26) 47°22.02' N. lat., 124°44.40' W. long.;
- (27) 47°16.98' N. lat., 124°45.48' W. long.;
- (28) 47°10.98' N. lat., 124°48.48' W. long.;
- (29) 47°04.98' N. lat., 124°49.02' W. long.;
- (30) 46°57.98' N. lat., 124°46.50' W. long.;
- (31) 46°54.00' N. lat., 124°45.00' W. long.;
- (32) 46°48.48' N. lat., 124°44.52' W. long.;
- (33) 46°40.02' N. lat., 124°36.00' W. long.;
- (34) 46°34.09' N. lat., 124°27.03' W. long.;
- (35) 46°24.64' N. lat., 124°30.33' W. long.;
- (36) 46°19.98' N. lat., 124°36.00' W. long.;
- (37) 46°18.14' N. lat., 124°34.26' W. long.;
- (38) 46°18.72' N. lat., 124°22.68' W. long.;
- (39) 46°14.64' N. lat., 124°22.54' W. long.;
- (40) 46°11.08' N. lat., 124°30.74' W. long.;
- (41) 46°04.28' N. lat., 124°31.49' W. long.;
- (42) 45°55.97' N. lat., 124°19.95' W. long.;
- (43) 45°44.97' N. lat., 124°15.96' W. long.;
- (44) 45°43.14' N. lat., 124°21.86' W. long.;
- (45) 45°34.44' N. lat., 124°14.44' W. long.;
- (46) 45°15.49' N. lat., 124°11.49' W. long.;
- (47) 44°57.31' N. lat., 124°15.03' W. long.;
- (48) 44°43.90' N. lat., 124°28.88' W. long.;
- (49) 44°28.64' N. lat., 124°35.67' W. long.;
- (50) 44°25.31' N. lat., 124°43.08' W. long.;
- (51) 44°17.15' N. lat., 124°47.98' W. long.;
- (52) 44°13.67' N. lat., 124°54.41' W. long.;
- (53) 43°56.85' N. lat., 124°55.32' W. long.;
- (54) 43°57.50' N. lat., 124°41.23' W. long.;
- (55) 44°01.79' N. lat., 124°38.00' W. long.;
- (56) 44°02.16' N. lat., 124°32.62' W. long.;
- (57) 43°58.15' N. lat., 124°30.39' W. long.;
- (58) 43°53.25' N. lat., 124°31.39' W. long.;
- (59) 43°35.56' N. lat., 124°28.17' W. long.;
- (60) 43°21.84' N. lat., 124°36.07' W. long.;
- (61) 43°19.73' N. lat., 124°34.86' W. long.;
- (62) 43°09.38' N. lat., 124°39.30' W. long.;
- (63) 43°07.11' N. lat., 124°37.66' W. long.;
- (64) 42°56.27' N. lat., 124°43.29' W. long.;
- (65) 42°45.00' N. lat., 124°41.50' W. long.;
- (66) 42°39.72' N. lat., 124°39.11' W. long.;
- (67) 42°32.88' N. lat., 124°40.13' W. long.;
- (68) 42°32.30' N. lat., 124°39.04' W. long.;
- (69) 42°26.96' N. lat., 124°44.31' W. long.;
- (70) 42°24.11' N. lat., 124°42.16' W. long.;
- (71) 42°21.10' N. lat., 124°35.46' W. long.;
- (72) 42°14.72' N. lat., 124°32.30' W. long.;
- (73) 42°09.24' N. lat., 124°32.04' W. long.;
- (74) 42°01.89' N. lat., 124°32.70' W. long.;
- (75) 42°00.03' N. lat., 124°32.02' W. long.;
- (76) 42°00.00' N. lat., 124°32.02' W. long.;
- (77) 41°46.18' N. lat., 124°26.60' W. long.;
- (78) 41°29.22' N. lat., 124°28.04' W. long.;
- (79) 41°09.62' N. lat., 124°19.75' W. long.;
- (80) 40°50.71' N. lat., 124°23.80' W. long.;
- (81) 40°43.35' N. lat., 124°29.30' W. long.;
- (82) 40°40.24' N. lat., 124°29.86' W. long.;
- (83) 40°37.50' N. lat., 124°28.68' W. long.;
- (84) 40°34.42' N. lat., 124°29.65' W. long.;
- (85) 40°34.74' N. lat., 124°34.61' W. long.;
- (86) 40°31.70' N. lat., 124°37.13' W. long.;
- (87) 40°25.03' N. lat., 124°34.77' W. long.;
- (88) 40°23.58' N. lat., 124°31.49' W. long.;
- (89) 40°23.64' N. lat., 124°28.35' W. long.;
- (90) 40°22.53' N. lat., 124°24.76' W. long.;
- (91) 40°21.46' N. lat., 124°24.86' W. long.;
- (92) 40°21.74' N. lat., 124°27.63' W. long.;
- (93) 40°19.76' N. lat., 124°28.15' W. long.;
- (94) 40°18.00' N. lat., 124°25.38' W. long.;
- (95) 40°18.54' N. lat., 124°22.94' W. long.;
- (96) 40°15.55' N. lat., 124°25.75' W. long.;
- (97) 40°16.06' N. lat., 124°30.48' W. long.;
- (98) 40°15.75' N. lat., 124°31.69' W. long.; and
- (99) 40°10.00' N. lat., 124°21.28' W. long.
- (iii) The 100 fm (183 m) depth contour used north of 40°10' N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°15.00' N. lat., 125°41.00' W. long.;
- (2) 48°14.00' N. lat., 125°36.00' W. long.;
- (3) 48°09.50' N. lat., 125°40.50' W. long.;
- (4) 48°08.00' N. lat., 125°38.00' W. long.;
- (5) 48°05.00' N. lat., 125°37.25' W. long.;
- (6) 48°02.60' N. lat., 125°34.70' W. long.;
- (7) 47°59.00' N. lat., 125°34.00' W. long.;
- (8) 47°57.26' N. lat., 125°29.82' W. long.;
- (9) 47°59.87' N. lat., 125°25.81' W. long.;
- (10) 48°01.80' N. lat., 125°24.53' W. long.;
- (11) 48°02.08' N. lat., 125°22.98' W. long.;
- (12) 48°02.97' N. lat., 125°22.89' W. long.;
- (13) 48°04.47' N. lat., 125°21.75' W. long.;
- (14) 48°06.11' N. lat., 125°19.33' W. long.;
- (15) 48°07.95' N. lat., 125°18.55' W. long.;
- (16) 48°09.00' N. lat., 125°18.00' W. long.;
- (17) 48°11.31' N. lat., 125°17.55' W. long.;
- (18) 48°14.60' N. lat., 125°13.46' W. long.;

- (19) 48°16.67' N. lat., 125°14.34' W. long.;
- (20) 48°18.73' N. lat., 125°14.41' W. long.;
- (21) 48°19.67' N. lat., 125°13.70' W. long.;
- (22) 48°19.70' N. lat., 125°11.13' W. long.;
- (23) 48°22.95' N. lat., 125°10.79' W. long.;
- (24) 48°21.61' N. lat., 125°02.54' W. long.;
- (25) 48°23.00' N. lat., 124°49.34' W. long.;
- (26) 48°17.00' N. lat., 124°56.50' W. long.;
- (27) 48°06.00' N. lat., 125°00.00' W. long.;
- (28) 48°04.62' N. lat., 125°01.73' W. long.;
- (29) 48°04.84' N. lat., 125°04.03' W. long.;
- (30) 48°06.41' N. lat., 125°06.51' W. long.;
- (31) 48°06.00' N. lat., 125°08.00' W. long.;
- (32) 48°07.08' N. lat., 125°09.34' W. long.;
- (33) 48°07.28' N. lat., 125°11.14' W. long.;
- (34) 48°03.45' N. lat., 125°16.66' W. long.;
- (35) 47°59.50' N. lat., 125°18.88' W. long.;
- (36) 47°58.68' N. lat., 125°16.19' W. long.;
- (37) 47°56.62' N. lat., 125°13.50' W. long.;
- (38) 47°53.71' N. lat., 125°11.96' W. long.;
- (39) 47°51.70' N. lat., 125°09.38' W. long.;
- (40) 47°49.95' N. lat., 125°06.07' W. long.;
- (41) 47°49.00' N. lat., 125°03.00' W. long.;
- (42) 47°46.95' N. lat., 125°04.00' W. long.;
- (43) 47°46.58' N. lat., 125°03.15' W. long.;
- (44) 47°44.07' N. lat., 125°04.28' W. long.;
- (45) 47°43.32' N. lat., 125°04.41' W. long.;
- (46) 47°40.95' N. lat., 125°04.14' W. long.;
- (47) 47°39.58' N. lat., 125°04.97' W. long.;
- (48) 47°36.23' N. lat., 125°02.77' W. long.;
- (49) 47°34.28' N. lat., 124°58.66' W. long.;
- (50) 47°32.17' N. lat., 124°57.77' W. long.;
- (51) 47°30.27' N. lat., 124°56.16' W. long.;
- (52) 47°30.60' N. lat., 124°54.80' W. long.;
- (53) 47°29.26' N. lat., 124°52.21' W. long.;
- (54) 47°28.21' N. lat., 124°50.65' W. long.;
- (55) 47°27.38' N. lat., 124°49.34' W. long.;
- (56) 47°25.61' N. lat., 124°48.26' W. long.;
- (57) 47°23.54' N. lat., 124°46.42' W. long.;
- (58) 47°20.64' N. lat., 124°45.91' W. long.;
- (59) 47°17.99' N. lat., 124°45.59' W. long.;
- (60) 47°18.20' N. lat., 124°49.12' W. long.;
- (61) 47°15.01' N. lat., 124°51.09' W. long.;
- (62) 47°12.61' N. lat., 124°54.89' W. long.;
- (63) 47°08.22' N. lat., 124°56.53' W. long.;
- (64) 47°08.50' N. lat., 124°54.95' W. long.;
- (65) 47°01.92' N. lat., 124°57.74' W. long.;
- (66) 47°01.14' N. lat., 124°59.35' W. long.;
- (67) 46°58.48' N. lat., 124°57.81' W. long.;
- (68) 46°56.79' N. lat., 124°56.03' W. long.;
- (69) 46°58.01' N. lat., 124°55.09' W. long.;
- (70) 46°55.07' N. lat., 124°54.14' W. long.;
- (71) 46°59.60' N. lat., 124°49.79' W. long.;
- (72) 46°58.72' N. lat., 124°48.78' W. long.;
- (73) 46°54.45' N. lat., 124°48.36' W. long.;
- (74) 46°53.99' N. lat., 124°49.95' W. long.;
- (75) 46°54.38' N. lat., 124°52.73' W. long.;
- (76) 46°52.38' N. lat., 124°52.02' W. long.;
- (77) 46°48.93' N. lat., 124°49.17' W. long.;
- (78) 46°41.50' N. lat., 124°43.00' W. long.;
- (79) 46°34.50' N. lat., 124°28.50' W. long.;
- (80) 46°29.00' N. lat., 124°30.00' W. long.;
- (81) 46°20.00' N. lat., 124°36.50' W. long.;
- (82) 46°18.00' N. lat., 124°38.00' W. long.;
- (83) 46°17.52' N. lat., 124°35.35' W. long.;
- (84) 46°17.00' N. lat., 124°22.50' W. long.;
- (85) 46°15.02' N. lat., 124°23.77' W. long.;
- (86) 46°12.00' N. lat., 124°35.00' W. long.;
- (87) 46°10.50' N. lat., 124°39.00' W. long.;
- (88) 46°08.90' N. lat., 124°39.11' W. long.;
- (89) 46°00.97' N. lat., 124°38.56' W. long.;
- (90) 45°57.04' N. lat., 124°36.42' W. long.;
- (91) 45°54.29' N. lat., 124°40.02' W. long.;
- (92) 45°47.19' N. lat., 124°35.58' W. long.;
- (93) 45°41.75' N. lat., 124°28.32' W. long.;
- (94) 45°34.16' N. lat., 124°24.23' W. long.;
- (95) 45°27.10' N. lat., 124°21.74' W. long.;
- (96) 45°17.14' N. lat., 124°17.85' W. long.;
- (97) 44°59.51' N. lat., 124°19.34' W. long.;
- (98) 44°49.30' N. lat., 124°29.97' W. long.;
- (99) 44°45.64' N. lat., 124°33.89' W. long.;
- (100) 44°33.00' N. lat., 124°36.88' W. long.;
- (101) 44°28.20' N. lat., 124°44.72' W. long.;
- (102) 44°13.16' N. lat., 124°56.36' W. long.;
- (103) 43°56.34' N. lat., 124°55.74' W. long.;
- (104) 43°56.47' N. lat., 124°34.61' W. long.;
- (105) 43°42.73' N. lat., 124°32.41' W. long.;
- (106) 43°30.92' N. lat., 124°34.43' W. long.;
- (107) 43°17.44' N. lat., 124°41.16' W. long.;
- (108) 43°07.04' N. lat., 124°41.25' W. long.;
- (109) 43°03.45' N. lat., 124°44.36' W. long.;
- (110) 43°03.90' N. lat., 124°50.81' W. long.;
- (111) 42°55.70' N. lat., 124°52.79' W. long.;
- (112) 42°54.12' N. lat., 124°47.36' W. long.;
- (113) 42°43.99' N. lat., 124°42.38' W. long.;
- (114) 42°38.23' N. lat., 124°41.25' W. long.;
- (115) 42°33.02' N. lat., 124°42.38' W. long.;
- (116) 42°31.89' N. lat., 124°42.04' W. long.;
- (117) 42°30.08' N. lat., 124°42.67' W. long.;
- (118) 42°28.27' N. lat., 124°47.08' W. long.;
- (119) 42°25.22' N. lat., 124°43.51' W. long.;
- (120) 42°19.22' N. lat., 124°37.92' W. long.;
- (121) 42°16.28' N. lat., 124°36.11' W. long.;
- (122) 42°05.65' N. lat., 124°34.92' W. long.;
- (123) 42°00.00' N. lat., 124°35.27' W. long.;

- (124) 42°00.00' N. lat., 124°35.26' W. long.;
- (125) 41°47.04' N. lat., 124°27.64' W. long.;
- (126) 41°32.92' N. lat., 124°28.79' W. long.;
- (127) 41°24.17' N. lat., 124°28.46' W. long.;
- (128) 41°10.12' N. lat., 124°20.50' W. long.;
- (129) 40°51.41' N. lat., 124°24.38' W. long.;
- (130) 40°43.71' N. lat., 124°29.89' W. long.;
- (131) 40°40.14' N. lat., 124°30.90' W. long.;
- (132) 40°37.35' N. lat., 124°29.05' W. long.;
- (133) 40°34.76' N. lat., 124°29.82' W. long.;
- (134) 40°36.78' N. lat., 124°37.06' W. long.;
- (135) 40°32.44' N. lat., 124°39.58' W. long.;
- (136) 40°24.82' N. lat., 124°35.12' W. long.;
- (137) 40°23.30' N. lat., 124°31.60' W. long.;
- (138) 40°23.52' N. lat., 124°28.78' W. long.;
- (139) 40°22.43' N. lat., 124°25.00' W. long.;
- (140) 40°21.72' N. lat., 124°24.94' W. long.;
- (141) 40°21.87' N. lat., 124°27.96' W. long.;
- (142) 40°21.40' N. lat., 124°28.74' W. long.;
- (143) 40°19.68' N. lat., 124°28.49' W. long.;
- (144) 40°17.73' N. lat., 124°25.43' W. long.;
- (145) 40°18.37' N. lat., 124°23.35' W. long.;
- (146) 40°15.75' N. lat., 124°26.05' W. long.;
- (147) 40°16.75' N. lat., 124°33.71' W. long.;
- (148) 40°16.29' N. lat., 124°34.36' W. long.; and
- (149) 40°10.00' N. lat., 124°21.12' W. long.
- (iv) The 250 fm (457 m) depth contour used north of 38° N. lat. as a western boundary for the trawl RCA in the months of March through October is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°14.68' N. lat., 125°42.10' W. long.;
- (2) 48°13.00' N. lat., 125°39.00' W. long.;
- (3) 48°12.73' N. lat., 125°38.87' W. long.;
- (4) 48°12.43' N. lat., 125°39.12' W. long.;
- (5) 48°11.83' N. lat., 125°40.01' W. long.;
- (6) 48°11.78' N. lat., 125°41.70' W. long.;
- (7) 48°10.62' N. lat., 125°43.41' W. long.;
- (8) 48°09.23' N. lat., 125°42.80' W. long.;
- (9) 48°08.79' N. lat., 125°43.79' W. long.;
- (10) 48°08.50' N. lat., 125°45.00' W. long.;
- (11) 48°07.43' N. lat., 125°46.36' W. long.;
- (12) 48°06.00' N. lat., 125°46.50' W. long.;
- (13) 48°05.38' N. lat., 125°42.82' W. long.;
- (14) 48°04.19' N. lat., 125°40.40' W. long.;
- (15) 48°03.50' N. lat., 125°37.00' W. long.;
- (16) 48°01.50' N. lat., 125°40.00' W. long.;
- (17) 47°57.00' N. lat., 125°37.00' W. long.;
- (18) 47°55.21' N. lat., 125°37.22' W. long.;
- (19) 47°54.02' N. lat., 125°36.57' W. long.;
- (20) 47°53.67' N. lat., 125°35.06' W. long.;
- (21) 47°54.14' N. lat., 125°32.35' W. long.;
- (22) 47°55.50' N. lat., 125°28.56' W. long.;
- (23) 47°57.03' N. lat., 125°26.52' W. long.;
- (24) 47°57.98' N. lat., 125°25.08' W. long.;
- (25) 48°00.54' N. lat., 125°24.38' W. long.;
- (26) 48°01.45' N. lat., 125°23.70' W. long.;
- (27) 48°01.97' N. lat., 125°22.34' W. long.;
- (28) 48°03.68' N. lat., 125°21.20' W. long.;
- (29) 48°01.96' N. lat., 125°19.56' W. long.;
- (30) 48°00.98' N. lat., 125°20.43' W. long.;
- (31) 48°00.00' N. lat., 125°20.68' W. long.;
- (32) 47°58.00' N. lat., 125°19.50' W. long.;
- (33) 47°57.65' N. lat., 125°19.18' W. long.;
- (34) 47°58.00' N. lat., 125°18.00' W. long.;
- (35) 47°56.59' N. lat., 125°18.15' W. long.;
- (36) 47°51.30' N. lat., 125°18.32' W. long.;
- (37) 47°49.88' N. lat., 125°14.49' W. long.;
- (38) 47°49.00' N. lat., 125°11.00' W. long.;
- (39) 47°47.99' N. lat., 125°07.31' W. long.;
- (40) 47°46.47' N. lat., 125°08.63' W. long.;
- (41) 47°46.00' N. lat., 125°06.00' W. long.;
- (42) 47°44.50' N. lat., 125°07.50' W. long.;
- (43) 47°43.39' N. lat., 125°06.57' W. long.;
- (44) 47°42.37' N. lat., 125°05.74' W. long.;
- (45) 47°40.61' N. lat., 125°06.48' W. long.;
- (46) 47°37.43' N. lat., 125°07.33' W. long.;
- (47) 47°33.68' N. lat., 125°04.80' W. long.;
- (48) 47°30.00' N. lat., 125°00.00' W. long.;
- (49) 47°28.00' N. lat., 124°58.50' W. long.;
- (50) 47°28.88' N. lat., 124°54.71' W. long.;
- (51) 47°27.70' N. lat., 124°51.87' W. long.;
- (52) 47°24.84' N. lat., 124°48.45' W. long.;
- (53) 47°21.76' N. lat., 124°47.42' W. long.;
- (54) 47°18.84' N. lat., 124°46.75' W. long.;
- (55) 47°19.82' N. lat., 124°51.43' W. long.;
- (56) 47°18.13' N. lat., 124°54.25' W. long.;
- (57) 47°13.50' N. lat., 124°54.69' W. long.;
- (58) 47°15.00' N. lat., 125°00.00' W. long.;
- (59) 47°08.00' N. lat., 124°59.83' W. long.;
- (60) 47°05.79' N. lat., 125°01.00' W. long.;
- (61) 47°03.34' N. lat., 124°57.49' W. long.;
- (62) 47°01.00' N. lat., 125°00.00' W. long.;
- (63) 46°55.00' N. lat., 125°02.00' W. long.;
- (64) 46°51.00' N. lat., 124°57.00' W. long.;
- (65) 46°47.00' N. lat., 124°55.00' W. long.;
- (66) 46°34.00' N. lat., 124°38.00' W. long.;
- (67) 46°30.50' N. lat., 124°41.00' W. long.;
- (68) 46°33.00' N. lat., 124°32.00' W. long.;
- (69) 46°29.00' N. lat., 124°32.00' W. long.;
- (70) 46°20.00' N. lat., 124°39.00' W. long.;
- (71) 46°18.16' N. lat., 124°40.00' W. long.;
- (72) 46°15.83' N. lat., 124°27.01' W. long.;
- (73) 46°15.00' N. lat., 124°30.96' W. long.;
- (74) 46°13.17' N. lat., 124°37.87' W. long.;
- (75) 46°13.17' N. lat., 124°38.75' W. long.;

- (76) 46°10.50' N. lat., 124°42.00' W. long.;
- (77) 46°06.21' N. lat., 124°41.85' W. long.;
- (78) 46°03.02' N. lat., 124°50.27' W. long.;
- (79) 45°57.00' N. lat., 124°45.52' W. long.;
- (80) 45°46.85' N. lat., 124°45.91' W. long.;
- (81) 45°45.81' N. lat., 124°47.05' W. long.;
- (82) 45°44.87' N. lat., 124°45.98' W. long.;
- (83) 45°43.44' N. lat., 124°46.03' W. long.;
- (84) 45°35.82' N. lat., 124°45.72' W. long.;
- (85) 45°35.70' N. lat., 124°42.89' W. long.;
- (86) 45°24.45' N. lat., 124°38.21' W. long.;
- (87) 45°11.68' N. lat., 124°39.38' W. long.;
- (88) 44°57.94' N. lat., 124°37.02' W. long.;
- (89) 44°44.28' N. lat., 124°50.79' W. long.;
- (90) 44°32.63' N. lat., 124°54.21' W. long.;
- (91) 44°23.20' N. lat., 124°49.87' W. long.;
- (92) 44°13.17' N. lat., 124°58.81' W. long.;
- (93) 43°57.92' N. lat., 124°58.29' W. long.;
- (94) 43°50.12' N. lat., 124°53.36' W. long.;
- (95) 43°49.53' N. lat., 124°43.96' W. long.;
- (96) 43°42.76' N. lat., 124°41.40' W. long.;
- (97) 43°24.00' N. lat., 124°42.61' W. long.;
- (98) 43°19.74' N. lat., 124°45.12' W. long.;
- (99) 43°19.62' N. lat., 124°52.95' W. long.;
- (100) 43°17.41' N. lat., 124°53.02' W. long.;
- (101) 42°49.15' N. lat., 124°54.93' W. long.;
- (102) 42°46.74' N. lat., 124°53.39' W. long.;
- (103) 42°43.76' N. lat., 124°51.64' W. long.;
- (104) 42°45.41' N. lat., 124°49.35' W. long.;
- (105) 42°43.92' N. lat., 124°45.92' W. long.;
- (106) 42°38.87' N. lat., 124°43.38' W. long.;
- (107) 42°34.78' N. lat., 124°46.56' W. long.;
- (108) 42°31.47' N. lat., 124°46.89' W. long.;
- (109) 42°31.00' N. lat., 124°44.28' W. long.;
- (110) 42°29.22' N. lat., 124°46.93' W. long.;
- (111) 42°28.39' N. lat., 124°49.94' W. long.;
- (112) 42°26.28' N. lat., 124°47.60' W. long.;
- (113) 42°19.58' N. lat., 124°43.21' W. long.;
- (114) 42°13.75' N. lat., 124°40.06' W. long.;
- (115) 42°05.12' N. lat., 124°39.06' W. long.;
- (116) 41°59.99' N. lat., 124°37.72' W. long.;
- (117) 42°00.00' N. lat., 124°37.76' W. long.;
- (118) 41°47.93' N. lat., 124°31.79' W. long.;
- (119) 41°21.35' N. lat., 124°30.35' W. long.;
- (120) 41°07.11' N. lat., 124°25.25' W. long.;
- (121) 40°57.37' N. lat., 124°30.25' W. long.;
- (122) 40°48.77' N. lat., 124°30.69' W. long.;
- (123) 40°41.03' N. lat., 124°33.21' W. long.;
- (124) 40°37.40' N. lat., 124°38.96' W. long.;
- (125) 40°33.70' N. lat., 124°42.50' W. long.;
- (126) 40°31.31' N. lat., 124°41.59' W. long.;
- (127) 40°25.00' N. lat., 124°36.65' W. long.;
- (128) 40°22.42' N. lat., 124°32.19' W. long.;
- (129) 40°17.17' N. lat., 124°32.21' W. long.;
- (130) 40°18.68' N. lat., 124°50.44' W. long.;
- (131) 40°13.55' N. lat., 124°34.26' W. long.;
- (132) 40°10.11' N. lat., 124°28.25' W. long.;
- (133) 40°06.72' N. lat., 124°21.40' W. long.;
- (134) 40°01.63' N. lat., 124°17.25' W. long.;
- (135) 40°00.68' N. lat., 124°11.19' W. long.;
- (136) 39°59.09' N. lat., 124°14.92' W. long.;
- (137) 39°51.85' N. lat., 124°10.33' W. long.;
- (138) 39°36.90' N. lat., 124°00.63' W. long.;
- (139) 39°32.41' N. lat., 124°00.01' W. long.;
- (140) 39°05.40' N. lat., 124°00.52' W. long.;
- (141) 39°04.32' N. lat., 123°59.00' W. long.;
- (142) 38°58.02' N. lat., 123°58.18' W. long.;
- (143) 38°58.19' N. lat., 124°01.90' W. long.;
- (144) 38°50.27' N. lat., 123°56.26' W. long.;
- (145) 38°46.73' N. lat., 123°51.93' W. long.;
- (146) 38°44.64' N. lat., 123°51.77' W. long.;
- (147) 38°32.97' N. lat., 123°41.84' W. long.;
- (148) 38°14.56' N. lat., 123°32.18' W. long.;
- (149) 38°13.85' N. lat., 123°29.94' W. long.;
- (150) 38°11.88' N. lat., 123°30.57' W. long.;
- (151) 38°08.72' N. lat., 123°29.56' W. long.;
- (152) 38°05.62' N. lat., 123°32.38' W. long.;
- (153) 38°01.90' N. lat., 123°32.00' W. long.; and
- (154) 38°00.00' N. lat., 123°30.00' W. long.
- (v) The Winter Petrale Boundary used north of 38° N. lat. as a western boundary for the trawl RCA, modified to allow fishing for petrale in the winter months of January, February, November, and December, is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°14.71' N. lat., 125°41.95' W. long.;
  - (2) 48°13.00' N. lat., 125°39.00' W. long.;
  - (3) 48°08.50' N. lat., 125°45.00' W. long.;
  - (4) 48°06.00' N. lat., 125°46.50' W. long.;
  - (5) 48°03.50' N. lat., 125°37.00' W. long.;
  - (6) 48°01.50' N. lat., 125°40.00' W. long.;
  - (7) 47°57.00' N. lat., 125°37.00' W. long.;
  - (8) 47°55.50' N. lat., 125°28.50' W. long.;
  - (9) 47°58.00' N. lat., 125°25.00' W. long.;
  - (10) 48°00.50' N. lat., 125°24.50' W. long.;
  - (11) 48°03.50' N. lat., 125°21.00' W. long.;
  - (12) 48°02.00' N. lat., 125°19.50' W. long.;
  - (13) 48°00.00' N. lat., 125°21.00' W. long.;
  - (14) 47°58.00' N. lat., 125°20.00' W. long.;
  - (15) 47°58.00' N. lat., 125°18.00' W. long.;
  - (16) 47°52.00' N. lat., 125°16.50' W. long.;
  - (17) 47°49.00' N. lat., 125°11.00' W. long.;
  - (18) 47°46.00' N. lat., 125°06.00' W. long.;
  - (19) 47°44.50' N. lat., 125°07.50' W. long.;
  - (20) 47°42.00' N. lat., 125°06.00' W. long.;
  - (21) 47°38.00' N. lat., 125°07.00' W. long.;
  - (22) 47°30.00' N. lat., 125°00.00' W. long.;

- (23) 47°28.00' N. lat., 124°58.50' W. long.;
- (24) 47°28.88' N. lat., 124°54.71' W. long.;
- (25) 47°27.70' N. lat., 124°51.87' W. long.;
- (26) 47°24.84' N. lat., 124°48.45' W. long.;
- (27) 47°21.76' N. lat., 124°47.42' W. long.;
- (28) 47°18.84' N. lat., 124°46.75' W. long.;
- (29) 47°19.82' N. lat., 124°51.43' W. long.;
- (30) 47°18.13' N. lat., 124°54.25' W. long.;
- (31) 47°13.50' N. lat., 124°54.69' W. long.;
- (32) 47°15.00' N. lat., 125°00.00' W. long.;
- (33) 47°08.00' N. lat., 124°59.82' W. long.;
- (34) 47°05.79' N. lat., 125°01.00' W. long.;
- (35) 47°03.34' N. lat., 124°57.49' W. long.;
- (36) 47°01.00' N. lat., 125°00.00' W. long.;
- (37) 46°55.00' N. lat., 125°02.00' W. long.;
- (38) 46°51.00' N. lat., 124°57.00' W. long.;
- (39) 46°47.00' N. lat., 124°55.00' W. long.;
- (40) 46°34.00' N. lat., 124°38.00' W. long.;
- (41) 46°30.50' N. lat., 124°41.00' W. long.;
- (42) 46°33.00' N. lat., 124°32.00' W. long.;
- (43) 46°29.00' N. lat., 124°32.00' W. long.;
- (44) 46°20.00' N. lat., 124°39.00' W. long.;
- (45) 46°18.16' N. lat., 124°40.00' W. long.;
- (46) 46°15.83' N. lat., 124°27.01' W. long.;
- (47) 46°15.00' N. lat., 124°30.96' W. long.;
- (48) 46°13.17' N. lat., 124°38.76' W. long.;
- (49) 46°10.51' N. lat., 124°41.99' W. long.;
- (50) 46°06.24' N. lat., 124°41.81' W. long.;
- (51) 46°03.04' N. lat., 124°50.26' W. long.;
- (52) 45°56.99' N. lat., 124°45.45' W. long.;
- (53) 45°49.94' N. lat., 124°45.75' W. long.;
- (54) 45°49.94' N. lat., 124°42.33' W. long.;
- (55) 45°45.73' N. lat., 124°42.18' W. long.;
- (56) 45°45.73' N. lat., 124°43.82' W. long.;
- (57) 45°41.94' N. lat., 124°43.61' W. long.;
- (58) 45°41.58' N. lat., 124°39.86' W. long.;
- (59) 45°38.45' N. lat., 124°39.94' W. long.;
- (60) 45°35.75' N. lat., 124°42.91' W. long.;
- (61) 45°24.49' N. lat., 124°38.20' W. long.;
- (62) 45°14.43' N. lat., 124°39.05' W. long.;
- (63) 45°14.30' N. lat., 124°34.19' W. long.;
- (64) 45°08.98' N. lat., 124°34.26' W. long.;
- (65) 45°09.02' N. lat., 124°38.81' W. long.;
- (66) 44°57.98' N. lat., 124°36.98' W. long.;
- (67) 44°56.62' N. lat., 124°38.32' W. long.;
- (68) 44°50.82' N. lat., 124°35.52' W. long.;
- (69) 44°46.89' N. lat., 124°38.32' W. long.;
- (70) 44°50.78' N. lat., 124°44.24' W. long.;
- (71) 44°44.27' N. lat., 124°50.78' W. long.;
- (72) 44°32.63' N. lat., 124°54.24' W. long.;
- (73) 44°23.25' N. lat., 124°49.78' W. long.;
- (74) 44°13.16' N. lat., 124°58.81' W. long.;
- (75) 43°57.88' N. lat., 124°58.25' W. long.;
- (76) 43°56.89' N. lat., 124°57.33' W. long.;
- (77) 43°53.41' N. lat., 124°51.95' W. long.;
- (78) 43°51.56' N. lat., 124°47.38' W. long.;
- (79) 43°51.49' N. lat., 124°37.77' W. long.;
- (80) 43°48.02' N. lat., 124°43.31' W. long.;
- (81) 43°42.77' N. lat., 124°41.39' W. long.;
- (82) 43°24.09' N. lat., 124°42.57' W. long.;
- (83) 43°19.73' N. lat., 124°45.09' W. long.;
- (84) 43°15.98' N. lat., 124°47.76' W. long.;
- (85) 43°04.14' N. lat., 124°52.55' W. long.;
- (86) 43°04.00' N. lat., 124°53.88' W. long.;
- (87) 42°54.69' N. lat., 124°54.54' W. long.;
- (88) 42°45.46' N. lat., 124°49.37' W. long.;
- (89) 42°43.91' N. lat., 124°45.90' W. long.;
- (90) 42°38.84' N. lat., 124°43.36' W. long.;
- (91) 42°34.82' N. lat., 124°46.56' W. long.;
- (92) 42°31.57' N. lat., 124°46.86' W. long.;
- (93) 42°30.98' N. lat., 124°44.27' W. long.;
- (94) 42°29.21' N. lat., 124°46.93' W. long.;
- (95) 42°28.52' N. lat., 124°49.40' W. long.;
- (96) 42°26.06' N. lat., 124°46.61' W. long.;
- (97) 42°21.82' N. lat., 124°43.76' W. long.;
- (98) 42°17.47' N. lat., 124°38.89' W. long.;
- (99) 42°13.67' N. lat., 124°37.51' W. long.;
- (100) 42°13.76' N. lat., 124°40.03' W. long.;
- (101) 42°05.12' N. lat., 124°39.06' W. long.;
- (102) 42°02.67' N. lat., 124°38.41' W. long.;
- (103) 42°02.67' N. lat., 124°35.95' W. long.;
- (104) 42°00.00' N. lat., 124°35.88' W. long.;
- (105) 41°59.99' N. lat., 124°35.92' W. long.;
- (106) 41°56.38' N. lat., 124°34.96' W. long.;
- (107) 41°53.98' N. lat., 124°32.50' W. long.;
- (108) 41°50.69' N. lat., 124°30.46' W. long.;
- (109) 41°47.79' N. lat., 124°29.52' W. long.;
- (110) 41°21.00' N. lat., 124°29.00' W. long.;
- (111) 41°11.00' N. lat., 124°23.00' W. long.;
- (112) 41°05.00' N. lat., 124°23.00' W. long.;
- (113) 40°54.00' N. lat., 124°26.00' W. long.;
- (114) 40°50.00' N. lat., 124°26.00' W. long.;
- (115) 40°44.51' N. lat., 124°30.83' W. long.;
- (116) 40°40.61' N. lat., 124°32.06' W. long.;
- (117) 40°37.36' N. lat., 124°29.41' W. long.;
- (118) 40°35.64' N. lat., 124°30.47' W. long.;
- (119) 40°37.43' N. lat., 124°37.10' W. long.;
- (120) 40°36.00' N. lat., 124°40.00' W. long.;
- (121) 40°31.59' N. lat., 124°40.72' W. long.;
- (122) 40°24.64' N. lat., 124°35.62' W. long.;
- (123) 40°23.00' N. lat., 124°32.00' W. long.;
- (124) 40°23.39' N. lat., 124°28.70' W. long.;
- (125) 40°22.28' N. lat., 124°25.25' W. long.;
- (126) 40°21.90' N. lat., 124°25.17' W. long.;
- (127) 40°22.00' N. lat., 124°28.00' W. long.;

(128) 40°21.35' N. lat., 124°29.53' W. long.;

(129) 40°19.75' N. lat., 124°28.98' W. long.;

(130) 40°18.15' N. lat., 124°27.01' W. long.;

(131) 40°17.45' N. lat., 124°25.49' W. long.;

(132) 40°18.00' N. lat., 124°24.00' W. long.;

(133) 40°16.00' N. lat., 124°26.00' W. long.;

(134) 40°17.00' N. lat., 124°35.00' W. long.;

(135) 40°16.00' N. lat., 124°36.00' W. long.;

(136) 40°10.00' N. lat., 124°22.75' W. long.;

(137) 40°03.00' N. lat., 124°14.75' W. long.;

(138) 39°49.25' N. lat., 124°06.00' W. long.;

(138) 39°34.75' N. lat., 123°58.50' W. long.;

(140) 39°03.07' N. lat., 123°57.81' W. long.;

(141) 38°52.25' N. lat., 123°56.25' W. long.;

(142) 38°41.42' N. lat., 123°46.75' W. long.;

(143) 38°39.47' N. lat., 123°46.59' W. long.;

(144) 38°35.25' N. lat., 123°42.00' W. long.;

(145) 38°19.97' N. lat., 123°32.95' W. long.;

(146) 38°15.00' N. lat., 123°26.50' W. long.;

(147) 38°08.09' N. lat., 123°23.39' W. long.;

(148) 38°10.08' N. lat., 123°26.82' W. long.;

(149) 38°04.08' N. lat., 123°32.12' W. long.; and

(150) 38°00.00' N. lat., 123°29.85' W. long.

(vi) The 50 fm (91 m) depth contour used between 40°10' N. lat. and 34°27' N. lat. as an eastern boundary for the trawl RCA in the months of January and February is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01' N. lat., 124°19.97' W. long.;

(2) 40°09.20' N. lat., 124°15.81' W. long.;

(3) 40°07.51' N. lat., 124°15.29' W. long.;

(4) 40°05.22' N. lat., 124°10.06' W. long.;

(5) 40°06.51' N. lat., 124°08.01' W. long.;

(6) 40°00.72' N. lat., 124°08.45' W. long.;

(7) 39°56.60' N. lat., 124°07.12' W. long.;

(8) 39°52.58' N. lat., 124°03.57' W. long.;

(9) 39°50.65' N. lat., 123°57.98' W. long.;

(10) 39°40.16' N. lat., 123°52.41' W. long.;

(11) 39°30.12' N. lat., 123°52.92' W. long.;

(12) 39°24.53' N. lat., 123°55.16' W. long.;

(13) 39°11.58' N. lat., 123°50.93' W. long.;

(14) 38°55.13' N. lat., 123°51.14' W. long.;

(15) 38°28.58' N. lat., 123°22.84' W. long.;

(16) 38°14.58' N. lat., 123°09.93' W. long.;

(17) 38°01.86' N. lat., 123°09.76' W. long.;

(18) 37°53.66' N. lat., 123°12.06' W. long.;

(19) 37°48.01' N. lat., 123°15.84' W. long.;

(20) 37°36.77' N. lat., 122°58.48' W. long.;

(21) 37°01.02' N. lat., 122°33.71' W. long.;

(22) 37°02.28' N. lat., 122°25.06' W. long.;

(23) 36°48.20' N. lat., 122°03.28' W. long.;

(24) 36°51.46' N. lat., 121°57.54' W. long.;

(25) 36°44.14' N. lat., 121°58.10' W. long.;

(26) 36°36.76' N. lat., 122°01.16' W. long.;

(27) 36°15.62' N. lat., 121°57.13' W. long.;

(28) 36°10.60' N. lat., 121°43.65' W. long.;

(29) 35°40.38' N. lat., 121°22.59' W. long.;

(30) 35°24.35' N. lat., 121°02.53' W. long.;

(31) 35°02.66' N. lat., 120°51.63' W. long.;

(32) 34°39.52' N. lat., 120°48.72' W. long.;

(33) 34°31.26' N. lat., 120°44.12' W. long.; and

(34) 34°27.00' N. lat., 120°36.00' W. long.

(vii) The 60 fm (110 m) depth contour used between 40°10' N. lat. and 34°27' N. lat. as an eastern boundary for the trawl RCA in March through December is defined by straight lines connecting all of the following points in the order stated:

(1) 40°10.01' N. lat., 124°19.97' W. long.;

(2) 40°09.20' N. lat., 124°15.81' W. long.;

(3) 40°07.51' N. lat., 124°15.29' W. long.;

(4) 40°05.22' N. lat., 124°10.06' W. long.;

(5) 40°06.51' N. lat., 124°08.01' W. long.;

(6) 40°00.72' N. lat., 124°08.45' W. long.;

(7) 39°56.60' N. lat., 124°07.12' W. long.;

(8) 39°52.58' N. lat., 124°03.57' W. long.;

(9) 39°50.65' N. lat., 123°57.98' W. long.;

(10) 39°40.16' N. lat., 123°52.41' W. long.;

(11) 39°30.12' N. lat., 123°52.92' W. long.;

(12) 39°24.53' N. lat., 123°55.16' W. long.;

(13) 39°11.58' N. lat., 123°50.93' W. long.;

(14) 38°55.13' N. lat., 123°51.14' W. long.;

(15) 38°28.58' N. lat., 123°22.84' W. long.;

(16) 38°08.57' N. lat., 123°14.74' W. long.;

(17) 38°00.28' N. lat., 123°15.61' W. long.;

(18) 37°56.98' N. lat., 123°21.82' W. long.;

(19) 37°48.01' N. lat., 123°15.90' W. long.;

(20) 37°36.73' N. lat., 122°58.48' W. long.;

(21) 36°48.20' N. lat., 122°03.32' W. long.;

(22) 37°02.08' N. lat., 122°25.49' W. long.;

(23) 37°07.58' N. lat., 122°37.64' W. long.;

(24) 36°51.46' N. lat., 121°57.54' W. long.;

(25) 36°44.14' N. lat., 121°58.10' W. long.;

(26) 36°36.76' N. lat., 122°01.16' W. long.;

(27) 36°15.62' N. lat., 121°57.13' W. long.;

(28) 36°10.60' N. lat., 121°43.65' W. long.;

(29) 35°40.38' N. lat., 121°22.59' W. long.;

(30) 35°24.35' N. lat., 121°02.53' W. long.;

(31) 35°02.66' N. lat., 120°51.63' W. long.;

(32) 34°39.52' N. lat., 120°48.72' W. long.;

(33) 34°31.26' N. lat., 120°44.12' W. long.; and

(34) 34°27.00' N. lat., 120°36.00' W. long.

(viii) The 100 fm (183 m) depth contour used between 34°27' N. lat. and the U.S. border with Mexico as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 34°27.00' N. lat., 120°39.00' W. long.;

(2) 34°21.90' N. lat., 120°25.25' W. long.;

- (3) 34°24.86' N. lat., 120°16.81' W. long.;
- (4) 34°22.80' N. lat., 119°57.06' W. long.;
- (5) 34°18.59' N. lat., 119°44.84' W. long.;
- (6) 34°15.04' N. lat., 119°40.34' W. long.;
- (7) 34°14.40' N. lat., 119°45.39' W. long.;
- (8) 34°12.32' N. lat., 119°42.41' W. long.;
- (9) 34°09.71' N. lat., 119°28.85' W. long.;
- (10) 34°04.70' N. lat., 119°15.38' W. long.;
- (11) 34°03.33' N. lat., 119°12.93' W. long.;
- (12) 34°02.72' N. lat., 119°07.01' W. long.;
- (13) 34°03.90' N. lat., 119°04.64' W. long.;
- (14) 34°01.80' N. lat., 119°03.23' W. long.;
- (15) 33°59.32' N. lat., 119°03.50' W. long.;
- (16) 33°59.00' N. lat., 118°59.55' W. long.;
- (17) 33°59.51' N. lat., 118°57.25' W. long.;
- (18) 33°58.82' N. lat., 118°52.47' W. long.;
- (19) 33°58.54' N. lat., 118°41.86' W. long.;
- (20) 33°55.07' N. lat., 118°34.25' W. long.;
- (21) 33°54.28' N. lat., 118°38.68' W. long.;
- (22) 33°51.00' N. lat., 118°36.66' W. long.;
- (23) 33°39.77' N. lat., 118°18.41' W. long.;
- (24) 33°35.50' N. lat., 118°16.85' W. long.;
- (25) 33°32.68' N. lat., 118°09.82' W. long.;
- (26) 33°34.09' N. lat., 117°54.06' W. long.;
- (27) 33°31.60' N. lat., 117°49.28' W. long.;
- (28) 33°16.07' N. lat., 117°34.74' W. long.;
- (29) 33°07.06' N. lat., 117°22.71' W. long.;
- (30) 32°53.34' N. lat., 117°19.13' W. long.;
- (31) 32°46.39' N. lat., 117°23.45' W. long.;
- (32) 32°42.79' N. lat., 117°21.16' W. long.; and
- (33) 32°34.22' N. lat., 117°21.20' W. long.
- (ix) The 150 fm (274 m) depth contour used between 40°10' N. lat. and the U.S. border with Mexico as a western boundary for the trawl RCA and used between 38° N. lat. and the U.S. border with Mexico as a western boundary for the non-trawl RCA is defined by straight lines connecting all of the following points in the order stated:
- (1) 40°10.01' N. lat., 124°22.90' W. long.;
- (2) 40°07.00' N. lat., 124°19.00' W. long.;
- (3) 40°08.10' N. lat., 124°16.70' W. long.;
- (4) 40°05.90' N. lat., 124°17.77' W. long.;
- (5) 40°01.46' N. lat., 124°12.85' W. long.;
- (6) 40°04.32' N. lat., 124°10.33' W. long.;
- (7) 40°03.21' N. lat., 124°08.83' W. long.;
- (8) 40°01.33' N. lat., 124°08.70' W. long.;
- (9) 39°58.51' N. lat., 124°12.44' W. long.;
- (10) 39°55.73' N. lat., 124°07.49' W. long.;
- (11) 39°34.75' N. lat., 123°58.50' W. long.;
- (12) 39°03.07' N. lat., 123°57.81' W. long.;
- (13) 38°52.25' N. lat., 123°56.25' W. long.;
- (14) 38°41.42' N. lat., 123°46.75' W. long.;
- (15) 38°39.47' N. lat., 123°46.59' W. long.;
- (16) 38°35.25' N. lat., 123°42.00' W. long.;
- (17) 38°19.97' N. lat., 123°32.95' W. long.;
- (18) 38°14.43' N. lat., 123°25.56' W. long.;
- (19) 38°09.41' N. lat., 123°24.43' W. long.;
- (20) 38°10.10' N. lat., 123°27.20' W. long.;
- (21) 38°03.82' N. lat., 123°31.91' W. long.;
- (22) 38°00.91' N. lat., 123°30.32' W. long.;
- (23) 38°00.00' N. lat., 123°28.78' W. long.;
- (24) 37°59.73' N. lat., 123°29.85' W. long.;
- (25) 37°51.46' N. lat., 123°25.16' W. long.;
- (26) 37°44.06' N. lat., 123°11.44' W. long.;
- (27) 37°35.26' N. lat., 123°02.29' W. long.;
- (28) 37°14.00' N. lat., 122°50.00' W. long.;
- (29) 37°01.00' N. lat., 122°36.00' W. long.;
- (30) 36°58.07' N. lat., 122°28.35' W. long.;
- (31) 37°00.71' N. lat., 122°24.53' W. long.;
- (32) 36°57.50' N. lat., 122°24.98' W. long.;
- (33) 36°58.38' N. lat., 122°21.85' W. long.;
- (34) 36°55.85' N. lat., 122°21.95' W. long.;
- (35) 36°52.86' N. lat., 122°12.89' W. long.;
- (36) 36°48.71' N. lat., 122°09.28' W. long.;
- (37) 36°46.65' N. lat., 122°04.10' W. long.;
- (38) 36°51.00' N. lat., 121°58.00' W. long.;
- (39) 36°44.00' N. lat., 121°59.00' W. long.;
- (40) 36°38.00' N. lat., 122°02.00' W. long.;
- (41) 36°26.00' N. lat., 121°59.50' W. long.;
- (42) 36°22.00' N. lat., 122°01.00' W. long.;
- (43) 36°19.00' N. lat., 122°05.00' W. long.;
- (44) 36°14.00' N. lat., 121°58.00' W. long.;
- (45) 36°10.61' N. lat., 121°44.51' W. long.;
- (46) 35°50.53' N. lat., 121°29.93' W. long.;
- (47) 35°46.00' N. lat., 121°28.00' W. long.;
- (48) 35°38.94' N. lat., 121°23.16' W. long.;
- (49) 35°26.00' N. lat., 121°08.00' W. long.;
- (50) 35°07.42' N. lat., 120°57.08' W. long.;
- (51) 34°42.00' N. lat., 120°54.00' W. long.;
- (52) 34°29.00' N. lat., 120°44.00' W. long.;
- (53) 34°22.00' N. lat., 120°32.00' W. long.;
- (54) 34°21.00' N. lat., 120°21.00' W. long.;
- (55) 34°24.00' N. lat., 120°15.00' W. long.;
- (56) 34°22.11' N. lat., 119°56.63' W. long.;
- (57) 34°19.00' N. lat., 119°48.00' W. long.;
- (58) 34°15.00' N. lat., 119°48.00' W. long.;
- (59) 34°08.00' N. lat., 119°37.00' W. long.;
- (60) 34°07.00' N. lat., 120°11.00' W. long.;
- (61) 34°13.00' N. lat., 120°30.00' W. long.;
- (62) 34°09.00' N. lat., 120°38.00' W. long.;
- (63) 33°58.00' N. lat., 120°29.00' W. long.;
- (64) 33°51.00' N. lat., 120°09.00' W. long.;
- (65) 33°38.00' N. lat., 119°58.00' W. long.;
- (66) 33°38.00' N. lat., 119°50.00' W. long.;
- (67) 33°46.25' N. lat., 119°49.32' W. long.;
- (68) 33°53.82' N. lat., 119°53.42' W. long.;
- (69) 33°59.00' N. lat., 119°21.00' W. long.;

- (70) 34°02.00' N. lat., 119°13.00' W. long.;
- (71) 34°01.52' N. lat., 119°04.50' W. long.;
- (72) 33°58.83' N. lat., 119°03.76' W. long.;
- (73) 33°56.55' N. lat., 118°40.50' W. long.;
- (74) 33°51.00' N. lat., 118°38.00' W. long.;
- (75) 33°39.63' N. lat., 118°18.75' W. long.;
- (76) 33°35.44' N. lat., 118°17.57' W. long.;
- (77) 33°31.98' N. lat., 118°12.59' W. long.;
- (78) 33°33.25' N. lat., 117°54.15' W. long.;
- (79) 33°31.43' N. lat., 117°49.84' W. long.;
- (80) 33°16.53' N. lat., 117°36.13' W. long.;
- (81) 33°06.51' N. lat., 117°24.11' W. long.;
- (82) 32°54.11' N. lat., 117°21.45' W. long.;
- (83) 32°46.15' N. lat., 117°24.26' W. long.;
- (84) 32°41.97' N. lat., 117°22.10' W. long.;
- (85) 32°39.00' N. lat., 117°28.13' W. long.; and
- (86) 32°34.84' N. lat., 117°24.62' W. long.
- (x) The 150 fm (274 m) depth contour used around islands/seamounts off the state of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:
- (A) San Nicholas Island
- (1) 33°32.73' N. lat., 119°47.00' W. long.;
- (2) 33°14.00' N. lat., 119°15.00' W. long.;
- (3) 33°12.00' N. lat., 119°18.00' W. long.;
- (4) 33°11.00' N. lat., 119°26.00' W. long.;
- (5) 33°13.13' N. lat., 119°43.19' W. long.;
- (6) 33°13.11' N. lat., 119°53.05' W. long.;
- (7) 33°30.00' N. lat., 119°52.00' W. long.; and
- (8) 33°32.73' N. lat., 119°47.00' W. long.
- (B) Santa Catalina Island
- (1) 33°19.00' N. lat., 118°15.00' W. long.;
- (2) 33°26.00' N. lat., 118°22.00' W. long.;
- (3) 33°28.00' N. lat., 118°28.00' W. long.;
- (4) 33°30.00' N. lat., 118°31.00' W. long.;
- (5) 33°31.00' N. lat., 118°37.00' W. long.;
- (6) 33°29.00' N. lat., 118°41.00' W. long.;
- (7) 33°23.00' N. lat., 118°31.00' W. long.;
- (8) 33°21.00' N. lat., 118°33.00' W. long.;
- (9) 33°18.00' N. lat., 118°28.00' W. long.;
- (10) 33°16.00' N. lat., 118°13.00' W. long.; and
- (11) 33°19.00' N. lat., 118°15.00' W. long.
- (C) San Clemente Island
- (1) 32°48.50' N. lat., 118°18.34' W. long.;
- (2) 32°56.00' N. lat., 118°29.00' W. long.;
- (3) 33°03.00' N. lat., 118°34.00' W. long.;
- (4) 33°05.00' N. lat., 118°38.00' W. long.;
- (5) 33°03.00' N. lat., 118°40.00' W. long.;
- (6) 32°48.00' N. lat., 118°31.00' W. long.;
- (7) 32°43.00' N. lat., 118°24.00' W. long.; and
- (8) 32°48.50' N. lat., 118°18.34' W. long.
- (D) Santa Barbara Island
- (1) 33°36.06' N. lat., 118°57.15' W. long.;
- (2) 33°20.64' N. lat., 118°59.39' W. long.;
- (3) 33°23.00' N. lat., 119°07.00' W. long.;
- (4) 33°43.00' N. lat., 119°14.00' W. long.;
- (5) 33°46.00' N. lat., 119°12.00' W. long.; and
- (6) 33°36.06' N. lat., 118°57.15' W. long.
- (E) Orange County Seamount
- (1) 33°25.00' N. lat., 118°01.00' W. long.;
- (2) 33°25.00' N. lat., 117°58.00' W. long.;
- (3) 33°23.00' N. lat., 117°58.00' W. long.;
- (4) 33°23.00' N. lat., 118°01.00' W. long.; and
- (5) 33°25.00' N. lat., 118°01.00' W. long.
- (xi) The 50 fm (91 m) depth contour off Oregon state which may be used for inseason management in 2003 is defined by straight lines connecting all of the following points in the order stated:
- (1) 46°16.00' N. lat., 124°17.33' W. long.;
- (2) 45°50.88' N. lat., 124°09.68' W. long.;
- (3) 45°12.99' N. lat., 124°06.71' W. long.;
- (4) 44°52.48' N. lat., 124°11.22' W. long.;
- (5) 44°42.41' N. lat., 124°19.70' W. long.;
- (6) 44°38.80' N. lat., 124°26.58' W. long.;
- (7) 44°24.99' N. lat., 124°31.22' W. long.;
- (8) 44°18.11' N. lat., 124°43.74' W. long.;
- (9) 44°15.23' N. lat., 124°40.47' W. long.;
- (10) 44°18.80' N. lat., 124°35.48' W. long.;
- (11) 44°19.62' N. lat., 124°27.18' W. long.;
- (12) 43°56.65' N. lat., 124°16.86' W. long.;
- (13) 43°34.95' N. lat., 124°17.47' W. long.;
- (14) 43°12.60' N. lat., 124°35.80' W. long.;
- (15) 43°08.96' N. lat., 124°33.77' W. long.;
- (16) 42°59.66' N. lat., 124°34.79' W. long.;
- (17) 42°54.29' N. lat., 124°39.46' W. long.;
- (18) 42°46.50' N. lat., 124°39.99' W. long.;
- (19) 42°41.00' N. lat., 124°34.92' W. long.;
- (20) 42°36.29' N. lat., 124°34.70' W. long.;
- (21) 42°28.36' N. lat., 124°37.90' W. long.;
- (22) 42°25.53' N. lat., 124°37.68' W. long.;
- (23) 42°18.64' N. lat., 124°29.47' W. long.;
- (24) 42°12.95' N. lat., 124°27.34' W. long.;
- (25) 42°03.04' N. lat., 124°25.81' W. long.; and
- (26) 42°00.00' N. lat., 124°26.21' W. long.
- (xii) The 150 fm (274 m) depth contour between 46°16' N. lat. and 38° N. lat. which may be used for inseason management in 2003 is defined by straight lines connecting all of the following points in the order stated:
- (1) 46°16.00' N. lat., 124°26.15' W. long.;
- (2) 46°13.38' N. lat., 124°31.36' W. long.;
- (3) 46°12.09' N. lat., 124°38.39' W. long.;
- (4) 46°09.46' N. lat., 124°40.64' W. long.;
- (5) 46°07.30' N. lat., 124°40.68' W. long.;
- (6) 46°02.76' N. lat., 124°44.01' W. long.;
- (7) 46°02.64' N. lat., 124°47.96' W. long.;
- (8) 46°01.22' N. lat., 124°43.47' W. long.;
- (9) 45°51.81' N. lat., 124°42.89' W. long.;
- (10) 45°45.95' N. lat., 124°40.72' W. long.;
- (11) 45°44.11' N. lat., 124°43.09' W. long.;
- (12) 45°34.50' N. lat., 124°30.27' W. long.;
- (13) 45°21.10' N. lat., 124°23.11' W. long.;

- (14) 45°09.69' N. lat., 124°20.45' W. long.;
- (15) 44°56.25' N. lat., 124°27.03' W. long.;
- (16) 44°44.47' N. lat., 124°37.85' W. long.;
- (17) 44°31.81' N. lat., 124°39.60' W. long.;
- (18) 44°31.48' N. lat., 124°43.30' W. long.;
- (19) 44°19.70' N. lat., 124°50.88' W. long.;
- (20) 44°12.04' N. lat., 124°58.16' W. long.;
- (21) 44°07.38' N. lat., 124°57.87' W. long.;
- (22) 43°57.06' N. lat., 124°57.20' W. long.;
- (23) 43°52.52' N. lat., 124°49.00' W. long.;
- (24) 43°51.56' N. lat., 124°37.49' W. long.;
- (25) 43°47.83' N. lat., 124°36.43' W. long.;
- (26) 43°31.79' N. lat., 124°36.80' W. long.;
- (27) 43°30.78' N. lat., 124°38.19' W. long.;
- (28) 43°29.34' N. lat., 124°36.77' W. long.;
- (29) 43°26.46' N. lat., 124°40.02' W. long.;
- (30) 43°16.15' N. lat., 124°44.37' W. long.;
- (31) 43°09.33' N. lat., 124°45.35' W. long.;
- (32) 43°08.85' N. lat., 124°48.92' W. long.;
- (33) 43°03.23' N. lat., 124°52.41' W. long.;
- (34) 43°00.25' N. lat., 124°51.93' W. long.;
- (35) 42°56.62' N. lat., 124°53.93' W. long.;
- (36) 42°54.84' N. lat., 124°54.01' W. long.;
- (37) 42°52.31' N. lat., 124°50.76' W. long.;
- (38) 42°47.78' N. lat., 124°47.27' W. long.;
- (39) 42°46.32' N. lat., 124°43.59' W. long.;
- (40) 42°41.63' N. lat., 124°44.07' W. long.;
- (41) 42°38.83' N. lat., 124°42.77' W. long.;
- (42) 42°35.37' N. lat., 124°43.22' W. long.;
- (43) 42°32.78' N. lat., 124°44.68' W. long.;
- (44) 42°32.19' N. lat., 124°42.40' W. long.;
- (45) 42°30.28' N. lat., 124°44.30' W. long.;
- (46) 42°28.16' N. lat., 124°48.38' W. long.;
- (47) 42°18.34' N. lat., 124°38.77' W. long.;
- (48) 42°13.65' N. lat., 124°36.82' W. long.;
- (49) 42°00.15' N. lat., 124°35.81' W. long.;
- (50) 41°47.79' N. lat., 124°29.52' W. long.;
- (51) 41°21.00' N. lat., 124°29.00' W. long.;
- (52) 41°11.00' N. lat., 124°23.00' W. long.;
- (53) 41°05.00' N. lat., 124°23.00' W. long.;
- (54) 40°54.00' N. lat., 124°26.00' W. long.;
- (55) 40°50.00' N. lat., 124°26.00' W. long.;
- (56) 40°44.51' N. lat., 124°30.83' W. long.;
- (57) 40°40.61' N. lat., 124°32.06' W. long.;
- (58) 40°37.36' N. lat., 124°29.41' W. long.;
- (59) 40°35.64' N. lat., 124°30.47' W. long.;
- (60) 40°37.43' N. lat., 124°37.10' W. long.;
- (61) 40°36.00' N. lat., 124°40.00' W. long.;
- (62) 40°31.59' N. lat., 124°40.72' W. long.;
- (63) 40°24.64' N. lat., 124°35.62' W. long.;
- (64) 40°23.00' N. lat., 124°32.00' W. long.;
- (65) 40°23.39' N. lat., 124°28.70' W. long.;
- (66) 40°22.28' N. lat., 124°25.25' W. long.;
- (67) 40°21.90' N. lat., 124°25.17' W. long.;
- (68) 40°22.00' N. lat., 124°28.00' W. long.;
- (69) 40°21.35' N. lat., 124°29.53' W. long.;
- (70) 40°19.75' N. lat., 124°28.98' W. long.;
- (71) 40°18.15' N. lat., 124°27.01' W. long.;
- (72) 40°17.45' N. lat., 124°25.49' W. long.;
- (73) 40°18.00' N. lat., 124°24.00' W. long.;
- (74) 40°16.00' N. lat., 124°26.00' W. long.;
- (75) 40°17.00' N. lat., 124°35.00' W. long.;
- (76) 40°16.00' N. lat., 124°36.00' W. long.;
- (77) 40°10.07' N. lat., 124°22.90' W. long.;
- (78) 40°07.00' N. lat., 124°19.00' W. long.;
- (79) 40°08.10' N. lat., 124°16.70' W. long.;
- (80) 40°05.90' N. lat., 124°17.77' W. long.;
- (81) 40°01.46' N. lat., 124°12.85' W. long.;
- (82) 40°04.32' N. lat., 124°10.33' W. long.;
- (83) 40°03.21' N. lat., 124°08.83' W. long.;
- (84) 40°01.33' N. lat., 124°08.70' W. long.;
- (85) 39°58.51' N. lat., 124°12.44' W. long.;
- (86) 39°55.73' N. lat., 124°07.49' W. long.;
- (87) 39°34.75' N. lat., 123°58.50' W. long.;
- (88) 39°03.07' N. lat., 123°57.81' W. long.;
- (89) 38°52.25' N. lat., 123°56.25' W. long.;
- (90) 38°41.42' N. lat., 123°46.75' W. long.;
- (91) 38°39.47' N. lat., 123°46.59' W. long.;
- (92) 38°35.25' N. lat., 123°42.00' W. long.;
- (93) 38°19.97' N. lat., 123°32.95' W. long.;
- (94) 38°14.43' N. lat., 123°25.56' W. long.;
- (95) 38°09.41' N. lat., 123°24.43' W. long.;
- (96) 38°10.10' N. lat., 123°27.20' W. long.;
- (97) 38°03.82' N. lat., 123°31.91' W. long.;
- (98) 38°00.91' N. lat., 123°30.32' W. long.; and
- (99) 38°00.00' N. lat., 123°28.78' W. long.
- (20) *Rockfish categories.* Rockfish (except thornyheads) are divided into categories north and south of 40°10' N. lat., depending on the depth where they most often are caught: nearshore, shelf, or slope (scientific names appear in Table 2). Nearshore rockfish are further divided into shallow nearshore and deeper nearshore categories south of 40°10' N. lat. Trip limits are established for "minor rockfish" species according to these categories (see Tables 2–5).
- (a) Nearshore rockfish consists entirely of the minor nearshore rockfish species listed in Table 2, which includes California scorpionfish.
- (i) Shallow nearshore rockfish consists of black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish.
- (ii) Deeper nearshore rockfish consists of black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish, and treefish.
- (iii) California scorpionfish.
- (b) Shelf rockfish consists of canary rockfish, shortbelly rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, bocaccio, chilipepper, cowcod, and the minor shelf rockfish species listed in Table 2.
- (c) Slope rockfish consists of Pacific ocean perch, splitnose rockfish, darkblotched rockfish, and the minor slope rockfish species listed in Table 2.

**Table 2 – Minor Rockfish Species (excludes thornyheads)**

<u>North of 40°10' N. lat.</u>	<u>South of 40°10' N. lat.</u>
<u>NEARSHORE</u>	
black, <i>Sebastes melanops</i> black and yellow, <i>S. chrysomelas</i> blue, <i>S. mystinus</i> brown, <i>S. auriculatus</i> calico, <i>S. dalli</i> China, <i>S. nebulosus</i> copper, <i>S. caurinus</i> gopher, <i>S. carnatus</i> grass, <i>S. rastrelliger</i> kelp, <i>S. atrovirens</i> olive, <i>S. serranoides</i> quillback, <i>S. maliger</i> treefish, <i>S. serriceps</i>	black, <i>Sebastes melanops</i> black and yellow, <i>S. chrysomelas</i> blue, <i>S. mystinus</i> brown, <i>S. auriculatus</i> calico, <i>S. dalli</i> California scorpionfish, <i>Scorpaena guttata</i> China, <i>Sebastes nebulosus</i> copper, <i>S. caurinus</i> gopher, <i>S. carnatus</i> grass, <i>S. rastrelliger</i> kelp, <i>S. atrovirens</i> olive, <i>S. serranoides</i> quillback, <i>S. maliger</i> treefish, <i>S. serriceps</i>
<u>SHELF</u>	
bronzespotted, <i>S. gilli</i> bocaccio, <i>S. paucispinis</i> chameleon, <i>S. phillipsi</i> chilipepper, <i>S. goodei</i> cowcod, <i>S. levis</i> dwarf-red, <i>S. rufianus</i> flag, <i>S. rubrivinctus</i> freckled, <i>S. lentiginosus</i> greenblotched, <i>S. rosenblatti</i> green spotted, <i>S. chlorostictus</i> green striped, <i>S. elongatus</i> halfbanded, <i>S. semicinctus</i> honeycomb, <i>S. umbrosus</i> Mexican, <i>S. macdonaldi</i> pink, <i>S. eos</i> pinkrose, <i>S. simulator</i> pygmy, <i>S. wilsoni</i> red striped, <i>S. proriger</i> rosethorn, <i>S. helvomaculatus</i> rosy, <i>S. rosaceus</i> silvergry, <i>S. brevispinis</i> speckled, <i>S. ovalis</i> squarespot, <i>S. hopkinsi</i> starry, <i>S. constellatus</i> stripetail, <i>S. saxicola</i> swordspine, <i>S. ensifer</i> tiger, <i>S. nigorcinctus</i> vermilion, <i>S. miniatus</i> yelloweye, <i>S. ruberrimus</i>	bronzespotted, <i>S. gilli</i> chameleon, <i>S. phillipsi</i> dwarf-red, <i>S. rufianus</i> flag, <i>S. rubrivinctus</i> freckled, <i>S. lentiginosus</i> greenblotched, <i>S. rosenblatti</i> greenspotted, <i>S. chlorostictus</i> green striped, <i>S. elongatus</i> halfbanded, <i>S. semicinctus</i> honeycomb, <i>S. umbrosus</i> Mexican, <i>S. macdonaldi</i> pink, <i>S. eos</i> pinkrose, <i>S. simulator</i> pygmy, <i>S. wilsoni</i> red striped, <i>S. proriger</i> rosethorn, <i>S. helvomaculatus</i> rosy, <i>S. rosaceus</i> silvergry, <i>S. brevispinis</i> speckled, <i>S. ovalis</i> squarespot, <i>S. hopkinsi</i> starry, <i>S. constellatus</i> stripetail, <i>S. saxicola</i> swordspine, <i>S. ensifer</i> tiger, <i>S. nigorcinctus</i> vermilion, <i>S. miniatus</i> yelloweye, <i>S. ruberrimus</i> yellowtail, <i>S. flavidus</i>
<u>SLOPE</u>	
aurora, <i>S. aurora</i> bank, <i>S. rufus</i> blackgill, <i>S. melanostomus</i> darkblotched, <i>S. crameri</i> redbanded, <i>S. babcocki</i> roughey, <i>S. aleutianus</i> sharpchin, <i>S. zacentrus</i> shortraker, <i>S. borealis</i> splitnose, <i>S. diploproa</i> yellowmouth, <i>S. reedi</i>	aurora, <i>S. aurora</i> bank, <i>S. rufus</i> blackgill, <i>S. melanostomus</i> darkblotched, <i>S. crameri</i> Pacific ocean perch (POP), <i>S. alutus</i> redbanded, <i>S. babcocki</i> roughey, <i>S. aleutianus</i> sharpchin, <i>S. zacentrus</i> shortraker, <i>S. borealis</i> yellowmouth, <i>S. reedi</i>

*B. Limited Entry Fishery*

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d).) size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A. (7)), and areas that are closed to specific gear types. The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph IV.A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A. (20)). Yelloweye rockfish retention is prohibited in the

limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in the following tables: Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

A header in Table 3 (North), Table 3 (South), Table 4 (North), and Table 5 (South) generally describes the Rockfish Conservation Area (i.e., closed area) for vessels participating in the limited entry fishery. The RCA boundaries are defined by latitude and longitude coordinates (See paragraph IV.A.(19), earlier) [Note: Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport

South Jetty (33° 35' 37" N. lat.; 117° 52' 50" W. long.) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line defined by coordinates approximating 50 fm (91 m).]

Management measures may be changed during the year by announcement in the Federal Register. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

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**Table 3 (North). Trip Limits and Gear Requirements<sup>1/</sup> for Limited Entry Trawl Gear North of 40°10' N. Latitude<sup>2/</sup>**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area<sup>10/</sup> (RCA):</b> North of 40°10' N. lat.	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm		75 fm - 250 fm	100 fm - 250 fm	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA.						
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. See IV.A.(14)(iv) for details.						
<b>1 Minor slope rockfish<sup>3/</sup></b>	1,800 lb/ 2 months					
<b>2 Pacific ocean perch</b>	3,000 lb/ 2 months					
<b>3 DTS complex</b>						
<b>4 Sablefish</b>	6,000 lb/ 2 months		7,000 lb/ 2 months		6,000 lb/ 2 months	
<b>5 Longspine thornyhead</b>	8,000 lb/ 2 months		9,000 lb/ 2 months		7,000 lb/ 2 months	
<b>6 Shortspine thornyhead</b>	2,300 lb/ 2 months		2,400 lb/ 2 months		2,200 lb/ 2 months	
<b>7 Dover sole</b>	26,000 lb/ 2 months		25,000 lb/ 2 months		26,000 lb/ 2 months	
<b>8 Flatfish</b>						
<b>9 All other flatfish<sup>4/</sup></b>	100,000 lb/ 2 months	100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
<b>10 Petrale sole</b>	Not limited					Not limited
<b>11 Rex sole</b>	Included in all other flatfish					
<b>12 Arrowtooth flounder</b>	30,000 lb/ trip	60,000 lb/ 2 months; 7,500 lb/ trip				30,000 lb/ trip
<b>13 Whiting<sup>5/</sup></b>						
<b>14 mid-water trawl</b>	20,000 lb/ trip	Primary Season (mid-water trawl permitted in the RCA)		10,000 lb/ trip		
<b>15 Other Fish<sup>9/</sup></b>	Not limited					
<b>16 Use of small footrope bottom trawl<sup>7/</sup> or mid-water trawl is required for landing all of the following species:</b>						
<b>17 Minor shelf rockfish and widow rockfish<sup>3/</sup></b>	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month	
<b>18 Widow rockfish</b>						
<b>19 mid-water trawl - permitted within the RCA</b>	CLOSED <sup>6/</sup>	During primary whiting season, in trips of at least 10,000 lb of whiting; combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED <sup>6/</sup>	12,000 lb/ 2 months	
<b>20 Canary rockfish</b>	100 lb/ month	300 lb/ month		100 lb/ month		
<b>21 Yellowtail</b>						
<b>22 mid-water trawl - permitted within the RCA</b>	CLOSED <sup>6/</sup>	During primary whiting season, in trips of at least 10,000 lb of whiting; combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months	
<b>23 small footrope trawl<sup>7/</sup></b>	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 3,000 lb/ month, no more than 1,000 lb of which may be landed without flatfish.					
<b>24 Minor nearshore rockfish</b>	300 lb/ month					
<b>25 Lingcod<sup>8/</sup></b>	800 lb/ 2 months	1,000 lb/ 2 months		800 lb/ 2 months		

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 3 (South). Trip Limits and Gear Requirements<sup>1/</sup> for Limited Entry Trawl Gear South of 40°10' N. Latitude<sup>2/</sup>**  
**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area<sup>10/</sup> (RCA):</b>						
40°10' - 38° N. lat.	50 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)		60 fm - 250 fm			60 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)
38° - 34°27' N. lat.	50 fm - 150 fm		60 fm - 150 fm			
South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
Small footrope is required shoreward of the RCA; both large and small footropes are permitted seaward of the RCA.						
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. See IV.A.(14)(iv) for details.						
<b>1 Minor slope rockfish<sup>3/</sup></b>						
2	40°10' - 38° N. lat.		1,800 lb/ 2 months			
3	South of 38° N. lat.		30,000 lb/ 2 months			
<b>4 Splitnose</b>						
5	40°10' - 38° N. lat.		1,800 lb/ 2 months			
6	South of 38° N. lat.		30,000 lb/ 2 months			
<b>7 DTS complex</b>						
8	Sablefish	6,000 lb/ 2 months		7,000 lb/ 2 months		6,000 lb/ 2 months
9	Longspine thornyhead	8,000 lb/ 2 months		9,000 lb/ 2 months		7,000 lb/ 2 months
10	Shortspine thornyhead	2,300 lb/ 2 months		2,400 lb/ 2 months		2,200 lb/ 2 months
11	Dover sole	26,000 lb/ 2 months		25,000 lb/ 2 months		26,000 lb/ 2 months
<b>12 Flatfish</b>						
13	All other flatfish <sup>4/</sup>	70,000 lb/ 2 months	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole			70,000 lb/ 2 months
14	Petrale sole	No limit				No limit
15	Rex sole	Included in all other flatfish				
16	Arrowtooth flounder	No limit	1,000 lb/ 2 months			No limit
<b>17 Whiting<sup>5/</sup></b>						
18	mid-water trawl	20,000 lb/ trip	Primary Season (mid-water trawl permitted within the RCA)		10,000 lb/ trip	
<b>19 Other Fish<sup>9/</sup></b>						
Not limited						
<b>20 Use of small footrope bottom trawl<sup>7/</sup> or mid-water trawl is required for landing all of the following species:</b>						
<b>21 Minor shelf rockfish, widow, and chilipepper rockfish<sup>3/</sup></b>						
300 lb/ month						
<b>22 Widow rockfish</b>						
23	mid-water trawl - permitted within the RCA	CLOSED <sup>6/</sup>				12,000 lb/ 2 months
24	Canary rockfish	100 lb/ month	300 lb/ month		100 lb/ month	
25	Bocaccio	CLOSED <sup>6/</sup>				
26	Cowcod	CLOSED <sup>6/</sup>				
<b>27 Minor nearshore rockfish</b>						
300 lb/ month						
28	Lingcod <sup>8/</sup>	800 lb/ 2 months	1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 4 (North). Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude<sup>1/</sup>**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area<sup>1/</sup> (RCA):</b>						
North of 46°16' N. lat.	shoreline - 100 fm					
46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm					
1 Minor slope rockfish <sup>4/</sup>	1,800 lb/ 2 months	No more than 25% of the weight of sablefish landed/ trip				1,800 lb/ 2 months
2 Pacific ocean perch	1,800 lb/ 2 months					
3 Sablefish	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
4 Longspine thornyhead	9,000 lb/ 2 months					
5 Shortspine thornyhead	2,000 lb/ 2 months					
6 Dover sole	5,000 lb/ month					
7 Arrowtooth flounder						
8 Petrale sole						
9 Rex sole						
10 All other flatfish <sup>2/</sup>						
11 Whiting <sup>3/</sup>	10,000 lb/ trip					
12 Minor shelf rockfish, widow, and yellowtail rockfish <sup>4/</sup>	200 lb/ month					
13 Canary rockfish	CLOSED <sup>5/</sup>					
14 Yelloweye rockfish	CLOSED <sup>5/</sup>					
15 Cowcod	CLOSED <sup>5/</sup>					
16 Minor nearshore rockfish	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish <sup>6/</sup>					
17 Lingcod <sup>7/</sup>	CLOSED <sup>5/</sup>		400 lb/ month			CLOSED <sup>5/</sup>
18 Other fish <sup>9/</sup>	Not limited					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude<sup>1/</sup>**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table**

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area<sup>7/</sup> (RCA):</b> South of 40°10' N. lat.	20 fm - 150 fm		20 fm - 150 fm -- Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N. lat.; 117° 52' 50" W. long.,) vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm		20 fm - 150 fm	
<b>1 Minor slope rockfish<sup>4/</sup></b>						
<b>2 40°10' - 38° N. lat.</b>	1,800 lb/ 2 months	No more than 25% of weight of sablefish landed/ trip				1,800 lb/ 2 months
<b>3 South of 38° N. lat.</b>	30,000 lb/ 2 months					
<b>4 Splitnose</b>						
<b>5 40°10' - 38° N. lat.</b>	1,800 lb/ 2 months					
<b>6 South of 38° N. lat.</b>	20,000 lb/ 2 months					
<b>7 Sablefish</b>						
<b>8 40°10' - 36° N. lat.</b>	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
<b>9 South of 36° N. lat.</b>	350 lb/ day, or 1 landing per week of up to 1,050 lb					
<b>10 Longspine thornyhead</b>	9,000 lb/ 2 months					
<b>11 Shortspine thornyhead</b>	2,000 lb/ 2 months					
<b>12 Dover sole</b>	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
<b>13 Arrowtooth flounder</b>						
<b>14 Petrale sole</b>						
<b>15 Rex sole</b>						
<b>16 All other flatfish<sup>2/</sup></b>						
<b>17 Whiting<sup>3/</sup></b>	10,000 lb/ trip					
<b>18 Minor shelf rockfish, widow, and yellowtail rockfish<sup>4/</sup></b>	100 lb/ 2 month	CLOSED <sup>5/</sup>	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
<b>19 Canary rockfish</b>	CLOSED <sup>5/</sup>					
<b>20 Yelloweye rockfish</b>	CLOSED <sup>5/</sup>					
<b>21 Cowcod</b>	CLOSED <sup>5/</sup>					
<b>22 Bocaccio</b>	CLOSED <sup>5/</sup>					
<b>23 Minor nearshore rockfish</b>						
<b>24 Shallow nearshore</b>	200 lb/ 2 months	CLOSED <sup>5/</sup>	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
<b>25 Deep nearshore</b>	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
<b>26 California scorpionfish</b>	CLOSED <sup>5/</sup>		800 lb/ 2 months		CLOSED <sup>5/</sup>	
<b>27 Lingcod<sup>6/</sup></b>	CLOSED <sup>5/</sup>		400 lb/ month, when nearshore open			CLOSED <sup>5/</sup>
<b>28 Other fish<sup>8/</sup></b>	Not limited					

<sup>1/</sup> "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

<sup>2/</sup> "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

<sup>3/</sup> The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

<sup>4/</sup> Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

<sup>5/</sup> Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

<sup>6/</sup> The minimum size limit for lingcod is 24 inches (61 cm) total length.

<sup>7/</sup> The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e) that may vary seasonally.

<sup>8/</sup> Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

(2) *Sablefish*. The limited entry sablefish allocation is further allocated 58 percent to trawl gear and 42 percent to nontrawl gear. See footnote e/ of Table 1a.

(a) *Trawl trip and size limits*. Management measures for the limited entry trawl fishery for sablefish are listed in Table 3 (North) and Table 3 (South).

(b) *Nontrawl (fixed gear) trip and size limits*. To take, retain, possess, or land sablefish during the primary season for the limited entry fixed gear sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. (See 50 CFR 660.323(a)(2)(i).) A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Primary season*. The primary season begins at 12 noon l.t. on April 1, 2003, and ends at 12 noon l.t. on October 31, 2003. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2003, the following limits are in effect: Tier 1, 53,000 lb (24,040 kg); Tier 2, 24,000 lb (10,886 kg); Tier 3, 14,000 lb (6,350 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2003 count against the cumulative limits associated with the permit(s) registered for use with that vessel.

(ii) *Daily trip limit*. Daily and/or weekly sablefish trip limits listed in Table 4 (North) and Table 4 (South) apply to any limited entry fixed gear vessels not participating in the primary sablefish season described in paragraph (i) of this section. North of 36° N. lat., the daily and/or weekly trip limits apply to fixed gear vessels that are not registered for use with a sablefish-endorsed limited entry permit, and to fixed gear vessels that are registered for use with a sablefish-endorsed limited entry permit when those vessels are not fishing against their primary sablefish season cumulative limits. South of 36° N. lat., the daily and/or weekly trip limits for taking and retaining sablefish that are listed in Table 4 (South) apply throughout the year to all vessels registered for use with a limited entry fixed gear permit.

(iii) *Participating in both the primary and daily trip limit fisheries*. A vessel that is eligible to participate in the primary sablefish season may participate in the daily trip limit fishery for sablefish once that vessel's primary season sablefish limit(s) have been taken or after October 31, 2003, whichever occurs first. No vessel may land sablefish against both its primary season cumulative sablefish limits and against the daily trip limit fishery limits within the same 24 hour period of 0001 hour l.t. to 2400 hours l.t. If a vessel has taken all of its tier limit except for an amount that is smaller than the daily trip limit amount, that vessel's subsequent sablefish landings are automatically subject to daily and/or weekly trip limits.

(3) *Whiting*. Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) *Allocations*. The non-tribal allocations, based on percentages that are applied to the commercial OY of 121,200 mt in 2003 (see 50 CFR 660.323(a)(4)), are as follows:

(i) *Catcher/processor sector*—41,288 mt (34 percent);

(ii) *Mothership sector*—29,080 mt (24 percent);

(iii) *Shore-based sector*—50,904 mt (42 percent). No more than 5 percent (2,545 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2003.

(iv) *Tribal allocation*—See paragraph V.

(b) *Seasons*. The 2003 primary seasons for the whiting fishery start on the same dates as in 2002, as follows (see 50 CFR 660.323(a)(3)):

(i) *Catcher/processor sector*—May 15;

(ii) *Mothership sector*—May 15;

(iii) *Shore-based sector*—June 15 north of 42° N. lat.; April 1 between 42°–40°30' N. lat.; April 15 south of 40°30' N. lat.

(c) *Trip limits*. (i) Before and after the regular season. The "per trip" limit for whiting before and after the regular season for the shore-based sector is announced in Table 3 (North) and Table 3 (South), as authorized at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) *Inside the Eureka 100 fm (183 m) contour*. No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts

18580, 18600, and 18620) in the Eureka area.

(4) *Black rockfish*. The regulations at 50 CFR 660.323(a)(1) state: "The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.) and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." These "per trip" limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures listed in Tables 4 (North) and Table 5 (North) of section IV. The crossover provisions at paragraphs IV.A. (12) do not apply to the black rockfish per-trip limits.

### C. Trip Limits in the Open Access Fishery

(1) *General*. Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57'30" N. lat.), CA halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d)), size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A.(7)), and closed areas. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(19)). Retention of yelloweye rockfish and canary rockfish and, south of 40°10' N. lat., bocaccio is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, including exempted trawl gear, are listed in Table 5 (North) and Table 5 (South). A header in Table 5 (North) and Table 5 (South) approximates the RCA (i.e., closed area) for vessels participating in the open access fishery. [Note: Between a line drawn due south from Point Fermin (33°42'30" N. lat.; 118°17'30" W. long.)

and a line drawn due west from the Newport South Jetty (33°35'37" N. lat.; 117°52'50" W. long.,) vessels fishing with hook-and-line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm (91 m) in the months of July and August.] For vessels participating in exempted

trawl fisheries, the RCAs are the same as those for limited entry trawl gear. Exempted trawl gear RCAs are detailed in the exempted trawl gear sections at the bottom of Table 5 (North) and Table 5 (South). Retention of groundfish caught by exempted trawl gear is prohibited in the designated RCAs. The

trip limit at 50 CFR 660.323(a)(1) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.(4).)

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**Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude<sup>1/</sup>**

**Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table**

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area<sup>8/</sup> (RCA):</b>							
North of 46°16' N. lat.		0 fm - 100 fm					
46°16' N. lat. - 40°10' N. lat.		27 fm - 100 fm					
1	Minor slope rockfish <sup>2/</sup>	Per trip, no more than 25% of weight of the sablefish landed					
2	Pacific ocean perch	100 lb/ month					
3	Sablefish	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
4	Thornyheads	CLOSED <sup>5/</sup>					
5	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.					
6	Arrowtooth flounder						
7	Petrale sole						
8	Rex sole						
9	All other flatfish <sup>3/</sup>						
10	Whiting	300 lb/ month					
11	Minor shelf rockfish, widow and yellowtail rockfish <sup>2/</sup>	200 lb/ month					
12	Canary rockfish	CLOSED <sup>5/</sup>					
13	Yelloweye rockfish	CLOSED <sup>5/</sup>					
14	Cowcod	CLOSED <sup>5/</sup>					
15	Minor nearshore rockfish	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish <sup>4/</sup>					
16	Lingcod <sup>6/</sup>	CLOSED <sup>5/</sup>		300 lb/ month		CLOSED <sup>5/</sup>	
17	Other Fish <sup>7/</sup>	Not limited					
<b>18 PINK SHRIMP EXEMPTED TRAWL (not subject to RCAs)</b>							
19	North	<b>Effective April 1 - October 31, 2003:</b> groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
<b>20 PRAWN EXEMPTED TRAWL (not subject to RCAs)</b>							
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.					

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude<sup>1/</sup>**

**Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table**

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area<sup>7/</sup> (RCA):</b>						
South of 40°10' N. lat.	20 fm - 150 fm		20 fm - 150 fm Between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N. lat.; 117° 52' 50" W. long.), vessels fishing with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm		20 fm - 150 fm	
1 Minor slope rockfish <sup>2/</sup>						
2 40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3 South of 38° N. lat.	10,000 lb/ 2 months					
4 Splitnose	200 lb/ month					
5 Sablefish						
6 40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
7 South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8 Thornyheads						
9 40°10' - 34°27' N. lat.	CLOSED <sup>5/</sup>					
10 South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
11 Dover sole						
12 Arrowtooth flounder	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
13 Petrale sole						
14 Rex sole						
15 All other flatfish <sup>3/</sup>						
16 Whiting	300 lb/ month					
17 Minor shelf rockfish, widow and chilipepper rockfish <sup>2/</sup>	100 lb/ 2 months	CLOSED <sup>5/</sup>	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18 Canary rockfish	CLOSED <sup>5/</sup>					
19 Yelloweye rockfish	CLOSED <sup>5/</sup>					
20 Cowcod	CLOSED <sup>5/</sup>					
21 Bocaccio	CLOSED <sup>5/</sup>					
22 Minor nearshore rockfish						
23 Shallow nearshore	200 lb/ 2 months	CLOSED <sup>5/</sup>	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
24 Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
25 California scorpionfish	CLOSED <sup>5/</sup>		800 lb/ 2 months		CLOSED <sup>5/</sup>	
26 Lingcod <sup>4/</sup>	CLOSED <sup>5/</sup>		300 lb/ month, when nearshore open			CLOSED <sup>5/</sup>
27 Other Fish <sup>6/</sup>	Not limited					
28 PINK SHRIMP EXEMPTED TRAWL GEAR (not subject to RCAs)						
29 South	<p><b>Effective April 1 - October 31, 2003:</b> Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.</p>					
30 PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL						
31 EXEMPTED TRAWL Rockfish Conservation Area <sup>7/</sup> (RCA):						
32 40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm				
33 38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm				
34 South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
35	<p>Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25).</p>					

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A. (19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers.*

[Note: The States of California and Washington will likely prohibit trawling for spot prawn beginning in 2003, while the State of Oregon will likely begin phasing out trawling for spot prawn in 2003.] Trip limits and RCAs for groundfish retained in the spot and ridgeback prawn, California halibut, or sea cucumber fisheries are in Table 5 (North) and Table 5 (South). The tables also generally describe the RCAs for vessels participating in these fisheries. (a) State law. The trip limits in Table 5 (North) and Table 5 (South) are not intended to supersede any more restrictive State law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(b) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4 lb (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3 lbs (1.3608 kg) or more dressed with the head off. Total length means "the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(c) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* Trip limits for groundfish retained in the pink shrimp fishery are in Table 5 (North) and Table

5 (South). Notwithstanding section IV.A.(11), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

#### D. Recreational Fishery

Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish.

(1) *Washington.* For each person engaged in recreational fishing seaward of Washington, the groundfish bag limit is 15 groundfish, including rockfish and lingcod, and is open year-round (except for lingcod). The following sublimits and closed areas apply:

(a) *Yelloweye Rockfish Conservation Area.* The Yelloweye Rockfish Conservation Area, or YRCA, is a "C-shaped" area which is closed to recreational groundfish and halibut fishing. The YRCA is defined by latitude and longitude coordinates specified at 50 CFR 660.304(d).

(b) *Rockfish.* In areas seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit, of which no more than 1 may be canary rockfish. Taking and retaining yelloweye rockfish is prohibited.

(c) *Lingcod.* Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31. In areas seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open (i.e., between March 16-October 15), there is a bag limit of 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of Oregon are 2 lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 10 marine fish per day, which excludes salmon, tuna, surfperch, sanddab, lingcod, and baitfish, but which includes rockfish and other groundfish. The minimum size limit for cabezon retained in the recreational fishery is 15 in (38 cm). Within the 10 marine fish bag limit, no

more than 1 may be canary rockfish, no more than 1 may be yelloweye rockfish and when the all-depth recreational fisheries for Pacific halibut (*Hippoglossus stenolopis*) are open, the first Pacific halibut taken of 32 in (81 cm) or greater in length may be retained. During the all-depth recreational fisheries for Pacific halibut, vessels with halibut on board may not take and retain, possess or land yelloweye rockfish or canary rockfish.

(3) *California.* Seaward of California (north and south of 40°10' N. lat.), California law provides that, in times and areas when the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. Retention of cowcod is prohibited in California's recreational fishery all year in all areas.

(a) *North of 40°10' N. lat.* North of 40°10' N. lat. to the California/Oregon border, California's recreational groundfish fishery will generally conform with Oregon's recreational regulations (see IV.D.(2)). For each person engaged in recreational fishing seaward of California north of 40°10' N. lat., the following seasons, bag limits, and size limits apply:

(i) *RCG Complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin."

(A) *Seasons.* North of 40°10' N. lat., recreational fishing for the RCG Complex is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits.* North of 40°10' N. lat., the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio, 1 may be canary rockfish, and no more than 1 per day up to a maximum of 2 per boat may be yelloweye rockfish. The following daily bag limits also apply: no more than 10 cabezon per day and no more than 10 greenling (kelp and/or rock greenling) per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: bocaccio may be no smaller than 10 in (25 cm) total length; cabezon may be no smaller than 15 in (38 cm) total length; and kelp and rock greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/Filleting*. Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish file size limits apply: bocaccio filets may be no smaller than 5 in (12.8 cm) and brown-skinned rockfish filets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(ii) *Lingcod*.—(A) *Seasons*. North of 40°10' N. lat., recreational fishing for lingcod is open from January 1 through December 31.

(B) *Bag limits, boat limits, hook limits*. North of 40°10' N. lat., the bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Filleting*. Lingcod filets may be no smaller than 16 in. (41 cm) in length.

(b) *South of 40°10' N. lat.* For each person engaged in recreational fishing seaward of California south of 40°10' N. lat., the following seasons, bag limits, size limits and closed areas apply:

(i) *Closed Areas*.—(A) *Cowcod Conservation Areas*. Coordinates defining the boundaries of the Cowcod Conservation Areas (CCAs) are described in Federal regulations at 50 CFR 660.304(c). Recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for sanddabs is permitted subject to the provisions in paragraph IV.D.(3)(iv) and that fishing for species managed under this section (not including cowcod, bocaccio, canary, and yelloweye rockfish) are permitted in waters shoreward of the 20-fm (37-m) depth contour within the CCAs from July 1 through December 31, 2003, subject to the bag limits in this section.

(B) South of 40°10' N. lat., recreational fishing for all groundfish, including lingcod, is prohibited seaward of the 20-fm (37-m) depth contour, except that recreational fishing for sanddabs is permitted seaward of the 20-fm (37-m) depth contour subject to the provisions in paragraph IV.D.(3)(iv).

(ii) *RCG Complex*. The California rockfish, cabezon, greenling complex (RCG Complex), as defined in State regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This

category does not include California scorpionfish, also known as "sculpin."

(A) *Seasons*. South of 40°10' N. lat., recreational fishing for the RCG Complex is open from July 1 through December 31 (i.e., it's closed from January 1 through June 30). When recreational fishing for the RCG Complex is open, it is permitted only inside the 20-fm (37-m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits*. South of 40°10' N. lat., in times and areas when the recreational season for the RCG Complex is open, there is a limit of 2-hooks and one line when fishing for rockfish, and the bag limit is 10 RCG Complex fish per day (not including bocaccio, canary rockfish, yelloweye rockfish and cowcod, which are prohibited), of which up to 10 may be rockfish, no more than 2 of which may be shallow nearshore rockfish. [Note: The shallow nearshore rockfish group off California are composed of kelp, grass, black-and-yellow, China, and gopher rockfishes.] Also within the 10 RCG Complex fish per day limit, no more than 2 fish per day may be greenling (kelp and/or rock greenling) and no more than 3 fish per day may be cabezon. Lingcod, California scorpionfish and sanddabs taken in recreational fisheries off California do not count toward the 10 RCG Complex fish per day bag limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. The following size limits apply: cabezon may be no smaller than 15 in (38 cm) and kelp and rock greenling may be no smaller than 12 in (30 cm).

(B) *Dressing/Filleting*. Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. Brown-skinned rockfish filets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *California scorpionfish*. California scorpionfish only occur south of 40°10' N. lat. (A) *Seasons*. South of 40°10' N. lat., recreational fishing for California scorpionfish is closed from March 1 through June 30 (i.e., the California scorpionfish season is open during January-February and during July-December). When recreational fishing for California scorpionfish is open, it is

permitted only inside the 20-fm (37-m) depth contour (except at Huntington Flats between a line drawn due south from Point Fermin (33°42'30" N. lat.; 118°17'30" W. long.) and a line drawn due west from the Newport South Jetty (33°35'37" N. lat.; 117°52'50" W. long.,) recreational fishing for California scorpionfish may occur from shore to a boundary line approximating 50 fm (91 m) during July-August), subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits*. South of 40°10' N. lat., in times and areas where the recreational season for California scorpionfish is open, and the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Filleting*. California scorpionfish filets may be no smaller than 5 in (12.8 cm).

(iv) *Lingcod*.—(A) *Seasons*. South of 40°10' N. lat., recreational fishing for lingcod is open July 1 through December 31. When recreational fishing for lingcod is open in the south, it is permitted only inside the 20-fm (37-m) depth contour, subject to the bag limits in paragraph (B) of this section.

(B) *Bag limits, boat limits, hook limits*. South of 40°10' N. lat., in times and areas when the recreational season for lingcod is open, there is a limit of 2-hooks and one line when fishing for lingcod, and the bag limit is 2 lingcod per day. Lingcod do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits*. Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/Filleting*. Lingcod filets may be no smaller than 16 in (41 cm) in length.

(iv) *Sanddabs*. South of 40°10' N. lat., recreational fishing for sanddabs is permitted both shoreward and seaward of the 20 fm (37 m) depth contour (i.e., recreational fishing for sanddabs is permitted in all areas south of 40°10' N. lat.). Recreational fishing for sanddabs is permitted seaward of the 20-fm (37-m) depth contour subject to a limit of up to 12-hooks "Number 2" or smaller, which measure 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight

per line. There is no bag limit, season, or size limit for sanddabs, however, it is prohibited to fillet sanddabs at sea.

#### V. Washington Coastal Tribal Fisheries

The Assistant Administrator (AA) announces the following tribal allocations for 2003, including those that are the same as in 2002. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations. With respect to the 2003 treaty Indian allocation of Pacific whiting, NMFS has reviewed the scientific information set forth in the Declaration of William L. Robinson dated April 26, 2002, and the Declaration of Dr. Richard D. Methot, Jr., dated April 18, 2002, which were submitted with the Federal Defendants Statement Regarding Remand in *Midwater Trawlers Co-operative v. Department of Commerce*, No. C99-1415BJR and No. C99-1500BJR (Consolidated) (W.D. Wash.). NMFS has no additional information that would change the conclusions in these declarations on the distribution and migratory pattern of the stock. Therefore, NMFS is relying on the information in those declarations as the best scientific information currently available. Accordingly, NMFS finds that the 2003 treaty Indian allocation of Pacific whiting (25,000 mt to be taken by the Makah Tribe), which is based on the sliding scale methodology that has been in use since 1999, is based on the best scientific information available, and is within the Indian treaty right as described in *Midwater Trawlers Co-operative v. Department of Commerce*, 282 F.3d 710, 718 (9th Cir. 2002). NMFS has rejected and continues to reject the so-called "biomass" method of calculating the treaty right. As stated in *U.S. v. Washington*, Subproceeding 96-2, 143 F. Supp.2d 1218, 1223-1224 (W.D. Wash. 2001), the biomass method is not required for conservation and underestimates the quantity of fish that pass through the tribal usual and accustomed fishing grounds, and hence it cannot serve as the basis for calculating the treaty share. Also, application of the biomass method to calculate the treaty Indian allocation of Pacific whiting would illegally discriminate against tribal fishing interests, since the biomass method is not used in management of the non-treaty fishery. *Id.*; also see *Makah v. Brown*, C85-1606R, Order on Five Motions Relating to Treaty Halibut Fishing at 6 (W.D. Wash. 1993).

#### A. Sablefish

The tribal allocation is 631 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

#### B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava, WA (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40'00" N. lat.) and Leadbetter Point, WA (46°38'10" N. lat.).

(2) Thornyheads are subject to a 300-lb (136-kg) trip limit.

(3) Canary rockfish are subject to a 300-lb (136-kg) trip limit.

(4) Yelloweye rockfish are subject to a 100-lb (45-kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are subject to a cumulative limit of 30,000 lb (13,608 kg) per 2-month period. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300-lb (136-kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

#### C. Lingcod

Lingcod are subject to a 300-lb (136-kg) daily trip limit and a 900-lb (408-kg) weekly limit.

#### D. Pacific whiting

The tribal allocation is 25,000 mt.

#### Classification

These final specifications and management measures for 2003 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the FMP, and 50 CFR part 660 subpart G (the regulations implementing the FMP).

The 2003 specifications and management measures are intended to protect overfished and other depressed stocks while also allowing as much harvest of more abundant groundfish stocks as possible during the course of the year. NMFS received the Council's recommendations on specifications and management measures in September

2002. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for publishing the proposed rule for the specifications and management measures, the proposed rule could not be made available for public comment prior to January 7, 2003. The timing of this final rule balances the need to publish and make effective a final rule as early as possible in the calendar year against the need to provide public comments on the proposed rule.

A 30-day delay in effectiveness for this rule would in fact be a 60-day delay, because most of the trip limits are two-month limits, so most fishers could exceed the entire two month limit before the rules went into effect after 30 days. In addition, none of the large rockfish conservation areas would be in place, thus a delay in effectiveness would allow fishing in an area this rule closes for conservation purposes. Thus, excessive harvest could cause harm to overfished species. Delay in publishing these measures could also require unnecessarily restrictive measures, including possible fishery closures, later in the year to make up for the excessive harvest that would be caused by late implementation of these regulations. Thus, a delay in effectiveness could ultimately cause economic harm to the fishing industry and associated fishing communities. For these reasons, there is good cause under 5 U.S.C. 553(d)(3) to determine that delaying the effectiveness of this rule for 30 days would be contrary to public interest.

The Council prepared an FEIS for this action; a notice of availability was published on January 17, 2003 (68 FR 2538). A copy of this FEIS is available from the Council, see **ADDRESSES**. On February 25, 2003, NMFS issued an ROD that documents the agency's final decisions concerning the decision by the NMFS Northwest Region to approve the Council's preferred OY alternative for 2003 groundfish ABC and OY specifications and management measures for Pacific Coast groundfish. The 2003 specifications and management measures are expected to have positive effects on the biological environment and negative effects on fishing communities and the socio-economic environment. The 2003 management regime is structured to protect overfished groundfish species and introduces a new depth based management regime that closes large areas of the continental shelf to groundfish fishing. Closure of important fishing areas is expected to have significant impacts on the human environment.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared a FRFA describing the impact of this action on small entities. The IRFA was summarized in the proposed rule published on January 7, 2003 (68 FR 936). The following is the summary of the FRFA. The need for and objectives of this final rule are contained in the **SUMMARY** and Background section of the preamble. NMFS did not receive any comments on the IRFA or on the proposed rule regarding the economic effects of this final rule.

These final 2003 annual specifications and management measures allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant groundfish stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks. The form of the specifications, in ABCs and OYs, follows the guidance of the Magnuson-Stevens Act, the National Standard Guidelines, and the FMP for protecting and conserving fish stocks. Annual management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the Small Business Administration. There are also about 450 groundfish buyers on the West Coast, approximately 5 percent of which are responsible for about 80 percent of West Coast groundfish purchases. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

The Magnuson-Stevens Act requires that actions taken to implement FMP be consistent with the 10 national standards. National Standard 8 requires that conservation and management measures, consistent with the conservation requirements of the Act, “take into account the importance of

fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities and (B), to the extent practicable, minimize adverse economic impacts on such communities.” Commercial and recreational fisheries for Pacific Coast groundfish contribute to the economies and shape the cultures of numerous fishing communities in Washington, Oregon, and California. Meeting the needs of fishing communities has become increasingly difficult because the Council manages a fishery that is overcapitalized and contains stocks that are overfished. In recommending this year’s specifications and management measures, the Council tried to accommodate some of the needs of those communities within the constraints of Magnuson-Stevens Act requirements to rebuild overfished stocks, prevent overfishing, and minimize bycatch. In general, the Council recommended the largest harvest of the more abundant stocks as possible, consistent with conservation needs of the fish stocks.

The Council considered five alternative specifications and management measures regimes for 2003: the no action alternative, which would have implemented the 2002 regime for 2003; the low OY alternative, which set harvest levels so that overfished stocks would have an 80 percent probability of rebuilding within Tmax; the high OY alternative, which set harvest levels so that overfished stocks would have a 50 percent probability of rebuilding within Tmax; the Allocation Committee alternative, which set harvest levels intermediate to those of the low and high alternatives, but includes management through depth-based closures, and; the Council OY alternatives (preferred alternative) which was the same as the Allocation Committee alternative, except that it included a higher sablefish harvest north of Point Conception, CA and more restrictive recreational fishery management measures south of Cape Mendocino, CA. Each of these alternatives included both harvest levels (specifications) and management measures needed to achieve those harvest levels, with the most restrictive management measures corresponding to the lowest OYs.

Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the FEIS for this action reviewed alternatives other than the no action alternative for expected declines in revenue and income from 2001 levels. Declines were not measured from 2002 levels because complete data

from 2002 is not yet available. The low OY alternative was expected to reduce commercial exvessel revenue by \$60 million in 2003, reduce overall commercial harvest income by \$274 million, and reduce recreational fishery income (mainly charter businesses) by \$64 million. The high OY alternative was expected to reduce commercial exvessel revenue by \$6 million in 2003, reduce overall commercial harvest income by \$16 million, and reduce recreational fishery income by \$1.2 million. The economic effects of the Allocation Committee alternative were analyzed both for management with depth-based regulatory measures and without those measures. The Allocation Committee alternative without depth-based regulatory measures was expected to reduce commercial exvessel revenue by \$21 million in 2003, reduce overall commercial harvest income by \$67 million, and reduce recreational fishery income by \$1.2 million. The Allocation Committee alternative with depth-based regulatory measures was expected to reduce commercial exvessel revenue by \$15 million in 2003, reduce overall commercial harvest income by \$40 million, and reduce recreational fishery income by \$1.2 million. The Council’s preferred alternative, which includes depth-based regulatory measures and a recreational fishery management regime designed to more strictly constrain harvest of overfished species, was expected to reduce commercial exvessel revenue by \$13 million in 2003, reduce overall commercial harvest income by \$35 million, and reduce recreational fishery income by \$25 million. The Council’s preferred alternative meets the conservation requirements of the Magnuson-Stevens Act, while reducing to the extent possible the adverse economic impacts of these conservation measures on the fishing industries and associated communities.

Depth based management is particularly expected to both protect overfished species from harvest in areas where they commonly occur and allow fisheries greater access to more abundant stocks outside of the closed areas. Without depth-based management, harvest of abundant stocks would have been more severely restricted because there would have been no measures to prevent vessels from operating in areas where abundant and overfished stocks cooccur.

Recreational fisheries management measures in 2001 and 2002 were not adequately conservative and those fisheries exceeded their overfished species retention levels in both years. Thus, the recreational fisheries are more severely restricted under the preferred

alternative than under the high OY alternative or under either of the Allocation Committee alternatives. While the preferred alternative is expected to result in greater income declines for businesses associated with recreational fishing, those declines reflect conservation measures expected to better protect overfished species.

Revenues for many groundfish fishery participants under the preferred alternative are expected to decline in 2003. These declines are mainly attributable to more restrictive management measures intended to protect overfished species. It is difficult to estimate exactly how this overall decline in landings and revenue will affect individual members of the groundfish fleet. However, the overall decline is significant enough to suggest that small businesses with a substantial portion of their incomes dependent on groundfish will be negatively affected by implementation of the 2003 proposed harvest levels. Overall, commercial vessels that target groundfish are expected to have a 21 percent decline in groundfish-related ex-vessel revenue and a 5 percent decline in total ex-vessel fishing revenue. The cumulative effect of 2003 management on the personal incomes of fishery participants is expected to be a \$35 million decline. Vessels and groundfish buyers that rely heavily on groundfish for their annual income, as opposed to other West Coast fish species, will be more affected by the 2003 management regime than those with more diversified catch and harvest assemblages.

Most of the significant catch and effort reductions in the recreational fleet would occur off California south of 40°10' N. lat. Little change in overall recreational effort is expected in Washington or Oregon. For the West Coast recreational fleet, personal income is expected to decline by 10 percent overall, with a cumulative effect of a \$25 million decline. These personal income values are a measure of the contribution of recreational fishing to businesses and local communities. Reduction in effort in California is expected to result in a reduction in revenue for businesses that cater to recreational fishers. Gross receipts for recreational groundfish activities will likely decline in proportion with the decline in number of angler trips, however, net profits may decline more given that certain costs will be fixed on an annual and per trip basis. Revenue declines from groundfish may be offset to the degree that charter vessels operate in other fisheries.

The Small Business Regulatory Enforcement Act of 1996 requires a

plain language guide to assist small entities in complying with this rule. NMFS has produced a public notice for the 2003 fishing season that includes trip limit tables and descriptions of 2003 management measures. Contact NMFS to request a copy of this public notice (see **ADDRESSES**) or see the NMFS Northwest Region's groundfish website at <http://www.nwr.noaa.gov/1sustfish/gdfsh01.htm>.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two fall groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The tribal management measures in this final rule were developed following these procedures. The tribal representative on the Council made a motion to adopt the tribal management measures, which was passed by the Council, and those management measures, which were developed and proposed by the tribes, are included in this final rule.

NMFS issued Biological Opinions (Bos) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Odette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the

2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

#### List of Subjects in 50 CFR Part 660

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

February 28, 2003.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

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

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

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

2. In § 660.302, the definitions for "Open access fishery" and "Trip limit" are revised and definitions for "Footrope" and "Trawl fishing line" are added to read as follows:

#### **§ 660.302 Definitions.**

\* \* \* \* \*

*Footrope* means a chain or wire rope attached to the bottom front end of a trawl net and attached to the trawl fishing line.

\* \* \* \* \*

*Open access fishery* means the fishery composed of vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery. Any commercial fishing vessel that does not have a limited entry permit and which lands groundfish in the course of commercial fishing is a participant in the open access fishery.

\* \* \* \* \*

*Trawl fishing line* means a length of chain or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

\* \* \* \* \*

*Trip limit* means the total amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board the vessel, that may legally be taken and retained, possessed, or landed per vessel from a single fishing trip.

\* \* \* \* \*

3. In § 660.304, the section heading, the heading of paragraph (a), and paragraphs (b) through (d) are revised to read as follows:

**§ 660.304 Management areas, including conservation areas, and commonly used geographic coordinates.**

(a) *Management areas.* \* \* \*

(b) *Commonly used geographic coordinates.*

(1) Cape Falcon, OR—45°46' N. lat.

(2) Cape Lookout, OR—45°20'15" N. lat.

(3) Cape Blanco, OR—42°50' N. lat.

(4) Cape Mendocino, CA—40°30' N. lat.

(5) North/South management line—40°10' N. lat.

(6) Point Arena, CA—38°57'30" N. lat.

(7) Point Conception, CA—34°27' N. lat.

(c) *Cowcod Conservation Areas (CCAs).* (1) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50' N. lat., 119°30' W. long.;

33°50' N. lat., 118°50' W. long.;

32°20' N. lat., 118°50' W. long.;

32°20' N. lat., 119°37' W. long.;

33°00' N. lat., 119°37' W. long.;

33°00' N. lat., 119°53' W. long.;

33°33' N. lat., 119°53' W. long.;

33°33' N. lat., 119°30' W. long.;

and connecting back to 33°50' N. lat., 119°30' W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42' N. lat., 118°02' W. long.;

32°42' N. lat., 117°50' W. long.;

32°36'42" N. lat., 117°50' W. long.;

32°30' N. lat., 117°53'30" W. long.;

32°30' N. lat., 118°02' W. long.;

and connecting back to 32°42' N. lat., 118°02' W. long.

(d) *Yelloweye Rockfish Conservation Area (YRCA).* The YRCA is an C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18' N. lat.; 125°18' W. long.;

48°18' N. lat.; 124°59' W. long.;

48°11' N. lat.; 124°59' W. long.;

48°11' N. lat.; 125°11' W. long.;

48°04' N. lat.; 125°11' W. long.;

48°04' N. lat.; 124°59' W. long.;

48°00' N. lat.; 124°59' W. long.;

48°00' N. lat.; 125°18' W. long.;

and connecting back to 48°18' N. lat.; 125°18' W. long.

\* \* \* \* \*

4. In § 660.322, revise paragraph (b)(5) and add a new paragraph (b)(6) to read as follows:

**§ 660.322 Gear restrictions.**

\* \* \* \* \*

(b) *Trawl gear.* \* \* \*

(5) *Large and small footrope trawl gear.* Large footrope trawl gear is bottom trawl gear, as specified at § 660.302, with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Small footrope trawl gear is bottom trawl gear, as specified at § 660.302 and 660.322(b), with a footrope diameter 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the coded. Other lines or ropes that run parallel to the footrope may not be augmented or modified to violate footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(6) *Pelagic or "midwater" trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. The footrope of pelagic gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of pelagic trawl gear must be bare and may not be suspended with chains or any

other materials. Sweepings, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

\* \* \* \* \*

5. In § 660.323, paragraph (b) is revised to read as follows:

**§ 660.323 Catch restrictions.**

\* \* \* \* \*

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the Federal Register if they have been designated as routine through the two-meeting process described in the FMP. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries—(i) Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, splitnose rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; Dover sole, sablefish, shortspine thornyheads, longspine thornyheads, and the "DTS complex," which is composed of those species; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and "other fish" as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an annual or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(i) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on an annual or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas may be imposed on any sector of the groundfish fleet using specific boundary lines that approximate depth contours with latitude/longitude waypoints. Depth-based management measures and the setting of closed areas may be used to protect and rebuild overfished stocks.

\* \* \* \* \*

[FR Doc. 03–5166 Filed 2–28–03; 4:27 pm]

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# Federal Register

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**Friday,  
March 7, 2003**

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## **Part III**

# **Department of Health and Human Services**

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**Centers for Medicare & Medicaid Services**

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**42 CFR Part 412**

**Medicare Program; Prospective Payment  
System for Long-Term Care Hospitals:  
Proposed Annual Payment Rate Updates  
and Policy Changes; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 412**

[CMS-1472-P]

RIN 0938-AL92

**Medicare Program; Prospective Payment System for Long-Term Care Hospitals; Proposed Annual Payment Rate Updates and Policy Changes**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** In this proposed annual update of the payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs), we are proposing to change the annual period during which the updated payment rates for the LTCH PPS would be effective from October 1 through September 30 to July 1 through June 30. We also are proposing to change the publication schedule for these updates to allow for an effective date of July 1 (instead of August 1). The proposed payment amounts and factors used to determine the proposed updated Federal rates that are described in this proposed rule have been determined based on this proposed revised update rate year. In addition, we are proposing that the annual update of the long-term care diagnosis-related groups (LTC-DRG) classifications and relative weights will remain linked to the annual adjustments of the acute care hospital inpatient diagnosis-related group system, effective each October 1. The proposed outlier threshold for July 1, 2003 through June 30, 2004 would be derived from the proposed rate year calculations. In order to conform to a proposed change in the acute care hospital inpatient PPS (IPPS) outlier policy, we are proposing a change for outlier payments under the LTCH PPS.

We also are proposing a policy change eliminating bed-number restrictions for pre-1997 LTCHs that have established satellite facilities and that elect to be paid 100 percent of the Federal rate.

**DATES:** Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on May 6, 2003.

**ADDRESSES:** Mail written comments (an original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human

Services, Attention: CMS-1472-P, PO Box 8010, Baltimore, MD 21244-1850.

If you prefer, you may deliver, by hand or courier, your written comments (an original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters who wish to retain proof of filing by stamping in and keeping an extra copy of the comments being filed.)

Comments mailed to those addresses specified as appropriate for courier delivery may be delayed and could be considered late.

Because of staffing and resource limitation, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS-1472-P.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following address:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Security and Standards Group, Regulations Development and Issuances Group Standards, PRA Reports Clearance Office, 7500 Security Boulevard, Baltimore, MD 21244-1850. Attn: John Burke, CMS-1472-P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

**FOR FURTHER INFORMATION CONTACT:**

Tzvi Hefter, (410) 786-4487 (General information)

Judy Richter, (410) 786-2590 (General information, transition payments, payment adjustments, and onsite discharges and readmissions)

Michele Hudson, (410) 786-5490 (Calculation of the payment rates, relative weights and case-mix index, and payment adjustments)

Tiffany Eggers, (410) 786-0400 (Market basket update, short-stay outliers and interrupted stays)

Ann Fagan, (410) 786-5662 (Patient classification system)

Miechal Lefkowitz, (410) 786-5316 (High-cost outliers and budget neutrality)

Linda McKenna, (410) 786-4537 (Payment adjustments and transition period)

Kathryn McCann, (410) 786-7623 (Medigap)

Robert Nakielny, (410) 786-4466 (Medicaid)

**SUPPLEMENTARY INFORMATION:**

**Inspection of Public Comments**

Comments received timely will be available for public inspection as they are processed, generally beginning approximately 4 weeks after publication of a document, in Room C5-12-08 of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786-7197 to schedule an appointment to view public comments.

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### Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

- BBA Balanced Budget Act of 1997, Pub. L. 105-33
- BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106-113
- BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Pub. L. 106-554
- CMS Centers for Medicare & Medicaid Services
- DRGs Diagnosis-related groups
- FY Federal fiscal year
- HCRIS Hospital Cost Report Information System
- HHA Home health agency
- HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104-191
- IPPS Acute Care Hospital Inpatient Prospective Payment System
- IRF Inpatient rehabilitation facility
- LTC-DRG Long-term care diagnosis-related group
- LTCH Long-term care hospital
- MedPAC Medicare Payment Advisory Commission
- MedPAR Medicare provider analysis and review file
- OSCAR Online Survey Certification and Reporting (System)
- PPS Prospective Payment System
- QIO Quality Improvement Organization (formerly Peer Review Organization (PRO))
- SNF Skilled nursing facility
- TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248

### I. Background

*A. Legislative and Regulatory Authority*  
The Medicare, Medicaid, and SCHIP [State Children's Health Insurance

Program] Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106-113) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106-554) provide for payment for both the operating and capital-related costs of hospital inpatient stays in long-term care hospitals (LTCHs) under Medicare Part A based on prospectively set rates. The Medicare prospective payment system for LTCHs applies to hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act), effective for cost reporting periods beginning on or after October 1, 2002. Section 1886(d)(1)(B)(iv)(I) of the Act defines a LTCH as "a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days." Section 1886(d)(1)(B)(iv)(II) of the Act also provides another definition of LTCHs: Specifically, a hospital that first received payment under section 1886(d) of the Act in 1986 and has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Section 123 of Pub. L. 106-113 requires the prospective payment system for LTCHs to be a per discharge system with a diagnosis-related group (DRG) based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 123 also requires that the system be implemented for cost reporting periods beginning on or after October 1, 2002.

Section 307(b)(1) of Pub. L. 106-554 mandates the examination of the feasibility and the impact of basing payment under the LTCH prospective payment system (LTCH PPS) on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients as well as the use of the most recently available hospital discharge data. Further, section 307(b)(1) provides that the Secretary shall examine and may provide for adjustments to payments under the LTCH PPS, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In a *Federal Register* document issued on August 30, 2002 (67 FR 55954), we implemented the LTCH PPS authorized under Pub. L. 106-113 and Pub. L. 106-554. This system uses

information from LTCH patient records to classify patients into distinct long-term care diagnosis-related groups (LTC-DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each LTC-DRG and provisions are made for appropriate payment adjustments. Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**.

The LTCH PPS replaced the reasonable cost-based payment system under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, for payments for inpatient services provided by a LTCH with a cost reporting period beginning on or after October 1, 2002. (The regulations implementing the TEFRA hospital payment provisions are located at 42 CFR part 413.) With the implementation of the prospective payment system for inpatient acute care hospitals authorized by the Social Security Amendments of 1983 (Pub. L. 98-21), which added section 1886(d) to the Act, certain hospitals, including LTCHs, were excluded from the PPS for acute care hospitals and paid their reasonable costs for inpatient services subject to a per discharge limitation or target amount under the TEFRA system. For each cost reporting period, a ceiling on payments to each hospital excluded from the acute care hospital inpatient prospective payment system (IPPS) was determined by multiplying the hospital's updated target amount by the number of total current year Medicare discharges. The August 30, 2002 final rule further details payment policy under the TEFRA system (67 FR 55954).

In the August 30, 2002 final rule, we presented an in-depth discussion of the LTCH PPS, including the patient classification system, relative weights, payment rates, additional payments, and the budget neutrality requirements mandated by section 123 of Pub. L. 106-113. That same final rule, which established regulations for the LTCH PPS under 42 CFR part 412, Subpart O, also contained provisions related to covered inpatient services, limitation on charges to beneficiaries, medical review requirements, furnishing of inpatient hospital services directly or under arrangement, and reporting and recordkeeping requirements.

We refer readers to the August 30, 2002 final rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS.

**B. Criteria for Classification as a LTCH**

LTCHs must have a provider agreement with Medicare and must have

an average Medicare inpatient length of stay of greater than 25 days, or, for cost reporting periods beginning on or after August 5, 1997, for a hospital that was first excluded from the PPS in 1986, must have an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days and demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principle diagnosis that reflects a finding of neoplastic disease. Subject to the provisions of § 412.23(e)(3), the average Medicare inpatient length of stay is determined based on all covered and noncovered days of stay of Medicare patients as calculated by dividing the total number of covered and noncovered days of stay of Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period. Fiscal intermediaries verify that LTCHs meet the average length of stay requirements.

The fiscal intermediary's determination of whether or not a hospital qualifies as an LTCH is based on the hospital's discharge data from its most recent cost reporting period and is effective at the start of the hospital's next cost reporting period, under § 412.22(d). If a hospital does not meet the length of stay requirement, the hospital may provide the intermediary with data indicating a change in the hospital's average length of stay by the same method for the immediately preceding 6-month period (§ 412.23(e)(3)(ii)). (For procedural efficiency and in order to comply with the timing requirement of § 412.22(d), we have a longstanding policy of allowing hospitals to submit data for a period greater than 5 months for this purpose.) Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iii).

LTCHs that exist as hospitals-within-hospitals or satellite facilities must also meet the criteria set forth in § 412.22(e) or § 412.22(h), respectively, to be excluded from the IPPS and paid under the LTCH PPS.

The following hospitals are paid under special payment provisions, as described in § 412.22(c) and, therefore, are not subject to the LTCH PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects

authorized under section 402(a) of Pub. L. 90-248 (42 U.S.C. 1395b-1) or section 222(a) of Pub. L. 92-603 (42 U.S.C. 1395b-1 (note)) (statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).

- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

**C. Transition Period for Implementation of the LTCH PPS**

In the August 30, 2002 final rule (67 FR 56038), we provided for a 5-year transition period from cost-based reimbursement to fully Federal prospective payment for LTCHs. During the 5-year period, two payment percentages are to be used to determine a LTCH's total payment under the PPS. The blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment federal rate percentage	Cost-based reimbursement rate percentage
Oct. 1, 2002 .....	20	80
Oct. 1, 2003 .....	40	60
Oct. 1, 2004 .....	60	40
Oct. 1, 2005 .....	80	20
Oct. 1, 2006 .....	100	0

The phase-in for payments to the full prospective payment Federal rate will apply according to each LTCH's cost reporting period.

**D. Limitation on Charges to Beneficiaries**

In the August 30, 2002 final rule, we presented an in-depth discussion of beneficiary liability under the LTCH prospective payment system (67 FR 55974-55975). Under § 412.507, as consistent with other established hospital prospective payment systems, a LTCH may not bill a Medicare beneficiary for more than the deductible and coinsurance amounts as specified under §§ 409.82, 409.83, and 409.87 and for items and services as specified under § 489.30(a), if the Medicare payment to the LTCH is the full LTC-DRG payment amount. However, if the Medicare payment was for a short-stay outlier case (§ 412.529) that was less than the full LTC-DRG payment amount, the LTCH could also charge the beneficiary for services for which the costs of those services or the days those services were provided were not a basis for calculating the Medicare short-stay outlier payment (§ 412.507).

Since the origin of the Medicare system, the intent of our regulations has been to set limits on beneficiary liability and to clearly establish the circumstances under which the

beneficiary would be required to assume responsibility for payment; that is, upon exhausting benefits described in 42 CFR part 409, subpart F. The discussion in the August 30, 2002 final rule was not meant to establish rates or payments for, or define, Medicare-eligible expenses. While CMS regulates beneficiary liability for coinsurance and deductibles for hospital stays that are covered by Medicare, payments from Medigap insurers to providers for inpatient hospital coverage after Medicare benefits are exhausted are not regulated by CMS. Furthermore, regulations beginning at § 403.200 and the 1991 National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplemental Insurance, which was incorporated by reference into section 1882 of the Act, govern the relationship between Medigap insurers and beneficiaries.

#### *E. System Implementation for the LTCH PPS*

When we established the regulations to implement the LTCH PPS on August 30, 2002 (67 FR 55954), effective for cost reporting periods that began on or after October 1, 2002, we did not have computer system changes in place that were necessary to accommodate claims processing and payment under the system. However, after January 1, 2003, we made the necessary system changes. Accordingly, after January 1, 2003, the fiscal intermediary will reconcile the payment amounts that had been made to LTCHs for all covered inpatient hospital services furnished to Medicare beneficiaries from cost reporting periods that began on or after October 1, 2002, through January 1, 2003, with the amounts that were payable under the LTCH PPS methodology. Because the LTCH PPS was effective at the start of the LTCH's first cost reporting period that began on or after October 1, 2002, only those LTCHs with cost reporting periods that started October 1, 2002, through January 1, 2003, will experience the payment reconciliation necessitated by this 3-month period prior to systems implementation. The claims submission procedure of using ICD-9-CM codes has not changed following the systems implementation of the LTCH PPS.

We also want to note that as of October 16, 2002, a LTCH that was required to comply with the Administrative Simplification Standards under the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191) and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107-105) is obligated to comply with the standards

for submitting claim forms to the LTCH's Medicare fiscal intermediary (45 CFR 162.1002 and 45 CFR 162.1102). Beginning October 16, 2003, LTCHs that obtained an extension and that are required to comply with the HIPAA Administrative Simplification Standards must start submitting electronic claims in compliance with the HIPAA regulations cited above, among others.

#### **II. Summary of the Major Contents of This Proposed Rule**

In this proposed rule, we are setting forth the proposed annual update to the payment rates for the Medicare LTCH PPS and proposing other policy changes. The following is a summary of the major areas that we are addressing in this proposed rule:

##### *A. Proposed Change in the Annual Update*

We are proposing to change the annual update to the Federal payment rate under the LTCH PPS from the Federal fiscal year (October 1 through September 30) to a "LTCH rate year" of July 1 through June 30, beginning July 1, 2003, as discussed in section III. of this preamble. (In this proposed rule, we would define the LTCH rate year as the period of July 1 to June 30 for updates to the LTCH PPS.) We are proposing to publish information on the annual update in the **Federal Register** by June 1 of each year. We recognize that it may be necessary to address issues affecting LTCHs at a time that does not conform to this schedule and in those circumstances, we could utilize the IPPS proposed and final rule for this purpose.

##### *B. Proposed Update Changes*

- In section IV. of this preamble, we are proposing that the annual update of the LTC-DRG classifications and relative weights would remain linked to the annual adjustments of the acute care hospital inpatient DRG system, which are based on the annual revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) codes, effective each October 1.

- In section V. of this preamble, we discuss a proposed policy change in how Medicare payment under the LTCH PPS would be made to certain LTCHs that have satellite facilities.

- In sections VI. through X. of this preamble, we discuss our proposed determination of the LTCH PPS rates that would be applicable to the proposed LTCH rate year of July 1, 2003 through June 30, 2004, including proposed revisions to the wage index,

the proposed excluded hospital with capital market basket that would be applied to the current standard Federal rate to determine the prospective payment rates, the applicable adjustments to payments, the proposed outlier threshold, the transition period, and the proposed budget neutrality factor.

- We are also proposing to revise § 412.525(a) and § 412.529(c)(4) regarding adjustments to outlier payments under the LTCH PPS in order to conform the regulation to a proposed policy change under the IPPS that is published in the **Federal Register** on March 4, 2003.

- In section XI. of this preamble, we discuss our continuing monitoring efforts to evaluate the LTCH PPS.

- In section XIII. of this preamble, we set forth an analysis of the impact of the proposed changes in this proposed rule on Medicare expenditures and on Medicare-participating LTCHs and Medicare beneficiaries.

#### **III. Proposed Changes in the Annual Update of the LTCH PPS**

In existing regulations at § 412.535 that were issued in the August 30, 2002 final rule, we specify a schedule for publishing information on the LTCH PPS on or before August 1, which coincided with the statutorily mandated publication schedule for the IPPS. We are proposing to revise § 412.535 to provide generally for a change in the annual rate update for the LTCH PPS, starting on July 1.

Section 1886(e)(5)(A) of the Act requires that, for the IPPS, the proposed rule be published in the **Federal Register** "not later than the April 1 before each fiscal year; and the final rule, not later than the August 1 before such fiscal year." The statute imposes no such publication schedule for the LTCH PPS. In the August 30, 2002 final rule (67 FR 55977), we stated that we were considering changing the publication schedule of the LTCH PPS annual rulemaking cycle in order to avoid concurrent publication of annual rules for these two systems for purposes of administrative feasibility and efficiency. In considering a change in the publication schedule of the LTCH PPS final rule, we contemplated a change in the effective date for updating the Federal rates for the LTCH PPS. Therefore, in this proposed rule, we are proposing to change the effective date of the annual update for the LTCH PPS from October 1 to July 1 of each year in order to facilitate a timely publication of these two significant payment updates (acute care hospital inpatient and LTCH). Thus, the annual update of the

LTCH PPS Federal rates would no longer be linked to the start of the Federal fiscal year, as is the update of the IPPS. This proposed change would necessitate publication of the final rule for the LTCH PPS by no later than June 1 of each year (proposed revised § 412.535).

We also are proposing to amend § 412.503 to include a definition of "long-term care hospital rate year". A "long-term care hospital rate year" would mean the 12-month period of July 1 through June 30. We would use this period for those calculations related to updating the Federal rate for payments under the LTCH PPS. The determination of the proposed fixed-loss threshold for outlier payment calculations, under § 412.525(a), would also be calculated based on the proposed LTCH rate year. (Section VI.C. of this proposed rule includes a more detailed discussion of our proposed outlier policy.)

Proposing a change for the annual Federal rate update period for the LTCH PPS has also necessitated a proposed recalculation of the excluded hospital market basket with capital estimate for the proposed forthcoming payment year, July 1, 2003 through June 30, 2004. In the August 30, 2002 final rule, we adopted a Federal rate of \$34,956 that was computed based on the excluded hospital with capital market basket calculated for the 12-month Federal fiscal year of October 1, 2002 through September 30, 2003. As already noted, we are proposing to change the Federal rate update for the LTCH PPS from the Federal fiscal year to a 12-month year of July 1 through June 30, and the proposed rates in this proposed rule are based on this period. Because the Federal rate of \$34,956 was originally computed based on a 12-month year, but in actuality will only be utilized for 9 months, if the proposed change in the LTCH PPS rate update year is finalized, we are proposing a budget neutral adjustment to the market basket update taking this 3-month differential into account in setting the Federal rate for July 1, 2003 through June 30, 2004. In addition, we are proposing that the change in the proposed 2004 LTCH PPS rate year be budget neutral. In section VI.B.1 of this proposed rule, we describe this proposed adjustment in greater detail.

We are proposing to update the LTCH PPS wage index that adjusts for differences in area wages under § 412.525(c) using the FY 1999 IPPS wage data because these are the best available data (as discussed in section VI.C. of this preamble).

We also are proposing to recalculate the budget neutrality offset to account for the effect of the transition period and the policy allowing LTCHs to elect 100 percent Federal rate payments rather than the transition blend. In addition, we are proposing an updated fixed-loss amount for determining outlier payments based on the updated proposed Federal rate (as discussed in section VII. of this preamble).

As discussed in section IV.C. of this proposed rule, we are not proposing an update to the LTC-DRG classifications or relative weights at this time. Currently, the LTC-DRG patient classifications utilized by the LTCH PPS for FY 2003 are based directly on the same version of DRGs used by the IPPS, that is, GROUPE 20.0. Therefore, we are not proposing any change to the timing of the annual update of the LTC-DRG classifications and relative weights. They would remain linked to the annual adjustments of the acute care hospital inpatient DRG system, which are based on the annual revisions to the ICD-9-CM codes, effective each October 1. Table 3 of the Addendum to the August 30, 2002 final rule (67 FR 56076-56084), which we are reprinting as Table 3 of the Addendum to this proposed rule, contains the LTC-DRG classifications and relative weights that we propose to continue to apply to discharges occurring during the period of July 1, 2003 through September 30, 2003. As an aid in calculating payment under the short-stay outlier policy, under § 412.529, we also are including, in column 3 of Table 3, the proposed five-sixths average length of stay that would be applied to each LTC-DRG in determining whether the LTCH stay is a short-stay outlier. The average length of stay for each DRG based on the FY 2001 MedPAR data, which were used for the FY 2003 LTCH PPS final rule, are still the best available complete LTCH discharge data available at this time.

The revised LTC-DRG classifications and relative weights for discharges occurring from October 1, 2003 through September 30, 2004, for payments under the LTCH PPS during that period would continue to be based on the annual updates to the acute care hospital inpatient DRG system. The FY 2004 DRGs and relative weights for the IPPS have not yet been proposed and we are unable to propose updated LTC-DRGs and relative weights (which would be based on the proposed updated acute care hospital inpatient DRGs and relative weights) at this time. Thus, we are proposing that the LTC-DRG classifications and relative weights would be presented for public comment in the proposed rule for the IPPS and

finalized in the IPPS final rule, for an effective date of October 1, 2003.

The proposed change in the rate year for the LTCH PPS from October 1 through September 30 to July 1 through June 30 means that, although the Federal rate calculations in the August 30, 2002 final rule were based on a 12-month year, only 9 months will elapse before the proposed July 1, 2003 update. We are proposing a prospective adjustment to the market basket update to take into account this 3-month differential in setting the proposed rates for July 1, 2003 through June 30, 2004.

Specifically, the proposed updates for the proposed 2004 LTCH PPS rate year would be affected as follows:

- The proposed update to the standard Federal rate calculated in accordance with § 412.523(c)(3) would be adjusted to account for updating the standard Federal rate on July 1, 2003, instead of October 1, 2003.
- The fixed-loss amount for determining high-cost outlier payments under § 412.525(a) would also be updated based on the proposed Federal rate effective for July 1, 2003 through June 30, 2004.

In section VI.B.1 of this proposed rule, we discuss the proposed computational adjustments resulting from our proposed establishment of a LTCH PPS rate year beginning July 1, 2003 through June 30, 2004.

Several provisions of the LTCH PPS would not be affected by the proposed change in the annual rate update year for the LTCH PPS from October 1 to July 1 because these policies are not based on any of the Federal rate calculations for the LTCH PPS. Specifically, the following provisions would not be affected:

- The transition blends provided for under § 412.533(a) would not be affected because they are linked to the start of each LTCH's cost reporting period, rather than to the start of the Federal fiscal year. (LTCHs being paid under the transition blend methodology would receive those blends for the entire 5-year transition period, unless they elect payments based on 100 percent of the Federal rate.) For instance, for cost reporting periods that began on or after October 1, 2002, and before October 1, 2003, the total payment for a LTCH is 80 percent of the amount that would have been calculated under the TEFRA payment system for that specific LTCH and 20 percent of the Federal prospective payment amount. For cost reporting periods beginning on or after October 1, 2003 and before October 1, 2004, the total payment for a LTCH is 60 percent of the amount that would have been calculated under the

TEFRA payment system for that specific LTCH and 40 percent of the Federal prospective payment amount.

- The 5-year phase-in of the adjustment for differences in area wage levels under § 412.525(c) would not be affected because they are linked to the start of each LTCH's cost reporting period, rather than to the start of the Federal fiscal year. For cost reporting periods that began on or after October 1, 2002 and before September 30, 2003, the applicable LTCH PPS wage index is one-fifth of the full LTCH wage index value, and for cost reporting periods beginning on or after October 1, 2003 and before September 30, 2004, the applicable LTCH PPS wage index is two-fifths of the full LTCH wage index value.

- The LTC-DRGs and their relative weights and the GROUPER would not be affected since they would continue to be updated effective October 1 through September 30 each year based on the changes to the DRGs published in the IPPS final rule.

Section XII. of this proposed rule contains an impact analysis that reflects the impact of these proposed changes.

In summary, we are proposing to amend § 412.535 to indicate that information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates under the LTCH PPS would be published in the **Federal Register** on or before June 1 prior to the beginning of each proposed LTCH PPS rate year beginning July 1. We are proposing that information on the DRG classification system and associated weighting factors, with the DRGs from which the LTC-DRGs are derived, would be published in the proposed IPPS rule and, ultimately, the final rule for the IPPS (the final IPPS rule is published on or before August 1 of each Federal fiscal year).

#### IV. Proposed Changes in Long-Term Care Diagnosis-Related Group (LTC-DRG) Classifications and Relative Weights

##### A. Background

Section 123 of Pub. L. 106-113 specifically requires that the PPS for LTCHs be a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 307(b)(1) of Pub. L. 106-554 modified the requirements of section 123 of Pub. L. 106-113 by specifically requiring that the Secretary examine "the feasibility and the impact of basing payment under such a system [the

LTCH PPS] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data."

In accordance with section 307(b)(1) of Pub. L. 106-554 and § 412.515 of our existing regulations, the LTCH PPS uses information from LTCH patient records to classify patient cases into distinct long-term care diagnosis-related groups (LTC-DRGs) based on clinical characteristics and expected resource needs. The LTC-DRGs used as the patient classification component of the LTCH PPS correspond to the DRGs in the IPPS. We apply weights to the existing hospital inpatient DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs.

In a departure from the IPPS, we use low volume LTC-DRGs (less than 25 LTCH cases) in determining the LTC-DRG weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), we group low volume DRGs into 5 quintiles based on average charge per discharge. (A listing of the composition of low volume quintiles appears in the August 30, 2002 final rule at 67 FR 55986.) We also take into account adjustments to payments for cases in which the stay at the LTCH is five-sixths of the geometric average length of stay and classify these cases as short-stay outlier cases. (A detailed discussion of the application of the Lewin Group model that was used to develop the LTC-DRGs appears in the August 30, 2002 final rule at 67 FR 55978.)

##### B. Patient Classifications into DRGs

Generally, under the LTCH PPS, Medicare payment is made at a predetermined specific rate for each discharge; that payment varies by the LTC-DRG to which a beneficiary's stay is assigned. Cases are classified into LTC-DRGs for payment based on the following six data elements:

- (1) Principal diagnosis.
- (2) Up to eight additional diagnoses.
- (3) Up to six procedures performed.
- (4) Age.
- (5) Sex.
- (6) Discharge status of the patient.

Upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the ICD-9-CM. As of October 16, 2002, a LTCH that was

required to comply with the HIPAA Administrative Simplification Standards and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107-105) is obligated to comply with the standards at 45 CFR 162.1002 and 45 CFR 162.1102. Completed claim forms are to be submitted to the LTCH's Medicare fiscal intermediary.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, the following type of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare (for example, organ transplant in a nonapproved transplant center).
- Cases requiring more information. (For example, ICD-9-CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, the claim will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, code 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD-9-CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE, each claim will be classified into the appropriate LTC-DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the same GROUPER used by the IPPS. The GROUPER software was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC-DRG assignment, the Medicare fiscal intermediary will determine the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments. As provided for under the IPPS, we provide an opportunity for the

LTCH to review the LTC-DRG assignments made by the fiscal intermediary and to submit additional information within a specified timeframe (§ 412.513(c)).

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update. DRG weights are based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals.

### C. Organization of DRGs

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. The GROUPER does not recognize all ICD-9-CM procedure codes as procedures that affect DRG assignment, that is, procedures which are not surgical (for example, EKG), or minor surgical procedures (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, sex, discharge status, and presence or absence of complications or comorbidities (CC). We note that CCs are defined by certain secondary diagnoses not related to, or not inherently a part of, the disease process identified by the principal diagnosis. (For example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a CC when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to preexisting conscious level.) In addition, we note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their

definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

In its June 2000 Report to Congress, MedPAC recommended that the Secretary “\* \* \* improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis-related group refinements that more fully capture differences in severity of illness among patients.” (Recommendation 3A, p. 63) We have determined it is not practical at this time to develop a refinement to inpatient hospital DRGs based on severity due to time and resource requirements. However, this does not preclude us from development of a severity-adjusted DRG refinement in the future. That is, a refinement to the list of comorbidities and complications could be incorporated into the existing DRG structure. It is also possible a more comprehensive severity adjusted structure may be created if a new code set is adopted. That is, if ICD-9-CM is replaced by ICD-10-CM (for diagnostic coding) and ICD-10-CS (for procedure coding) or by other code sets, a severity concept may be built into the resulting DRG assignments. Of course any change to the code set would be adopted through the process established in the HIPAA Administrative Simplification provisions.

### D. Update of LTC-DRGs

For FY 2003, the LTC-DRG patient classification system was based on LTCH data from the FY 2001 MedPAR file, which contained hospital bills received through March 31, 2001, for hospital discharges occurring in FY 2001. The patient classification system consisted of 510 DRGs that formed the basis of the FY 2003 LTCH PPS GROUPER. The 510 LTC-DRGs included two “error DRGs”. As in the IPPS, we included two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are DRG 469 (Principal Diagnosis Invalid as a Discharge Diagnosis) and DRG 470 (Ungroupable). (See the August 1, 2001, Medicare Program final rule, Changes to the Hospital Inpatient Prospective Payment Systems and Rates and Costs of Graduate Medical Education; Fiscal Year 2002 Rates, 66 FR 40062.) The other 508 LTC-DRGs are the same DRGs used in the IPPS GROUPER for FY 2003 (Version 20.0).

In the health care industry, annual changes to the ICD-9-CM codes are effective for discharges occurring on or

after October 1 each year. Thus, the manual and electronic versions of the GROUPER software, which are based on the ICD-9-CM codes, are also revised annually and effective for discharges occurring on or after October 1 each year. As discussed earlier, the patient classification system for the LTCH PPS (LTC-DRGs) is based on the IPPS patient classification system (CMS-DRGs), which is updated annually and effective for discharges occurring on or after October 1 through September 30 each year. The updated DRGs and GROUPER software are based on the latest revision to the ICD-9-CM codes, which are published annually in the IPPS proposed rule and final rule. The new or revised ICD-9-CM codes are not used by the industry for either the IPPS or the LTCH PPS until the beginning of the next Federal fiscal year (effective for discharges occurring on or after October 1 through September 30). (The use of the ICD-9-CM codes in this manner is consistent with current usage and the HIPAA regulations.) October 1 is also when the changes to the CMS-DRGs and the next version of the GROUPER software becomes effective.

As discussed in section III. of this proposed rule, we are proposing to make the annual update to the LTCH PPS effective from July 1 through June 30 each year. As a result of this change the LTCH PPS would use two GROUPERS during the course of a 12-month period: one GROUPER for 3 months (from July 1 through September 30); and an updated GROUPER for 9 months (from October 1 through June 30). The need to use two GROUPERS is based upon the October 1 effective date of the updated ICD-9-CM coding system. As previously discussed, new ICD-9-CM codes may result in changes to the structure of the DRGs. In order for the industry to be on the same schedule (for both the IPPS and the LTCH PPS) for the use of the most current ICD-9-CM codes, it is necessary for us to propose to apply two GROUPER programs to the LTCH PPS. Although we do not believe that this will have any adverse effect on LTCHs, we are interested in receiving comments on this issue. LTCHs would continue to code diagnosis and procedures using the most current version of the ICD-9-CM coding system.

Currently, for Federal FY 2003, we are using Version 20.0 of the GROUPER software for both the IPPS and the LTCH PPS. For discharges beginning on October 1, 2003 (Federal FY 2004), we are proposing our intent to use Version 21.0 of the GROUPER software for both the IPPS and the LTCH PPS. Thus, proposed changes to the CMS-DRGs

(the DRGs on which the LTC-DRGs are based), and their relative weights, as well as the LTC-DRGs and their relative weights that would be effective for October 1, 2003 through September 30, 2004, would be presented in the IPPS FY 2004 proposed rule that will be published in the spring of 2003 in the **Federal Register**. Accordingly, we would then notify LTCHs of any revised LTC-DRG relative weights based on the final DRGs and Version 21.0 GROUPER for the IPPS that would be effective October 1, 2003.

#### E. ICD-9-CM Coding System

##### 1. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular LTC-DRG will help determine the amount that will be paid for the case, it is important that the coding is accurate. Classifications and terminology used in the LTCH PPS are consistent with the ICD-9-CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics ("Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980") and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We wish to point out that the ICD-9-CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPAA Administrative Simplification Act of 1996 (45 CFR Part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. In addition, the following definitions (as described in the 1984 Revision of the UHDDS, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD-9-CM coding system, and have been used as a standard for the development of the CMS-DRGs:

- Diagnoses include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of

stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.

- All procedures performed will be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

We provide LTCHs with a 60-day window after the date of the notice of the initial LTC-DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

##### 2. Maintenance of the ICD-9-CM Coding System

The ICD-9-CM Coordination and Maintenance (C&M) Committee is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, that is charged with maintaining and updating the ICD-9-CM system. The C&M Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD-9-CM to reflect newly developed procedures and technologies and newly identified diseases. The C&M Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD-9-CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD-9-CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The C&M Committee encourages participation by health-related organizations in the above process and holds public meetings for discussion of educational issues and proposed coding changes twice a year at the CMS Central Office located in Baltimore, Maryland. The agenda and dates of the meetings can be accessed on the CMS Web site at: <http://www.cms.gov/paymentsystems/icd9>.

All changes to the ICD-9-CM coding system affecting DRG assignment are addressed annually in the IPPS proposed and final rules. Because the DRG-based patient classification system for the LTCH PPS is based on the IPPS DRGs, these changes will also affect the LTCH PPS LTC-DRG patient classification system.

As discussed above, the ICD-9-CM coding changes that have been adopted by the C&M Committee become effective at the beginning of each Federal fiscal year, October 1. Regardless of the proposed change to the annual update of the LTCH PPS year to July 1, we are proposing that coders would use the most current updated ICD-9-CM coding book from October 1 through September 30 of each year. This would mean that coders and LTCHs that use the updated ICD-9-CM coding system would be on the same schedule (effective October 1) as the rest of the health care industry. The newest version of ICD-9-CM is not available for use until October 1, which would be 4 months after the date that we are proposing to publish the LTCH annual payment rate update final rule. The new codes on which the LTC-DRGs are based would go into effect and be available for use for discharges occurring on or after October 1 through September 30 of each year. This annual schedule of the revision to the ICD-9-CM coding system and the change of the ICD-9-CM coding books or electronic coding programs has been in effect since the adoption of Revision 9 of the ICD in 1979.

Of particular note to LTCHs will be the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D) located in the annual proposed and final rules for the IPPS. Claims with invalid codes will not be processed by the Medicare claims processing system.

##### 3. Coding Rules and Use of ICD-9-CM Codes in LTCHs

We emphasize the need for proper coding by LTCHs. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC-DRG and produce inappropriate weighting factors at recalibration. We continue to urge LTCHs to focus on improved coding practices. Because of concerns raised by LTCHs concerning correct coding, we have asked the American Hospital Association (AHA) to provide additional clarification or instruction on proper coding in the LTCH setting. The AHA will provide this instruction via their established process of addressing questions through their publication "Coding Clinic for ICD-9-CM". Written questions or requests for clarification may be addressed to the Central Office on ICD-9-CM, American Hospital Association, One North Franklin, Chicago, IL 60606. A form for the question(s) is available to be downloaded and mailed on AHA's Web site at: <http://www.ahacentraloffice.org>. In addition, current coding guidelines are available at the National Center for Health Statistics (NCHS) Web site:

<http://www.cdc.gov/nchs.icd9.htm>.

In conjunction with the cooperating parties of the C&M Committee (AHA, AHIMA, and NCHS), we have reviewed actual medical records and are concerned about the quality of the documentation under the LTCH PPS, as was the case at the beginning of the IPPS. We fully believe that, with experience, the quality of the documentation and coding will improve, just as it did for the IPPS. As noted above, the cooperating parties have plans to assist their members with improvement in documentation and coding issues for the LTCHs through specific questions and coding guidelines. The importance of good documentation is emphasized in the revised ICD-9-CM Official Guidelines for Coding and Reporting (October 1, 2002): "A joint effort between the attending physician and coder is essential to achieve complete and accurate documentation, code assignment, and reporting of diagnoses and procedures. The importance of consistent, complete documentation in the medical record cannot be overemphasized. Without such documentation, the application of all coding guidelines is a difficult, if not impossible, task. (Coding Clinic for ICD-9-CM, Fourth Quarter 2002, page 115)

To improve medical record documentation, LTCHs should be aware that if the patient is being admitted for continuation of treatment of an acute or chronic condition, guidelines at Section I.B.10 of the Coding Clinic for ICD-9-CM, Fourth Quarter 2002 (page 129) are applicable concerning selection of principal diagnosis. To clarify coding advice issued in the August 30, 2002 final rule (67 FR 55979-55981), we would like to point out that, at Guideline I.B.12, Late Effects, a late effect is considered to be the residual effect (condition produced) after the acute phase of an illness or injury has terminated (Coding Clinic for ICD-9-CM, Fourth Quarter 2002, page 129). We have received question regarding whether a LTCH should report the ICD-9-CM code(s) for an unresolved acute condition instead of the code(s) for late effect or rehabilitation. Depending on the documentation in the medical record, either code could be appropriate in a LTCH. Since implementation of the LTCH PPS, our Medicare fiscal intermediaries have been conducting training and providing assistance to LTCHs in correct coding. We have also issued manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries. We will continue to conduct such training and

provide guidance on an as-needed basis. We also refer readers to the detailed discussion on correct coding practices in the August 30, 2002 final rule (67 FR 55979-55981).

#### *F. Proposed Changes to the Method for Updating the LTC-DRG Relative Weights*

As previously discussed, under the LTCH PPS, each LTCH will receive a payment that represents an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for those Medicare patients whose care is more costly. Therefore, in accordance with § 412.523(c), we adjust the standard Federal PPS rate by the LTC-DRG relative weights in determining payment to LTCHs for each case.

Under this payment system, relative weights for each LTC-DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (§ 412.515). To ensure that Medicare patients who are classified to each LTC-DRG have access to an appropriate level of services and to encourage efficiency, we calculate a relative weight for each LTC-DRG that represents the resources needed by an average inpatient LTCH case in that LTC-DRG. For example, cases in a LTC-DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC-DRG with a weight of 1.

As we discussed in the August 30, 2002 final rule (67 FR 55984-55995), the LTC-DRG relative weights effective under the LTCH PPS for Federal FY 2003 were calculated using the March 2002 update of FY 2001 MedPAR data and Version 20.0 of the CMS GROUPER software. We use total days and total charges in the calculation of the LTC-DRG relative weights.

By nature, LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such distribution of cases with relatively high (or low) charges in specific LTC-DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value method to calculate relative weights. We believe this method removes this hospital-specific source of bias in

measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC-DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. (See the August 30, 2002 final rule (67 FR 55985) for further information of the hospital-specific relative value methodology.)

In order to account for LTC-DRGs with low volume (that is, with fewer than 25 LTCH cases), we grouped those low volume LTC-DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. For FY 2003 based on the FY 2001 MedPAR data, we identified 161 LTC-DRGs that contained between 1 and 24 cases. This list of low volume LTC-DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 32 LTC-DRGs ( $161/5 = 32$  with 1 LTC-DRG as a remainder). Each of the low volume LTC-DRGs grouped to a specific quintile received the same relative weight and average length of stay using the formula applied to the regular LTC-DRGs (25 or more cases), as described below. (See the August 30, 2002 final rule (67 FR 55985-55988) for further explanation of the development and composition of each of the five low volume quintiles for FY 2003.)

After grouping the cases in the appropriate LTC-DRG, we calculate the relative weights by first removing statistical outliers and cases with a length of stay of 7 days or less. Next, we adjust the number of cases in each LTC-DRG for the effect of short-stay outlier cases under § 412.529. The short-stay adjusted discharges and corresponding charges were used to calculate "relative adjusted weights" in each LTC-DRG using the hospital-specific relative value method described above. (See the August 30, 2002 final rule (67 FR 55989-55995) for further details on the steps for calculating the LTC-DRG relative weights.)

We also adjust the LTC-DRG relative weights to account for nonmonotonically increasing relative weights. That is, we make an adjustment if cases classified to the LTC-DRG "with comorbidities (CCs)" of a "with CC"/"without CC" pair had a lower average charge than the corresponding LTC-DRG "without CCs" by assigning the same weight to both LTC-DRGs in the "with CC"/"without CC" pair. (See August 30, 2002, 67 FR 55990-55991). In addition, of the 510 LTC-DRGs in the LTCH PPS for FY 2003, based on the FY 2001 MedPAR data, we identified 159 LTC-DRGs for which there were no LTCH cases in the database. That is, no

patients who would have been classified to those DRGs were treated in LTCHs during FY 2001 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of LTC-DRGs, we were unable to determine weights for these 159 LTC-DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC-DRGs may be treated at LTCHs beginning in FY 2003, we assigned relative weights to each of the 159 "no volume" LTC-DRGs based on clinical similarity and relative costliness to one of the remaining 351 ( $510 - 159 = 351$ ) LTC-DRGs for which we were able to determine relative weights, based on the FY 2001 claims data. (A list of the no volume LTC-DRGs and further explanation of their relative weight assignment can be found in the August 30, 2002 final rule (67 FR 55991-55994).)

Furthermore, we establish LTC-DRG relative weights of 0.0000 for heart, kidney, liver, lung, pancreas, and simultaneous pancreas/kidney transplants (LTC-DRGs 103, 302, 480, 495, 512 and 513, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare and presently no LTCH has been so certified. If in the future, however, a LTCH applies for certification as a Medicare-approved transplant center, we believe that the application and approval procedure would allow sufficient time for us to propose appropriate weights for the LTC-DRGs effected. At the present time, though, we only include these six transplant LTC-DRGs in the GROUPER program for administrative purposes because since the LTCH PPS uses the same GROUPER program for LTCHs as is used under the IPPS, removing these DRGs would be administratively burdensome.

As we stated previously, we are proposing that we would continue to use the same LTC-DRGs and relative weights until October 1, 2003. Accordingly, Table 3 in the Addendum to this proposed rule lists the LTC-DRGs and their respective relative weights and arithmetic mean length of stay that we are proposing would continue to be used for the period of July 1, 2003 through September 30, 2003. (This table is the same as Table 3 of the Addendum to the August 30, 2002 final rule (67 FR 56076-56084), except that it includes the proposed five-sixth of the average length of stay for short-stay outliers under § 412.529. As we noted in section IV.D. of this

preamble, we are proposing that the final DRGs and GROUPER for FY 2004 that would be used for the IPPS and the LTCH PPS, effective October 1, 2003, would be presented in the IPPS FY 2004 final rule published no later than August 1, 2003 in the **Federal Register**.

Accordingly, we would notify LTCHs of the revised LTC-DRG relative weights for use in determining payments for discharges occurring between October 1, 2003 and September 30, 2004, based on the final DRGs and Version 21.0 GROUPER published in the IPPS rule on or before August 1, 2003.

#### **V. Proposed Policy Change Related to Payments to LTCHs That Are Satellite Facilities**

In the March 22, 2002 proposed rule related to the establishment of the LTCH PPS (67 FR 13416), we stated that we were considering proposing the elimination of the bed limit in § 412.22(h)(2)(i) for pre-1997 excluded hospitals once the applicable prospective payment system was fully phased in and all payments were based on 100 percent of the Federal prospective payment rates. This statement generated a number of comments and in the August 30, 2002 final rule (67 FR 56012), we stated our agreement with commenters who urged us to adopt a policy eliminating the bed-number restrictions for pre-1997 LTCHs with satellite facilities, as soon as a LTCH elected to be paid based on 100 percent of the Federal prospective rate. However, we also noted that we would address a change in the policy concerning bed limits in the next update of the LTCH PPS. Therefore, we are now proposing to eliminate the application of the bed-number restrictions set forth in § 412.22(h)(i) for LTCHs established prior to 1997 with satellite facilities, effective at the start of the first cost reporting year that the LTCH is paid under the 100 percent fully Federal prospective payment system. This would be either when the LTCH elects to be paid based on 100 percent of the Federal prospective rate or when the LTCH is transitioned to 100 percent of the Federal prospective rate, whichever comes first.

Presently, section 1886(b)(3) of the Act, as amended by section 4414 of Pub. L. 105-33, requires existing LTCHs to be subject to caps on their target amounts for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. For purposes of calculating these caps, the statute required the Secretary to "estimate the 75th percentile of the target amounts for such hospitals within [each] class for cost reporting periods ending during

fiscal year 1996." Section 1886(b)(3)(H) of the Act, as amended by section 121 of Pub. L. 106-113, directed the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric and rehabilitation hospitals and units and LTCHs effective for cost reporting periods beginning on or after October 1, 1999 through September 30, 2002. In addition, payment limits were established for new excluded hospitals or units (excluding children's hospitals) effective October 1, 1997. For new excluded hospitals (that is, post-1997 LTCHs), section 1886(b)(7) of the Act, as added by section 4416 of Pub. L. 105-33, specified that the payment amount for the facility's first two 12-month cost reporting periods, for which the hospital has a settled cost report, must not exceed 110 percent of the national median of target amounts of similarly classified hospitals for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the first cost reporting period in which the hospital receives payment, as adjusted by section 1886(b)(7)(C) of the Act. The result of section 4414 and 4416 of Pub. L. 105-33 was a distinction between the LTCHs established prior to and those established after 1997 with lower payment caps for the post-1997 LTCHs.

In the July 30, 1999 final rule for the IPPS (64 FR 41532-41533), we promulgated regulations at § 412.22(h)(2)(i) to discourage pre-1997 excluded hospitals, which had the higher caps on target amounts as discussed above (under § 413.40(c)(4)(iii), which implemented section 4414 of Pub. L. 105-33), from creating satellite arrangements rather than establishing new hospitals, in order to avoid the payment impact of the lower caps that apply to new hospitals (under § 413.40(f)(2)(ii) which implemented section 4416 of Pub. L. 105-33). Under the July 30, 1999 acute care hospital inpatient final rule (64 FR 41490), in order to address this possibility of gaming if a pre-1997 excluded hospital, such as a LTCH, established a satellite facility and, in doing so, its total beds, in both the parent hospital (or unit) and the satellite facility, exceeded the number of State-licensed and Medicare-certified beds in the parent hospital on the last day of its last cost reporting period beginning before October 1, 1997, the excluded hospital would be paid under the inpatient DRG system instead of receiving payment as an excluded hospital under the TEFRA payment system. Although the excluded hospital

could “transfer” bed capacity from the parent facility to the satellite, it could not increase its total bed capacity beyond the level it had in the most recent cost reporting period beginning before October 1, 1997, and still be paid as a hospital excluded from the IPPS. However, no such limitation was imposed on a LTCH (or other excluded facility) established after October 1, 1997 because it would have already been subject to the lower payment limits under § 413.40(f)(2)(ii) of 110 percent of the national median of target amounts for similarly classified hospitals. Therefore, it would not benefit from the higher 75 percent cap on target amounts under § 413.40(c)(4) by establishing a satellite facility, as would a pre-1997 LTCH.

The rationale for the bed-limit provision based on the distinction between these groups of hospitals was the potential for gaming, by creating a satellite facility with a higher TEFRA target cap where, in reality, the satellite facility should have been a separately certified excluded facility, which would have been subject to the lower cap on payments to new (post-1997) facilities paid under the TEFRA system. Once the LTCH is paid based on 100 percent of the Federal prospective rate, however, the LTCH will no longer be subject to TEFRA caps and LTCH prospective payments will be the same regardless of when the LTCH was established. Therefore, we are proposing to eliminate the bed-limit provision once the LTCH is paid based on 100 percent of the LTCH Federal PPS rate. Finally, under this proposed policy, the bed limitation on “existing” LTCHs would, however, continue to apply to those LTCHs while they are paid based on the transition blend, and, therefore, continue to receive a percentage of their payments based on the TEFRA payment rules, until they transition to a rate based on 100 percent of the Federal prospective payment rate.

## **VI. Proposed Changes to the LTCH PPS Rates for the Proposed 2004 LTCH PPS Rate Year**

### *A. Overview of the Development of the Proposed Payment Rates*

The PPS for LTCHs was effective for cost reporting periods beginning on or after October 1, 2002. Effective with that cost reporting period, LTCHs are paid, during a 5-year transition period, on the basis of an increasing proportion of the LTCH PPS Federal rate and a decreasing proportion of a hospital’s payment under TEFRA, unless the hospital makes a one-time election to receive payment based on 100 percent of the

Federal rate (see § 412.533). New LTCHs (as defined at § 412.23(e)(4)) are paid based on 100 percent of the Federal rate, with no phase-in transition payments.

The basic methodology for determining LTCH PPS Federal prospective payment rates is set forth in our regulations at §§ 412.521 through 412.529. Below we discuss the factors that we are proposing to use to update the LTCH PPS standard Federal rate for the proposed 2004 LTCH PPS rate year, which would be effective for LTCHs paid under the PPS for discharges occurring on or after July 1, 2003 through June 30, 2004.

In the August 30, 2002 final rule (67 FR 56029–56031), for cost reporting periods beginning on or after October 1, 2002 (FY 2003), we computed the LTCH PPS standard Federal payment rate by updating the best available (FY 1998 or FY 1999) Medicare inpatient operating and capital costs per case data, using the excluded hospital market basket.

Section 123(a)(1) of Pub. L. 106–113 requires that the PPS developed for LTCHs be budget neutral. Therefore, in calculating the standard Federal rate for FY 2003 under § 412.523(d)(2), we set total estimated PPS payments equal to estimated payments that would have been made under the TEFRA methodology if the PPS for LTCHs were not implemented. Section 307(a) of Pub. L. 106–554 specified that the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of Pub. L. 106–554 shall not be taken into account in the development and implementation of the LTCH PPS. In addition, the statute provides for enhanced bonus payments for LTCHs for FY 2001 and FY 2002 provided for by section 122 of Pub. L. 106–113. Furthermore, as specified at § 412.523(d)(1), the standard Federal rate is reduced by an adjustment factor to account for the estimated proportion of outlier payments under the LTCH PPS to total LTCH PPS payments (8 percent). For further details on the development of the FY 2003 standard Federal rate, see the August 30, 2002 final rule (67 FR 56027–56037). Under the existing regulations at § 412.523(c)(3)(ii) for fiscal years after FY 2003, we update the standard Federal rate annually to adjust for the most recent estimate of the projected increases in prices for LTCH inpatient hospital services.

### *B. Proposed Update to the Standard Federal Rate for the Proposed 2004 LTCH PPS Rate Year*

In the August 30, 2002 final rule (67 FR 56033), we established a LTCH PPS

standard Federal rate of \$34,956.15 for FY 2003. Based on the most recent estimate of the excluded hospital with capital market basket, adjusted to account for the proposed change in the rate year update cycle for the LTCH PPS rates discussed in section III. of this proposed rule, the proposed LTCH PPS standard Federal rate, effective from July 1, 2003 through June 30, 2004, would be \$35,726.64 (as discussed below).

In the discussion that follows, we explain how we developed the proposed update to the standard Federal rate. The proposed Federal rate for the proposed 2004 LTCH PPS rate year is calculated based on the proposed update factor of 1.0250. Thus, the proposed standard Federal rate for the proposed 2004 LTCH PPS rate year would increase 2.2 percent compared to the FY 2003 standard Federal rate.

#### **1. Proposed Standard Federal Rate Update**

In the August 30, 2002 final rule, we established in § 412.523 that, for years after FY 2003, the annual update to the LTCH PPS standard Federal rate will be equal to the percentage change in the excluded hospital with capital market basket (described in further detail below). As we discussed in the August 30, 2002 final rule (67 FR 56087), in the future we may propose to develop a framework to update payments to LTCHs that would account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. Because the LTCH PPS has only been implemented for cost reporting periods beginning on or after October 1, 2002, we have not yet collected sufficient data to allow for the analysis and development of an update framework under the LTCH PPS. Therefore, at this time, we are not proposing an update framework for the LTCH PPS. However, a conceptual basis for the proposal of developing an update framework in the future can be found in Appendix B of the August 30, 2002 final rule (67 FR 56086–56090).

#### **a. Description of the Proposed Market Basket for LTCHs for the Proposed 2004 LTCH PPS Rate Year**

A market basket has historically been used in the Medicare program to account for price increases of the services furnished by providers. The market basket used for the LTCH PPS includes both operating and capital-related costs of LTCHs because the LTCH PPS uses a single payment rate for both operating and capital-related costs. The development of the LTCH

PPS standard Federal rate is discussed in further detail in the August 30, 2002 final rule (67 FR 56027–56037).

Under the reasonable cost-based TEFRA reimbursement system, the excluded hospital market basket was used to update the hospital-specific limits on payment for operating costs of LTCHs. The excluded hospital market basket is based on operating costs from FY 1992 cost report data and includes Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCHs' costs are included in the excluded hospital market basket, this market basket index, in part, also reflects the costs of LTCHs. However, in order to capture the total costs (operating and capital-related) of LTCHs, we added a capital component to the excluded hospital market basket for use under the LTCH PPS. We refer to this index as the excluded hospital with capital market basket.

Beginning with the implementation of the LTCH PPS in FY 2003, the excluded hospital with capital market basket based on FY 1992 Medicare cost report data has been used for updating payments to LTCHs. The FY 1992-based market basket reflected the distribution of costs in FY 1992 for Medicare-participating freestanding rehabilitation, long-term care, psychiatric, cancer, and children's hospitals. This information was derived from the FY 1992 Medicare cost reports. A full discussion of the methodology and data sources used to construct the FY 1992-based excluded hospital with capital market basket is included in Appendix A of the August 30, 2001 final rule (67 FR 56085–56086). In this proposed rule, we are proposing to revise and rebase the excluded hospital with capital market basket, based on more recent data, to an FY 1997 base year for application beginning with the proposed 2004 LTCH PPS rate year.

We believe it is appropriate to propose to rebase the LTCH PPS market

basket based on the most recent complete data available (FY 1997) since these data would more accurately reflect LTCH current costs. This proposed rebasing of the LTCH PPS market basket from an FY 1992 base year to a FY 1997 base year is consistent with the rebasing of both the IPPS and the excluded hospital market basket used under the TEFRA payment system for FY 2003, as discussed in the August 1, 2002 IPPS final rule (67 FR 50032–50047).

The operating portion of the proposed FY 1997-based excluded hospital with capital market basket that we are proposing to use under the LTCH PPS is derived from the FY 1997-based excluded hospital market basket used under the TEFRA payment system. The methodology we proposed to use to develop the proposed operating portion of the market basket under the LTCH PPS is the same methodology used to describe the rebasing of the excluded hospital market basket used under the TEFRA payment system, which is described in greater detail in the August 1, 2002 IPPS final rule (67 FR 50042–50044). In brief, the operating cost category weights in the FY 1997-based excluded market basket added to 100.0. These weights were determined from FY 1997 Medicare cost report data, the 1997 Business Expenditure Survey, and the 1997 Annual Input-Output data from the Bureau of the Census. In this proposed rule, in applying the proposed FY 1997-based market basket we are proposing to make the same two methodological revisions that we established when we rebased the hospital inpatient market basket and the excluded hospital market basket in the August 1, 2002 IPPS final rule: (1) Changing the wage and benefit price proxies to use the Employment Cost Index (ECI) wage and benefit data for hospital workers; and (2) adding a cost category for blood and blood products.

When we add the weight for capital costs to the excluded hospital market

basket, the sum of the operating and capital weights must still equal 100.0. Based on FY 1997 Medicare cost reports for excluded hospitals, the capital cost weight would be 8.968 percent. Because capital costs would account for 8.968 percent of total costs for excluded hospitals in FY 1997, operating costs must, therefore, account for 91.032 percent (100 percent – 8.968 percent). Each operating cost category weight in the FY 1997-based excluded hospital market basket from the August 1, 2002 IPPS final rule (67 FR 50442–50444) was multiplied by 0.91032 to determine its weight in the FY 1997-based excluded hospital with capital market basket.

The aggregate capital component of the proposed FY 1997-based excluded hospital market basket (8.968 percent) was determined from the same set of Medicare cost reports used to derive the operating component. The detailed capital cost categories of depreciation, interest, and other capital expenses were also determined using the Medicare cost reports. We needed to determine two sets of weights for the capital portion of the proposed revised and rebased market basket. The first set of weights identifies the proportion of capital expenditures attributable to each capital cost category; the second set represents relative vintage weights for depreciation and interest. The vintage weights identify the proportion of capital expenditures that is attributable to each year over the useful life of capital assets within a cost category (See 67 FR 50046–50047, August 1, 2002, for a discussion of how vintage weights are determined).

The cost categories, price proxies, and base-year FY 1992 and proposed FY 1997 weights for the proposed excluded hospital with capital market basket are presented below in Table I. The vintage weights for the proposed FY 1997-based excluded hospital with capital market basket are presented in Table II.

TABLE I.—PROPOSED EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992-BASED AND PROPOSED FY 1997-BASED) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%), base-year FY 1992 <sup>1 2</sup>	Proposed weights (%), base-year FY 1997 <sup>1 2</sup>
Total .....		100.000	100.000
Compensation .....		57.935	57.579
Wages and Salaries .....	ECI—Wages and Salaries, Civilian Hospital Workers .....	47.417	47.335
Employee Benefits .....	ECI—Benefits, Civilian Hospital Workers to Capture Total Costs.	10.519	10.244
Professional fees: Non-Medical .....	ECI—Compensation: Professional & Technical .....	1.908	4.423
Utilities .....		1.524	1.180
Electricity .....	PPI—Commercial Electric Power .....	0.916	0.726
Fuel Oil, Coal, etc .....	PPI—Commercial Natural Gas .....	0.365	0.248
Water and Sewerage .....	CPI-U—Water & Sewerage Maintenance .....	0.243	0.206

TABLE I.—PROPOSED EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992-BASED AND PROPOSED FY 1997-BASED) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/wage variable	Weights (%), base-year FY 1992 <sup>1 2</sup>	Proposed weights (%) base-year FY 1997 <sup>1 2</sup>
Professional Liability Insurance .....	CMS—Professional Liability Insurance Premiums Index .....	0.983	0.733
All Other Products and Services .....		28.571	27.117
All Other Products .....		22.027	17.914
Pharmaceuticals .....	PPI—Ethical (Prescription) Drugs .....	2.791	6.318
Food: Direct Purchase .....	PPI—Processed Foods and Feeds .....	2.155	1.122
Food: Contract Service .....	CPI-U—Food Away from Home .....	0.998	1.043
Chemicals .....	PPI—Industrial Chemicals .....	3.413	2.133
Blood and Blood Products .....	PPI—Blood and Blood Derivatives, Human Use .....		0.748
Medical Instruments .....	PPI—Medical Instruments & Equipment .....	2.868	1.795
Photographic Supplies .....	PPI—Photographic Supplies .....	0.364	0.167
Rubber and Plastics .....	PPI—Rubber & Plastic Products .....	4.423	1.366
Paper Products .....	PPI—Converted Paper and Paperboard Products .....	1.984	1.110
Apparel .....	PPI—Apparel .....	0.809	0.478
Machinery and Equipment .....	PPI—Machinery & Equipment .....	0.193	0.852
Miscellaneous Products .....	PPI—Finished Goods Less Food and Energy .....	2.029	0.783
All Other Services .....		6.544	9.203
Telephone .....	CPI-U—Telephone Services .....	0.574	0.348
Postage .....	CPI-U—Postage .....	0.268	0.702
All Other: Labor Intensive .....	ECI—Compensation for Private Service Occupations .....	4.945	4.453
All Other: Non-Labor Intensive .....	CPI-U—All Items .....	0.757	3.700
Capital-Related Costs .....		9.080	8.968
Depreciation .....		5.611	5.586
Building & Fixed Equipment .....	Boeckh-Institutional Construct. Index—Vintage Weighted (23 years).	3.570	3.503
Movable Equipment .....	PPI—Machinery & Equipment—Vintage Weighted (11 Years).	2.041	2.083
Interest Costs .....		3.212	2.682
Government/ Nonprofit .....	Yield on Domestic Municipal Bonds (Bond Buyer 20 Bonds)—Vintage Weighted (23 years).	2.730	2.280
For-profit .....	Yield on Moody's Aaa Bonds—Vintage Weighted (23 Years).	0.482	0.402
Other Capital-Related Costs .....	CPI-U—Residential Rent .....	0.257	0.699

<sup>1</sup> The operating cost category weights in the excluded hospital market basket described in the August 1, 2002 final rule (67 FR 50042–50044) add to 100.0. When we add an additional set of cost category weights (total capital weight = 8.968 percent) to this original group, the sum of the weights in the new index must still add to 100.0. Capital costs account for 8.968 percent of the market basket; operating costs account for 91.032 percent. Each weight in the FY 1997-based excluded hospital market basket from the August 1, 2002 final rule (67 FR 50042–50044) was multiplied by 0.91032 to determine its weight in the proposed FY 1997-based excluded hospital with capital market basket.

<sup>2</sup>Weights may not sum to 100.0 due to rounding.

TABLE II.—PROPOSED EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1997) VINTAGE WEIGHTS

Year (from farthest to most recent) *	Building and fixed equipment (23-year weights) *	Movable equipment (11-year weights) *	Interest: capital-related (23-year weights) *
1 .....	0.018	0.063	0.007
2 .....	0.021	0.068	0.009
3 .....	0.023	0.074	0.011
4 .....	0.025	0.080	0.012
5 .....	0.026	0.085	0.014
6 .....	0.028	0.091	0.016
7 .....	0.030	0.096	0.019
8 .....	0.032	0.101	0.022
9 .....	0.035	0.108	0.026
10 .....	0.039	0.114	0.030
11 .....	0.042	0.119	0.035
12 .....	0.044	.....	0.039
13 .....	0.047	.....	0.045
14 .....	0.049	.....	0.049
15 .....	0.051	.....	0.053
16 .....	0.053	.....	0.059
17 .....	0.057	.....	0.065
18 .....	0.060	.....	0.072
19 .....	0.062	.....	0.077
20 .....	0.063	.....	0.081
21 .....	0.065	.....	0.085

TABLE II.—PROPOSED EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1997) VINTAGE WEIGHTS—  
Continued

Year (from farthest to most recent) *	Building and fixed equipment (23-year weights) *	Movable equipment (11-year weights) *	Interest: capital-related (23-year weights) *
22 .....	0.064	.....	0.087
23 .....	0.065	.....	0.090
Total .....	1.0000	1.0000	1.0000

\*Weights may not sum to 1.000 due to rounding.

Table III. compares the FY 1992-based excluded hospital with capital market basket to the proposed FY 1997-based excluded hospital with capital market basket. As shown in the table, the proposed rebased and revised market basket grows slightly faster over the FY 1999–2001 period than the FY 1992-based market basket. The major reason for this was the switching of the wage and benefit proxy to the ECI for hospital workers from the previous occupational blend. This revision had a similar impact on the IPPS and excluded market baskets, as described in the August 1, 2002 final rule (67 FR 50043–50047).

TABLE III.—PERCENT CHANGES IN THE FY 1992–BASED AND PROPOSED FY 1997–BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKETS, FYS 1999–2004

Fiscal year (FY)	Percentage change	
	FY 1992-based excluded hospital market basket	Proposed rebased FY 1997-based excluded market basket
1999 .....	2.3	2.7
2000 .....	3.4	3.1
2001 .....	3.9	4.0
Average historical .....	3.2	3.3
2002 .....	2.8	3.7
2003 .....	2.8	3.1
2004 .....	3.0	3.3
Average forecast	2.9	3.3

In the August 30, 2002 LTCH PPS final rule (67 FR 56016 and 56085–56086), we discussed why we believe the excluded hospital with capital market basket provides a reasonable measure of the price changes facing LTCHs. However, we have been researching the feasibility of developing a market basket specific to LTCH services. This research has included analyzing data sources for cost category weights, specifically the Medicare cost reports, and investigating other data

sources on cost, expenditure, and price information specific to LTCHs. Based on this research (as discussed below), at this time we are not proposing to develop a market basket specific to LTCH services.

Our analysis of the Medicare cost reports indicates that the distribution of costs among major cost report categories (wages, pharmaceuticals, capital) for LTCHs is not substantially different from the proposed 1997-based excluded hospital with capital market basket presented in this proposed rule. Data on other major cost categories (benefits, blood, contract labor) that we would like to analyze were excluded by many LTCHs in their Medicare cost reports. An analysis based on only the data available to us for these cost categories presented a potential problem since no other major cost category weight would be based on LTCH data.

We conducted a sensitivity analysis of annual percent changes in the market basket when the weights for wages, pharmaceuticals, and capital in LTCHs were substituted into the excluded hospital with capital market basket. Other cost categories were recalibrated using ratios available from the IPPS market basket. On average between FY 1995 and FY 2002, the proposed excluded hospital with capital market basket shows increases at nearly the same average annual rate (2.9 percent) as the market basket with LTCH weights for wages, pharmaceuticals, and capital (2.8 percent). This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment is warranted under the IPPS update framework.

We believe that an excluded hospital with capital market basket adequately reflects the price changes facing LTCHs. We will continue to solicit comments about issues particular to LTCHs that should be considered in relation to the proposed FY 1997-based excluded hospital with capital market basket and to encourage suggestions for additional data sources that may be available.

b. Proposed LTCH Market Basket Increase for the Proposed 2004 LTCH PPS Rate Year

As stated earlier, for LTCHs paid under the LTCH PPS, we are proposing that the 2004 rate year update would apply to discharges occurring from July 1, 2003 through June 30, 2004. Because we are proposing to change the timeframe of the standard Federal rate annual update, we needed to calculate an update factor that would reflect this proposed change in the update cycle. Presently, the current rate cycle is October 1, 2002 through September 30, 2003. This means that the standard Federal rate (\$34,956.15; see the August 30, 2002 final rule, 67 FR 56033) was determined based on the market basket increase through September 30, 2003. Since we are proposing to change the rate update cycle and, therefore, update the standard Federal rate 3 months earlier (that is, July 1, 2003 instead of October 1, 2003), we need to propose an adjustment to the projected full (12-month) market basket increase to eliminate the projected increase for the 3-month overlapping period (July 1, 2003 through September 30, 2003).

Thus, we needed to account for the fact that the FY 2003 standard Federal rate of \$34,956.15 already includes an update for the 3-month period from July 1, 2003 through September 30, 2003. In the absence of this proposed change, the update for FY 2004 would have been calculated using the estimated increase between FY 2003 and FY 2004. For the proposed update for the proposed 2004 LTCH PPS rate year, we calculated the estimated increase between FY 2003 and the proposed 2004 LTCH PPS rate year. Based on the fourth quarter 2002 forecast of the proposed rebased FY 1997-based excluded hospital with capital market basket, this calculation results in an increase that is 0.8 percentage points less than it would have been if the proposed change in the LTCH PPS rate cycle would not be made. The projected market basket increase for this 3-month period (0.8

percent) was already included in the FY 2003 standard Federal rate and, therefore, needs to be deducted from the projected market basket increase for the 12-month period of July 1, 2003 through June 30, 2004 (3.3 percent) in order to account for the proposed change in the update cycle.

Consistent with our historical practice of estimating market basket increases, based on Global Insights' (formerly DRI-WEFA) fourth quarter 2002 forecast of the proposed rebased FY 1997-based excluded hospital with capital market basket, we are proposing an update of 2.5 percent, as shown in Table IV. below.

TABLE IV.—CALCULATION OF PROPOSED MARKET BASKET INCREASE FOR THE PROPOSED 2004 LTCH PROSPECTIVE PAYMENT SYSTEM RATE YEAR

	Percent
Proposed 2004 rate year full market basket with capital increase*	3.3
Adjustment for the proposed change in the update cycle** .....	-0.8
Proposed 2004 market basket increase .....	2.5

\*Projected market basket increase for the 12-month period of July 1, 2003 through June 30, 2004.

\*\*Projected market basket increase for the 3-month period of July 1, 2003 through September 30, 2003 already included in the FY 2003 standard Federal rate.

In addition, based on the best available data for 194 LTCHs, we estimate that LTCH prospective payment system payments would be \$1.960 billion for the proposed 2004 LTCH prospective payment system rate year. As indicated previously, we are proposing to update the FY 2003 standard Federal rate and wage index data 3 months early (July 1, 2003 instead of October 1, 2003). We are proposing that this change be budget neutral because, as we discussed in the August 30, 2002 final rule (67 FR 56027), total estimated LTCH PPS payments in FY 2003 will equal estimated payments that would have been made under the reasonable cost-based principles if the LTCH PPS were not implemented. Based on the most recent data, for the 3-month period from July 1, 2003 through September 30, 2003, the proposed increase in the standard Federal rate would result in an additional cost of \$5.66 million to the FY 2003 Federal budget. Accordingly, in order to maintain budget neutrality for the proposed change in the rate update cycle, under proposed § 412.523(c)(3)(ii), we are proposing to

adjust the standard Federal rate by a factor of 0.997 ((\$1.960 billion—\$5.66 million)/\$1.960 billion) or -0.003.

Also, we propose to revise this adjustment factor in the final rule based on the best available data.

Therefore, we are proposing to update the current standard Federal rate (\$34,956.15) established in the August 30, 2002 final rule (67 FR 56033) by 2.2 percent (2.5 percent minus 0.3 percent) for discharges paid under the LTCH PPS that occur on or after July 1, 2003 through June 30, 2004. This proposed update represents the most recent estimate of the increase in the excluded hospital with capital market basket for the proposed 2004 LTCH PPS rate year, adjusted by the above described factor to transition to the proposed change in the rate update cycle to July 1, and is based on the best available data for 194 LTCHs.

2. Proposed Standard Federal Rate for the Proposed 2004 LTCH PPS Rate Year

In the August 30, 2002 LTCH PPS final rule (67 FR 56033), we established a standard Federal rate of \$34,956.15. For the proposed 2004 LTCH PPS rate year, we are proposing a standard Federal rate of \$35,726.64. Since the proposed standard Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, and high-cost outlier payments, we are not proposing any additional adjustments in the proposed standard Federal rate for these factors.

C. Calculation of Proposed LTCH Prospective Payments for the Proposed 2004 LTCH PPS Rate Year

The basic methodology for determining prospective payment rates for LTCH inpatient operating and capital-related costs is set forth in § 412.521. In accordance with § 412.515, we assign appropriate weighting factors to each LTC-DRG to reflect the estimated relative cost of hospital resources used for discharges within that group as compared to discharges classified within other groups. The amount of the prospective payment is based on the standard Federal rate, established under § 412.523, and adjusted for the LTC-DRG relative weights, differences in area wage levels, cost-of-living in Alaska and Hawaii, high-cost outliers, and other special payment provisions (short-stay outliers under § 412.529 and interrupted stays under § 412.531). In accordance with § 412.533, during the 5-year transition period, payment is based on the applicable transition blend percentage of the adjusted Federal rate and the TEFRA rate unless the LTCH makes a

one-time election to receive payment based on 100 percent of the Federal rate. A LTCH defined as "new" under § 412.23(e)(4) is paid based on 100 percent of the Federal rate with no blended transition payments (§ 412.533(d)). As discussed in the August 30, 2002 final rule and in accordance with § 412.533(a), the applicable transition blends are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	TEFRA rate percentage
Oct. 1, 2002 .....	20	80
Oct. 1, 2003 .....	40	60
Oct. 1, 2004 .....	60	40
Oct. 1, 2005 .....	80	20
Oct. 1, 2006 .....	100	0

Accordingly, for cost reporting periods beginning during FY 2003 (that is, on or after October 1, 2002, and before September 30, 2003), blended payments under the transition methodology are based on 80 percent of the LTCH's TEFRA rate and 20 percent of the adjusted Federal rate. For cost reporting periods beginning during FY 2004 (that is, on or after October 1, 2003 and before September 30, 2004), blended payments under the transition methodology will be based on 60 percent of the LTCH's TEFRA rate and 40 percent of the adjusted Federal rate.

1. Proposed Adjustment for Area Wage Levels

Under the authority of section 307(b) of Pub. L. 106-554, we established an adjustment to account for differences in LTCH area wage levels under § 412.525(c) using the labor-related share estimated by the excluded hospital market basket with capital and wage indices that were computed using wage data from acute care inpatient hospitals without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act. Furthermore, as we discussed in the August 30, 2002 final rule (67 FR 56015-56019), we established a 5-year transition to the full wage adjustment. For cost reporting periods beginning on or after October 1, 2002 and before September 30, 2003 (FY 2003), the applicable LTCH wage index value is one-fifth of the full FY 2002 acute care hospital inpatient wage index data, without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act.

In that same final rule (67 FR 56018), we stated that we would continue to reevaluate LTCH data as they become available and would propose to adjust the phase-in if subsequent data support

a change. Because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of the appropriateness of adjusting the phase-in. However, we have reviewed the most recent data available and did not find any evidence to support a change in the 5-year phase-in of the wage index. Therefore, we are not proposing to adjust the phase-in at this time. In addition, as stated earlier, the 5-year phase-in of the wage index would not be affected by the proposed establishment of a LTCH PPS rate year of July 1 to June 30. Instead, the 5-year phase-in of the wage index established in the August 30, 2002 final rule (67 FR 56018) will continue to follow the Federal fiscal year. That is, for cost reporting periods beginning on or after October 1, 2003 and before September 30, 2004 (FY 2004), the applicable proposed LTCH wage index will be two-fifths of the proposed applicable LTCH PPS index values discussed below. However, we will reevaluate LTCH data as they become available and would propose to adjust the phase-in if subsequent data support a change.

Section 412.525(c) provides that the adjustment to account for differences in area wage levels is made by multiplying the labor-related portion of the Federal rate by the appropriate wage index value for the area in which the LTCH is physically located. In the August 30, 2002 final rule (67 FR 56018), based on the best available data at that time, we stated that the wage index adjustment is based on the FY 2002 inpatient acute care hospital wage index data without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act. For the proposed 2004 LTCH PPS rate year, we are proposing that the wage index adjustment provided for under § 412.525(c) be based on the most recent available inpatient acute care hospital wage data, that is, the FY 2003 inpatient acute care hospital wage index data without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act. As we noted above, the 5-year phase-in of the wage index adjustment would not be affected by the proposed change in the LTCH PPS rate update cycle and will continue to be based on the Federal fiscal year. However, we are proposing to update the data used to compute the annual wage index values on the proposed 2004 LTCH PPS rate year cycle (July through June). For example, for a LTCH with a cost reporting period from January 1, 2003 through December

31, 2003, the LTCH will be paid using the one-fifth wage index value for its entire cost reporting period. For the first 6 months of that period (January 1, 2003 through June 30, 2003), the one-fifth wage index value would be based on the FY 2000 inpatient acute care hospital wage index data without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act as established in the August 30, 2002 final rule (67 FR 56018). Under our proposal to update the data used to compute the LTCH PPS wage index values for July 1, 2003 through June 30, 2004, for the next 6 months (July 1, 2003 through December 31, 2003) the LTCH would still be paid using one-fifth of the wage index value, but the wage index value would now be computed using FY 2003 inpatient acute care hospital wage index data without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act (as shown in Tables 1 and 2 of the Addendum of this proposed rule). For the LTCH's cost reporting period from January 1, 2004 through December 31, 2004, the LTCH would be paid using the two-fifth wage index value. For the first 6 months of that period (January 1, 2004 through June 30, 2004), the two-fifth wage index value would be based on the FY 2000 inpatient acute care hospital wage index data without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act, as shown in Tables 1 and 2 of the Addendum of this proposed rule.

In the August 30, 2002 final rule (67 FR 56018), for FY 2003 we used the FY 2002 inpatient acute care hospital wage index data without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act. The inpatient acute care hospital wage index data, without taking into account geographic reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act, is also used under other postacute care PPSs, such as the IRF PPS and the SNF PPS. As we discussed in the August 30, 2002 final rule (67 FR 56019), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report and we would need to establish instructions for the collection of such LTCH data in order to establish a geographic reclassification adjustment under the LTCH PPS, the wage adjustment established under the LTCH PPS is based on a LTCH's actual location without regard to the urban or rural designation of any related or affiliated provider. In this proposed rule, for the proposed 2004 LTCH PPS

rate year, we are proposing to use the FY 2000 inpatient acute care hospital wage index data without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act, because it is the most recent available complete data. This is the same wage data that were used to compute the FY 2003 wage indices currently used under the IPPS. The proposed LTCH wage index values for July 1, 2003 through June 30, 2004 is shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum of this proposed rule. As noted above, for cost reporting periods beginning on or after October 1, 2002 and before September 30, 2003 (FY 2003), the applicable LTCH wage index is one-fifth of the full FY 2003 acute care hospital inpatient wage index data, without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act. For cost reporting periods beginning on or after October 1, 2003 and before September 30, 2003 (FY 2004), the applicable proposed LTCH wage index would be two-fifths of the full FY 2003 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act.

In conjunction with our proposal to rebase the excluded hospital with capital market basket from an FY 1992 to an FY 1997 base year (as discussed in section VI.B.1.a. of this preamble), we also are proposing to use a labor-related share that is determined from our proposed FY 1997-based excluded hospital with capital market basket. In the August 30, 2002 final rule (67 FR 56016), we established a labor-related share of 72.885 percent based on the relative importance of the labor-related share of operating and capital costs of the excluded hospital with capital market basket with an FY 1992 base-year. In this proposed rule, as discussed in further detail below, we are proposing a labor-related share of 72.612 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all other labor-intensive services) and capital costs in the proposed FY 1997 rebased excluded hospital with capital market basket.

To determine the proposed labor-related share, we use the cost categories contained in the proposed FY 1997-based excluded hospital with capital market basket that are influenced by local labor markets, which reflect the different rates of price change for these cost categories between the base year

(FY 1997) and this period. First, we estimate the portion related to operating costs, which we estimate to be 69.075 percent for the proposed LTCH PPS rate year of July 1, 2003 through June 30, 2004, calculated based on the Medicare cost reports for excluded hospitals as the sum of the relative importance for wages and salaries (48.967), employee benefits (11.032), professional fees (4.518), and labor-intensive services (4.558), as shown in Table V. The labor-related share of capital costs in the market basket needed to be considered

as well. After an analysis of FY 1997 Medicare cost report data, we found no evidence to revise our current estimate of the portion of capital costs that is influenced by local labor markets of 46 percent (*see* 67 FR 56016, August 30, 2002). Based on the proposed change in the LTCH PPS rate update cycle, the relative importance of capital is estimated to be 7.692 percent. Because the relative importance of capital is 7.692 percent of the proposed FY 1997-based excluded hospital with capital market basket for the proposed 2004

LTCH PPS rate year, we multiplied 46 percent by 7.692 percent to determine the labor-related share of capital costs to be 3.538 percent. We then added the 3.543 that was calculated for capital costs to the 69.075 percent that was calculated for operating costs to determine the total labor-related relative importance of 72.612. Therefore, we are proposing to use a labor-related share of 72.612 percent for the proposed 2004 LTCH PPS rate year.

TABLE V.—PROPOSED LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	Relative importance FY 1992-based market basket (proposed 2004 LTCH PPS rate year)	Relative importance FY 1997-based market basket (proposed 2004 LTCH PPS rate year)
Wages and salaries .....	50.572	48.967
Employee benefits .....	11.882	11.032
Professional fees .....	2.052	4.518
Postage .....	0.254	
All other labor intensive services .....	5.242	4.558
Subtotal .....	70.001	69.075
Labor-related share of capital costs .....	3.412	3.538
Total .....	73.413	72.612*

\* Although the weights of the cost categories appear to add to 76.213, this is due to rounding; the actual labor-related share is 72.61246.

2. Proposed Adjustment for Cost-of-Living in Alaska and Hawaii

Under § 412.525(b), we make a cost-of-living adjustment (COLA) for LTCHs located in Alaska and Hawaii to account for the higher costs incurred in those States.

For the proposed 2004 LTCH PPS rate year, under § 412.525(b), we are proposing to make a COLA to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in Table VI. below. These factors are obtained from the U.S. Office of Personnel Management (OPM). If OPM releases revised COLA factors before May 1, 2003, we propose to use them for the development of payments and will publish them in the final rule.

TABLE VI.—PROPOSED COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE PROPOSED 2004 LTCH PPS RATE YEAR

Alaska:	
All areas .....	1.25
Hawaii:	
Honolulu County .....	1.25
Hawaii County .....	1.165
Kauai County .....	1.2325

TABLE VI.—PROPOSED COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE PROPOSED 2004 LTCH PPS RATE YEAR—Continued

Maui County .....	1.2375
Kalawao County .....	1.2375

3. Proposed Adjustment for High-Cost Outliers

Under § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We include a provision for outlier payments under the LTCH PPS and set the outlier threshold before the beginning of the applicable proposed rate update year so that total outlier payments are projected to equal 8 percent of total payments under the LTCH PPS.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC-DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.525(a), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC-DRG and the fixed-loss amount).

We determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the PPS for a case with unusually high costs before the hospital will receive any additional payments. We calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy. The fixed loss amount would result in estimated total outlier payments being equal to 8

percent of projected total LTCH PPS payments.

Outlier payments under the LTCH PPS are determined consistent with the IPPS outlier policy. Currently, under the IPPS, a floor and a ceiling are applied to an acute care hospital's cost-to-charge ratio and if the acute care hospital's cost-to-charge ratio is either below the floor or above the ceiling, the applicable statewide average cost-to-charge ratio is assigned to the acute care hospital. Similarly, if a LTCH's cost-to-charge ratio is below the floor or above the ceiling, currently the applicable statewide average cost-to-charge ratio is assigned to the hospital. In addition, for LTCHs for which we are unable to compute a cost-to-charge ratio, we also assign the applicable statewide average. Currently, MedPAR claims data and cost-to-charge ratios based on the latest available cost report data from HCRIS and corresponding MedPAR claims data are used to establish a fixed-loss threshold amount under the LTCH PPS.

For FY 2003, based on FY 2001 MedPAR claims data and cost-to-charge ratios based on the latest available data from HCRIS and corresponding MedPAR claims data from FYs 1998 and 1999, we established a fixed-loss amount of \$24,450. For the proposed 2004 LTCH PPS rate year, we are proposing to continue to use the March 2002 update of the FY 2001 MedPAR claims data to determine a fixed-loss threshold that would result in outlier payments being equal to 8 percent of total payments, based on the policies described in this proposed rule, because these data are the best data available. We would calculate cost-to-charge ratios for determining the proposed fixed-loss amount based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000. Consistent with the proposed outlier policy changes for acute care hospitals under the IPPS discussed in the March 4, 2003 proposed rule, we are proposing to no longer assign the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor. We are proposing this policy change because, as is the case for acute care hospitals, we believe LTCHs could arbitrarily increase their charges in order to maximize outlier payments. Even though this arbitrary increase in charges should result in a lower cost-to-charge ratio in the future (due to the lag time in cost report settlement), currently when a LTCH's actual cost-to-charge ratio falls below the floor, the LTCH's cost-to-charge ratio would be raised to the applicable statewide average. This application of the statewide average

would result in inappropriately higher outlier payments. Accordingly, we are proposing to apply the LTCH's actual cost-to-charge ratio to determine the cost of the case, even where the LTCH's actual cost-to-charge ratio falls below the floor. No longer applying the applicable statewide average cost-to-charge ratio when a LTCH's actual cost-to-charge ratio falls below the floor would result in a lower future cost-to-charge ratio. Applying this lower cost-to-charge ratio to charges in the future to determine the cost of the case would result in more appropriate outlier payments. Therefore, consistent with the proposed policy change for acute care hospitals under the IPPS, we are proposing that LTCHs would receive their actual cost-to-charge ratios no matter how low their ratios fall. Also, consistent with the proposed policy change for acute care hospitals under the IPPS, we are proposing under § 412.525(a)(4), by cross-referencing proposed § 412.84(i), to continue to apply the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio exceeds the ceiling by adopting the proposed policy at proposed § 412.84(i)(1)(ii). Cost-to-charge ratios above this range are probably due to faulty data reporting or entry, and, therefore, should not be used to identify and make payments for outlier cases because such data are clearly errors and should not be relied upon. In addition, we are proposing to make a similar change to § 412.529(c), by cross-referencing proposed § 412.84(i), for determining short-stay outlier payments to indicate that the applicable statewide average cost-to-charge ratio would be applied when a LTCH's cost-to-charge ratio exceeds the ceiling, but not when a LTCH's cost-to-charge ratio falls below the floor. Since cost-to-charge ratios are also used in determining short-stay outlier payments, the rationale for this proposed change mirrors that for high-cost outliers.

Therefore, consistent with IPPS outlier policy in determining the proposed fixed-loss amount for the proposed 2004 LTCH PPS rate year, we are proposing to use only the current combined operating and capital cost-to-charge ratio ceiling under the IPPS of 1.421 (as explained in the acute care hospital inpatient PPS final rule (67 FR 50125, August 1, 2002)). We believe that using the current combined IPPS operating and capital cost-to-charge ratio ceiling for LTCHs is appropriate since, as we explained in the August 30, 2002 final rule (67 FR 55960), LTCHs are certified as acute care hospitals that

meet the criteria set forth in section 1861(e) of the Act in order to participate in the hospital in the Medicare program. As we also discussed in the August 30, 2002 final rule (67 FR 55956), in general hospitals are paid as a LTCH only because their average length of stay is greater than 25 days in accordance with § 412.23(e). Furthermore, prior to qualifying as a LTCH under § 412.23(e)(2)(i), the hospitals generally are paid as acute care hospitals under the IPPS during the period in which they demonstrate that they have an average length of stay of greater than 25 days. Accordingly, if a LTCH's cost-to-charge ratio is above this ceiling, we are proposing to assign the applicable IPPS statewide average cost-to-charge ratio. (Currently, the applicable IPPS statewide averages can be found in Tables 8A and 8B of the August 1, 2002 IPPS final rule (67 FR 50263).) We would also assign the applicable statewide average for LTCHs for which we are unable to compute a cost-to-charge ratio. Accordingly, for the proposed 2004 LTCH PPS rate year, we are proposing a fixed-loss amount of \$19,978. Thus, we would pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC-DRG and the proposed fixed-loss amount of \$19,978).

As we discussed in section IV.D. of this preamble, the IPPS standard Federal rate and relative weights are updated simultaneously, effective October 1 of each year, when the new GROUPER with the final DRGs and the new relative weights are implemented for that fiscal year. The LTCH PPS utilizes the same DRGs and Medicare GROUPER program as the IPPS. The GROUPER in effect on July 1, 2003 will be version 20.0. Although we are proposing to update the LTCH PPS standard Federal rate on July 1, 2003, version 21.0 of the GROUPER will not be available at the time the final rule following this proposed rule is published. To the extent that the LTC-DRG weights in the version 21.0 GROUPER may change, total LTCH PPS payments may also change. Therefore, as explained in section IV.F. of this proposed rule, we are not proposing an update to the LTC-DRG weights for the period of July 1, 2003 through September 30, 2003, and the LTCH PPS would continue to use version 20.0 of the GROUPER and the LTC-DRG relative weights published in Table 3 of the Addendum to the August 30, 2002 final rule (reprinted in Table 3 of the Addendum to this proposed rule) for the

period from July 1, 2003 through September 30, 2003.

The calculation of the fixed-loss amount is dependent in part on the LTC-DRG relative weights because the fixed-loss amount is set so that estimated total outlier payments are estimated to be equal to 8 percent of total LTCH PPS payments. We are proposing to calculate a fixed-loss amount that would result in total estimated outlier payments being equal to 8 percent of total LTCH PPS payments for the proposed 2004 LTCH PPS rate year, using the LTC-DRG relative weights based on the version 20.0 GROUPEL. We are proposing to use the version 20.0 GROUPEL in determining the fixed-loss amount for the period of July 1, 2003 through June 30, 2004 as it contains the best available data at the time the fixed-loss amount is determined.

As we discuss below, we are not proposing to change the fixed-loss amount to account for changes in the version 21.0 GROUPEL because we believe implementing two fixed-loss amounts would be administratively burdensome. Implementing a single fixed-loss amount which would be in effect for a full 12 months (July through June) would be consistent with other components of the LTCH PPS, such as the standard Federal rate and the wage index, both of which would be in effect for a full 12-month period (July through June). Similarly, the relative weights and the GROUPEL program are in effect for 12 months (October through September). However, because the update to the ICD-9-CM codes, as described in section IV.E.2. of this proposed rule, is effective at the beginning of the Federal fiscal year, we will continue to update the GROUPEL and the relative weights on October 1. Furthermore, we do not anticipate that the fixed-loss amount calculated using the relative weights based on the version 20.0 GROUPEL would be significantly different from a fixed-loss amount calculated using the relative weights based on the version 21.0 GROUPEL. We believe this based on the fact that the LTCH PPS outlier policy, one component of which is a fixed-loss amount, was based on the IPPS outlier policy. The annual reclassification and recalibration of DRGs under the IPPS generally does not result in a significant impact on the IPPS fixed-loss amount (although this impact would vary from year to year depending on the actual DRG changes). Therefore, as explained above, we are proposing to calculate a single fixed-loss amount for each LTCH PPS rate year based on the version of the

GROUPEL that is in effect as of July 1 of that year.

Since the proposed effective date of the updated LTCH PPS standard Federal rate would be July 1, while the updated GROUPEL would not be effective until October 1, we did consider an alternative proposal that would establish two separate fixed-loss amounts: one for July through September based on the current GROUPEL and another for October through June based on the updated GROUPEL. We decided not to propose this alternative because, as we discussed above, calculating and implementing two fixed-loss amounts in one proposed LTCH PPS rate year is administratively burdensome.

As we stated in the August 30, 2002 final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529 and discussed in section VI. of this preamble) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC-DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for short-stay outlier in the proposed 2004 LTCH PPS rate year, the high-cost outlier payment would be based on 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the proposed fixed-loss amount of \$19,978 and the amount paid under the short-stay outlier policy).

Under existing regulations at § 412.525(a) (as established in the August 30, 2002 LTCH PPS final rule (67 FR 56026)), we specify that no retroactive adjustment will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. This policy is consistent with the existing outlier payment policy for short-term acute care hospitals under the IPPS. However, we note that in the proposed rule on March 4, 2003, we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because, as we discussed in that notice, we became aware that payment vulnerabilities exist in the current IPPS outlier policy.

Because the LTCH PPS high-cost outlier and short-stay policies are modeled after the outlier policy in the

IPPS, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 4, 2003 proposed rule, we are proposing under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(m), that for LTCHs any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio for the period during which the discharge occurs. As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change. In addition, we are proposing to make a similar change in § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(m), to indicate that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs.

In addition, because we currently use cost-to-charge ratios based on the latest settled cost report, again consistent with the policy for acute care hospitals under the IPPS, any dramatic increases in charges during the payment year are not reflected in the cost-to-charge ratios when making outlier payments. Consistent with the proposed policy change for acute care hospitals under the IPPS at proposed § 412.84(i) discussed in the March 4, 2003 proposed rule, because a LTCH has the ability to increase its outlier payments through a dramatic increase in charges and because of the lag time in the data used to calculate cost-to-charge ratios, we are proposing that fiscal intermediaries would use more recent data when determining a LTCH's cost-to-charge ratio. Therefore, under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(i), we are proposing that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later. In addition, we are proposing to make a similar change in § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(i), to indicate that subject to the proposed provisions in the regulations at § 412.84(i), fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later.

#### 4. Proposed Adjustments for Special Cases

##### a. General

As discussed in the August 30, 2002 final rule (67 FR 55995), under section 123 of Pub. L. 106–113 the Secretary generally has broad authority in developing the PPS for LTCHs, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by maintaining an average length of stay of greater than 25 days. However, LTCHs may have cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG. As we explained in the August 30, 2002 final rule (67 FR 55995), such cases would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. While we are not proposing any changes to the payment policy for special cases at this time, below we discuss the payment methodology for these special cases as implemented in the August 30, 2002 final rule (67 FR 55955–56010).

##### b. Short-Stay Outlier Cases

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments, because these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly “overpaid” for the resources they have actually expended.

Under § 412.529, we adjust the per discharge payment to the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment, for all cases with a

length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG.

As we discussed above, in section VI.C.3. of this preamble, in the March 4, 2003 proposed rule we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because, as we discussed in that notice, we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because the LTCH PPS high-cost outlier and short-stay outlier policies are modeled after the outlier policy in the IPPS, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) and (m) in the March 4, 2003 proposed rule and as we are proposing above for high-cost outlier payments at § 412.525(a)(4)(ii), we are proposing under § 412.529 that short-stay outlier payments would be subject to the proposed provisions in the regulations at § 412.84(i) and (m). Therefore, consistent with the proposed changes to the high-cost outlier policy discussed above in section VI.C.3. of this preamble, we are proposing, by cross-referencing § 412.84(i), that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later, in determining a LTCH’s cost-to-charge ratio. We also are proposing, by cross-referencing § 412.84(i), that the applicable statewide average cost-to-charge ratio would be applied when a LTCH’s cost-to-charge ratio exceeds the ceiling. Finally, we are proposing, by cross-referencing § 412.84(m), that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs. As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change.

##### c. Interrupted Stay

In § 412.531(a), we define an “interruption of a stay” as a stay at a LTCH during which a Medicare inpatient is transferred upon discharge to an acute care hospital, an IRF, or a SNF for treatment or services that are not available in the LTCH and returns to the same LTCH within applicable fixed day periods. For a discharge to an acute care hospital, the applicable fixed-day period is 9 days. For a discharge to

an IRF, the applicable fixed-day period is 27 days. For a discharge to a SNF, the applicable fixed-day period is 45 days. The counting of the days begins on the day of discharge from the specified facility and ends on the 9th, 27th, or 45th day for an acute care hospital, an IRF, or a SNF, respectively. (We refer readers to section VI.C.4.e. of this preamble for a discussion of application of this interrupted stay policy to Medicare-participating providers with approved swing beds.)

If the patient’s length of stay away from the LTCH does not exceed the fixed-day thresholds, the return to the LTCH is considered part of the first admission and only a single LTCH PPS payment will be made. (From the standpoint of implementing this policy, in the event that a Medicare inpatient is discharged from a LTCH and is readmitted and the stay qualifies as an interrupted stay, the provider should cancel the claim generated by the original stay in the LTCH and submit one claim for the entire stay. For further details, see Program Memorandum Transmittal A–02–093, September 2002.) On the other hand, if the patient stay exceeds the total fixed-day threshold outside of the LTCH at another facility before being readmitted, two separate LTC–DRG payments will be made, one based on the principal diagnosis for the first admittance and the other based on the principal diagnosis for the second admittance. Moreover, if the principal diagnoses are the same for both admissions, the hospital could receive two similar payments. (See section VI.C.4.e. of this proposed rule for application of the interrupted stay policy to transfers to swing bed hospitals.)

##### d. Onsite Discharges and Readmittances

Under § 412.532, generally, if a LTCH readmits more than 5 percent of its Medicare patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital, only one LTC–DRG payment will be made to the LTCH for discharges and readmittances during the LTCH’s cost reporting period. Therefore, payment for the entire stay will be paid either as one full LTC–DRG payment or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we apply one threshold for discharges and readmittances with a co-located acute care hospital. There is also a separate 5-percent threshold for all discharges and readmittances with co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital,

an IRF, or a SNF, the interrupted stay policy at § 412.531 applies until the 5-percent threshold is reached. However, once the applicable threshold is reached, all such discharges and readmittances to the applicable site(s) for that cost reporting period are paid as one discharge. This means that even if a discharged LTCH Medicare patient was readmitted to the LTCH following a stay in an acute care hospital of greater than 9 days, if the facilities share a common location and the 5-percent threshold were exceeded, the subsequent discharge from the LTCH will not represent a separate hospitalization for payment purposes. Only one LTC-DRG payment will be made for all such discharges during a cost reporting period to the acute care hospital, regardless of the length of stay at the acute care hospital, that are followed by readmittances to the onsite LTCH.

Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit with readmittances to the LTCH, the subsequent LTCH discharge for patients from those sites for the entire cost reporting period will not be treated as a separate discharge for Medicare payment purposes. (As under the interrupted stay policy, payment to an acute care hospital under the IPPS, to an IRF under the IRF PPS, and to a SNF under the SNF PPS, will not be affected. Payments to the psychiatric facility also will not be affected.)

#### e. Treatment of Swing Beds Under the Interrupted Stay and Onsite Discharge and Readmittance Policies

A swing-bed hospital is defined at § 413.114(b) as a hospital or critical access hospital (CAH) participating in Medicare that has an approval from CMS to provide posthospital SNF care as defined in § 409.20 and meets the requirements specified in § 482.66 or § 485.645. Swing beds are otherwise licensed hospital beds that may, under certain circumstances, be used temporarily as SNF beds. Under § 413.114(a)(2), posthospital SNF care furnished in general routine inpatient beds in rural hospitals (other than CAHs) is paid in accordance with the provisions of the SNF PPS for services furnished for cost reporting periods beginning on or after July 1, 2002. Since it is possible for a Medicare beneficiary to be discharged from a LTCH for posthospital SNF care that is being provided by another hospital-level Medicare provider with swing beds, such a discharge would be considered the same as if it were to a individual SNF. We interpret the extension of the

SNF PPS to swing beds to require that all payment policy determinations regarding patient movement between LTCHs and SNFs, including the onsite policy described above, also apply to swing beds.

We want to emphasize that our inclusion of swing beds in payment policy determinations for all patient movement between LTCHs and SNFs (see section VI.C.4.c. of this preamble) would mean that a readmission to a LTCH from posthospital SNF care being provided in a swing bed that is located either in the LTCH itself or in another onsite Medicare provider would have the same policy consequences as would a readmission to the LTCH from an onsite SNF.

#### 5. Other Proposed Payment Adjustments

As indicated earlier, we had broad authority under section 123 of Pub. L. 106-113, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs. Thus, in the August 30, 2002 final rule (67 FR 56014-56027), we discussed our extensive data analysis and rationale for not implementing an adjustment for geographic reclassification, rural location, treating a disproportionate share of low-income patients (DSH), or indirect medical education (IME) costs. In that same final rule, we stated that we would collect data and reevaluate the appropriateness of these adjustments in the future once more LTCH data become available after the LTCH PPS is implemented. Because the LTCH PPS was only recently implemented, sufficient new data have not yet been generated that would enable us to conduct a comprehensive reevaluation of these payment adjustments. Therefore, we are not proposing an adjustment for geographic reclassification, rural location, DSH, or IME at this time. However, we will continue to collect and interpret new data as they become available in the future to determine if these data support proposing any additional payment adjustments.

#### 6. Proposed Budget Neutrality Offset to Account for the Transition Methodology

Under § 412.533, we implemented a 5-year transition period from cost-based TEFRA reimbursement to prospective payment, during which a LTCH will be paid an increasing percentage of the LTCH PPS rate and a decreasing percentage of its payments under the TEFRA payment principles for each discharge. Furthermore, we allow a LTCH to elect to be paid based on 100

percent of the standard Federal rate in lieu of the blend methodology.

As we discussed in further detail in the August 30, 2002 final rule (67 FR 56032-56037), the standard Federal rate was determined as if all LTCHs will be paid based on 100 percent of the standard Federal rate. As stated earlier, we provide for a 5-year transition period methodology that allows LTCHs to receive payments based partially on reasonable cost principles. In order to maintain budget neutrality as required by section 123(a)(1) of the Pub. L. 106-113 and § 412.523(d)(2), during the 5-year transition period, we reduce all LTCH Medicare payments (whether a LTCH elects payment based on 100 percent of the Federal rate or whether a LTCH is being paid under the transition blend methodology) by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH PPS had not been implemented, to the projected total Medicare program PPS payments (that is, payments made under the transition methodology and the option to elect payment based on 100 percent of the Federal rate).

For FY 2003, based on a comparison of the estimated FY 2003 payments to each LTCH based on 100 percent of the standard Federal rate and the transition blend methodology, we projected that approximately 49 percent of LTCHs would elect to be paid based on 100 percent of the standard Federal rate rather than receive payment based on the transition blend methodology. This projection was based on our estimate that those 49 percent of LTCHs would receive higher payments based on 100 percent of the standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we projected that the remaining 51 percent of LTCHs would choose to be paid based on the transition blend methodology (80 percent of TEFRA and 20 percent of the PPS) in FY 2003, because those payments would be higher than if they were paid based on 100 percent of the standard Federal rate.

In the August 30, 2002 final rule (67 FR 56034), we projected that the full effect of the 5-year transition period and the election option would result in a cost to the Medicare program of \$240 million as follows: For FY 2003, \$50 million; for FY 2004, \$80 million; for FY 2005, \$60 million; for FY 2006, \$40 million; for FY 2007, \$10 million. Thus, in order to maintain budget neutrality, we applied a 6.6 percent reduction (0.934) to all LTCHs' payments in FY 2003 to account for the estimated cost

of \$50 million for FY 2003. Furthermore, in order to maintain budget neutrality, we indicated that, in the future, we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated payments for the respective fiscal year. Based on the data available at that time, in the August 30, 2002 final rule (67 FR 56037) we estimated the following budget neutrality offsets to LTCH payments during the remainder of transition period: 5.0 percent (0.950) in FY 2004; 3.4 percent (0.996) in FY 2005; and 1.7 percent (0.983) in FY 2006. We also stated that no budget neutrality offset is necessary in the 5th year of the transition period (FY 2007) because under the transition methodology at § 412.533, all LTCHs will be paid based on 100 percent of the standard Federal rate and zero percent of the TEFRA rate.

For the proposed 2004 LTCH PPS rate year, based on the best available data and the policies presented in this proposed rule, we project that approximately 49 percent of LTCHs would be paid based on 100 percent of the proposed standard Federal rate rather than receive payment under the transition blend methodology. Using the same methodology described in the August 30, 2002 final rule (67 FR 56034), this projection, which uses updated data and inflation factors, is based on our estimate that LTCHs would receive higher payments based on 100 percent of the proposed standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we project that the remaining 51 percent of LTCHs would choose to be paid based on the transition blend methodology (80 percent of TEFRA and 20 percent of the PPS for cost reporting periods beginning during FY 2003; and 60 percent of TEFRA and 40 percent of the PPS for cost reporting periods beginning during FY 2004 in accordance with § 412.533(a)) because they would receive higher payments than if they were paid based on 100 percent of the proposed standard Federal rate. We note that, as discussed in section VIII. of this preamble, we are not proposing to change the 5-year transition period set forth in § 412.533(a) in conjunction with the proposed change in the proposed 2004 LTCH PPS rate update discussed in detail in section III. of this preamble. Therefore, the applicable transition blend percentage will apply for a LTCH's entire cost reporting period beginning on or after October 1 (unless the LTCH elects payment based on 100 percent of the Federal rate).

In this proposed rule, based on the best available data and the proposed policy revisions described, we project that the full effect of the remaining 4 years of the transition period (including the election option) would result in a cost to the Medicare program of \$300 million as follows:

Proposed LTCH PPS rate year	Estimated cost (in millions)
2004 .....	\$120
2005 .....	90
2006 .....	60
2007 .....	30

Therefore, we are proposing a 5.7 percent reduction (0.943) to all LTCHs' payments for discharges occurring on or after July 1, 2003 and through June 30, 2004, to account for the estimated cost of the \$120 million for the proposed 2004 LTCH PPS rate year. We emphasize that the budget neutrality offset to account for the transition methodology is calculated based on and effective for payments made for discharges occurring during the proposed 2004 LTCH PPS rate year of July 1, 2003 through June 30, 2004, not the Federal FY 2004 of October 1, 2003 through September 30, 2004.

As we stated above, in order to maintain budget neutrality, we indicated that we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated costs for the respective fiscal year. Based on the best available data at this time, we are proposing the following budget neutrality offsets to LTCH payments during the transition period: 4.4 percent (0.956) in proposed 2005 LTCH PPS rate year; 2.9 percent (0.971) in proposed 2006 LTCH PPS rate year; and 1.2 percent (0.988) in proposed 2007 LTCH PPS rate year.

As we discussed in the August 30, 2002 final rule (67 FR 56036), consistent with the statutory requirement for budget neutrality in section 123(a)(1) of Pub. L. 106-113, we intend for estimated aggregate payments under the LTCH PPS to equal the estimated aggregate payments that would be made if the LTCH PPS was not implemented. Our methodology for estimating proposed payments for purposes of the proposed budget neutrality calculations used the best available data at this time and necessarily reflects assumptions. As the LTCH PPS progresses, we are monitoring payment data and will evaluate the ultimate accuracy of the assumptions used in the budget neutrality calculations (for example, inflation factors, intensity of services

provided, or behavioral response to the implementation of the LTCH PPS) described in the August 30, 2002 final rule (67 FR 56027-56037). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations were based.

Section 123 of Pub. L. 106-113 and section 307 of Pub. L. 106-554 provide the Secretary broad authority in developing the LTCH PPS, including the authority for appropriate adjustments. Under this broad authority, as implemented in the regulations at § 412.523(d)(3), we have provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the PPS rates for future years.

In the August 30, 2002 final rule (67 FR 56037), we estimated that total Medicare program payments for LTCH services over 5 years would be \$1.59 billion for FY 2003; \$1.69 billion for FY 2004; \$1.79 billion for FY 2005; \$1.90 billion for FY 2006; and \$2.00 billion for FY 2007. In this proposed rule, based on the best available data, we estimate that total Medicare program payments for LTCH services from the proposed LTCH PPS rate years of 2004 through 2008 would be:

Proposed LTCH PPS rate year	Estimated payments (\$ in billions)
2004 .....	\$2.17
2005 .....	2.29
2006 .....	2.42
2007 .....	2.56
2008 .....	2.71

As in our August 30, 2002 final rule (67 FR 56037), these estimates are based on the projection that 49 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate rather than the transition blend, and an update of our estimate of proposed 2004 LTCH PPS rate year payments to LTCHs using our Office of the Actuary's most recent estimate of the excluded hospital with capital market basket of 2.5 percent for proposed 2004 LTCH PPS rate year (adjusted to account for the proposed change in the rate update cycle discussed in section VI.B.1.b. of this preamble), 3.1 percent for proposed 2005 LTCH PPS rate year, 3.0 percent for proposed 2006 LTCH PPS rate year, 2.9 percent for proposed 2007 LTCH

PPS rate year, and 3.0 percent for proposed 2008 LTCH PPS rate year. We also have taken into account our Office of the Actuary's projection that there would be an increase in Medicare beneficiary enrollment of 1.3 percent in proposed 2004 LTCH PPS rate year, 1.6 percent in proposed 2005 LTCH PPS rate year, and 1.9 percent in proposed 2006 LTCH PPS rate year and 2.0 percent in proposed 2007 LTCH PPS rate year and 2.1 percent in proposed 2008 LTCH PPS rate year.

Because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, we are not proposing an adjustment for budget neutrality under § 412.523(d)(3) at this time. However, we will continue to collect and interpret new data as the data become available in the future to determine if such an adjustment should be proposed.

**VII. Computing the Proposed Adjusted Federal Prospective Payments**

In accordance with § 412.525 and as discussed in sections VI. of this

proposed rule, the proposed standard Federal rate would be adjusted to account for differences in area wages by multiplying the labor-related share of the proposed standard Federal rate by the appropriate proposed LTCH wage index. The proposed standard Federal rate would also be adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the proposed standard Federal rate by the appropriate adjustment factor shown in the table in section VI.C.2. of this preamble. To illustrate the methodology we are using to adjust the proposed Federal prospective payments, we are providing the following example:

During the proposed 2004 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago, Illinois (MSA 1600) with a proposed two-fifths wage index value of 1.0418 (see Table 1 in the Addendum to this proposed rule). The Medicare patient is classified into LTC-DRG 4 (Spinal Procedures), which has a proposed relative weight of 1.2493 (see Table 3 of the Addendum to this proposed rule). To calculate the LTCH's total adjusted Federal prospective

payment for this Medicare patient, we compute the wage-adjusted Federal prospective payment amount by multiplying the unadjusted proposed standard Federal rate (\$35,830.05) by the labor-related share (72.612 percent) and the proposed wage index (1.0418). This wage-adjusted amount is then added to the nonlabor-related portion of the unadjusted proposed standard Federal rate (27.388 percent) to determine the adjusted proposed Federal rate, which is then multiplied by the proposed LTC-DRG relative weight (1.2493) to calculate the total adjusted proposed Federal prospective payment for the proposed 2004 LTCH PPS rate year (\$46,121.11). In addition, as discussed in section VI.C.6. of this preamble, for the proposed 2004 LTCH PPS rate year, we are proposing to reduce the LTCH PPS payment by 5.6 percent for the proposed budget neutrality offset to account for the costs of the transition methodology. The following illustrates the components of the calculations in this example:

Proposed Unadjusted Standard Federal Prospective Payment Rate .....	\$35,830.05
Labor-Related Share .....	0.72612
Labor-Related Portion of the Federal Rate .....	= \$26,016.92
Proposed 2/5th Wage Index (MSA 1600) .....	1.0418
Wage-Adjusted Labor Share .....	= \$27,104.43
Nonlabor-Related Portion of the Federal Rate (adjusted for COLA if applicable) .....	+ \$ 9,813.36
Adjusted Proposed Federal Rate .....	= \$36,917.56
Proposed LTC-DRG 4 Relative Weight .....	× 1.2493
Total Adjusted Proposed Federal Prospective Payment (Before the Proposed Budget Neutrality Offset) .....	= \$46,121.11
Proposed Budget Neutrality Offset .....	× 0.944
Total Proposed Federal Prospective Payment (With the Proposed Budget Neutrality Offset) .....	= \$43,538.33

**VIII. Transition Period**

To provide a stable fiscal base for LTCHs, under § 412.533, we implemented a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system, payment is not based on the experience of an individual hospital. We believe that a 5-year phase-in will provide LTCHs time to adjust their operations and capital financing to the new LTCH PPS, which is based on prospectively determined Federal

payment rates. Furthermore, we believe that the 5-year phase-in of the LTCH PPS allows LTCH personnel to develop proficiency with the LTC-DRG coding system, resulting in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates.

In accordance with § 412.533, the transition period for all hospitals subject to the LTCH PPS begins with the hospital's first cost reporting period beginning on or after October 1, 2002 and extends through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, a LTCH's total

payment under the LTCH PPS is based on two payment percentages—one based on reasonable cost-based (TEFRA) payments and the other based on the standard Federal prospective payment rate. The percentage of payment based on the LTCH PPS Federal rate increases by 20 percentage points each year, while the TEFRA rate percentage decreases by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs will be determined entirely under the Federal PPS methodology. The blend percentages are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Reasonable cost principles rate percentage
October 1, 2002 .....	20	80
October 1, 2003 .....	40	60
October 1, 2004 .....	60	40

Cost reporting periods beginning on or after	Federal rate percentage	Reasonable cost principles rate percentage
October 1, 2005 .....	80	20
October 1, 2006 .....	100	0

For a cost reporting period that began on or after October 1, 2002, and before October 1, 2003 (FY 2003), the total payment for a LTCH is 80 percent of the amount calculated under reasonable cost principles for that specific LTCH and 20 percent of the Federal prospective payment amount. For cost reporting periods beginning on or after October 1, 2003 and before October 1, 2004 (Federal FY 2004), the total payment for a LTCH will be 60 percent of the amount calculated under reasonable cost principles for that specific LTCH and 40 percent of the Federal prospective payment amount. We note that the proposed change in the effective date of the proposed 2004 LTCH PPS rate year update discussed in section III. of this preamble has no effect on the LTCH PPS transition period as set forth in § 412.533(a). That is, LTCHs paid under the transition blend under § 412.533(a), will receive those blended for the entire 5-year transition period (unless they elect payments based on 100 percent of the Federal rate). Furthermore, LTCHs paid under the transition blend will receive the appropriate blend percentages of the Federal and reasonable cost-based rate for their entire cost reporting period as prescribed in § 412.533(a)(1) through (a)(5). For example, a LTCH with a cost reporting period beginning on July 1, 2003 (which is the LTCH's first cost reporting period since the implementation of the LTCH PPS) would receive payments based on 80 percent of the reasonable cost-based rate and 20 percent of the Federal rate for its discharges occurring on or after July 1, 2003 through June 30, 2004 (if the LTCH does not elect payment based on 100 percent of the Federal rate).

The reasonable cost-based rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the PPS were not implemented. Medicare fiscal intermediaries will continue to compute the LTCH reasonable cost-based payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act. We note that several reasonable cost-based payment provisions that were previously in effect are no longer effective, starting with cost reporting

periods beginning in FY 2003. For instance, the caps on the target amounts for "existing" LTCHs provided for under section 4414 of the BBA (see § 413.40(c)(4)(iii)) for FYs 1998 through 2002 will no longer be applicable for cost reporting periods beginning in FY 2003. Thus, a LTCH's target amount for FYs 2003 and beyond will be determined by updating its prior year's target amount (which for FY 2003 was subject to the FY 2002 cap). In addition, the 15-percent reduction to payments to LTCHs for capital-related costs provided for under section 4412 of Pub. L. 105-33 (§ 413.40(j)) is only applicable for portions of cost reporting periods occurring in FYs 1998 through FY 2002. This reduction is no longer applicable for cost reporting periods beginning in FY 2003. Therefore, the TEFRA portion of a LTCH's payment for capital-related costs during the LTCH PPS transition period is based on 100 percent of its Medicare allowable capital costs.

As we discussed in the August 30, 2002 final rule (67 FR 56038), in implementing the PPS for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, under § 412.533(c), we allow a LTCH, which is subject to a blended rate, to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from reasonable cost-based payments to prospective payments. Once a LTCH elects to be paid based on 100 percent of the Federal rate, it will not be able to revert to the transition blend. For cost reporting periods beginning on or after December 1, 2002, and for the remainder of the 5-year transition period, a LTCH must notify its fiscal intermediary in writing of its election on or before the 30th day prior to the start of the LTCH's next cost reporting period. For example, a LTCH with a cost report period that begins on October 15, 2003, must notify its fiscal intermediary in writing of an election before September 15, 2003.

Under § 412.533(c)(2)(i), the notification by the LTCH to make the election must be made in writing to the Medicare fiscal intermediary. Under § 412.533(c)(2)(ii) and (iii), the intermediary must receive the request

on or before the specified date (that is, before November 1, 2002 for cost reporting periods that begin on or after October 1, 2002 through November 30, 2002 and on or before the 30th day before the applicable cost reporting period begins for cost reporting periods beginning on or after December 1, 2002 through September 30, 2006), regardless of any postmarks or anticipated delivery dates.

Notifications received, postmarked, or delivered by other means after the specified date will not be accepted. If the specified date falls on a day that the postal service or other delivery sources are not open for business, the LTCH will be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's notification is not received timely, payment will be based on the transition period rates.

#### IX. Proposed Payments to New LTCHs

Under § 412.23(e)(4), for purposes of Medicare payment under the LTCH PPS, we define a new LTCH as a provider of inpatient hospital services that otherwise meets the qualifying criteria for LTCHs, set forth in §§ 412.23(e)(1) and (e)(2) and, under present or previous ownership (or both), and its first cost reporting period as a LTCH begins on or after October 1, 2002. We also specify in § 412.500 that the LTCH PPS applies to hospitals with a cost reporting period beginning on or after October 1, 2002.

This definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, added by section 4416 of Pub. L. 105-33. As stated in § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the payment amount for a "new" (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (see 62 FR 46019, August 29, 1997). Under the PPS for LTCHs, those "new" LTCHs that meet the definition of "new" under

§ 413.40(f)(2)(ii) and that have first cost reporting periods prior to October 1, 2002, will be paid under the transition methodology described in § 412.533.

As noted above and in accordance with § 412.533(d), new LTCHs will not participate in the 5-year transition from reasonable cost-based reimbursement to prospective payment. The transition period is intended to provide existing LTCHs time to adjust to payment under the new system. Since these new LTCHs with cost reporting periods beginning on or after October 1, 2002, would not have received payment under reasonable cost-based reimbursement for the delivery of LTCH services prior to the effective date of the LTCH PPS, we do not believe that those new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as will LTCHs that have been paid under reasonable cost-based.

For example, a "new" LTCH (post-FY 1998) that first began receiving payment as a LTCH on October 1, 2001, will be subject to the 110 percent of the median target amount payment limit for LTCHs (in accordance with § 413.40(f)(2)(ii)) for both its FY 2002 (October 1, 2001 through September 30, 2002) and FY 2003 (October 1, 2002 through September 30, 2003) cost reporting periods. Assuming the hospital has not elected to be paid 100 percent of the Federal rate for its cost reporting period beginning on October 1, 2002 (the first cost reporting period when the LTCH will be subject to the PPS), the hospital would be paid under the transition methodology whereby the LTCH's reasonable cost-based portion of its payment for operating costs (80 percent) is limited by the 110 percent of the median target amount payment limit for LTCHs under § 413.40(f)(2)(ii). For its cost reporting period beginning on October 1, 2003 (which is the hospital's third cost reporting period), under the transition methodology, that LTCH's reasonable cost-based portion of its payment for operating costs (60 percent) will be limited to its target amount as determined under § 413.40(c)(4)(v). Furthermore, if a hospital is designated as a LTCH on September 1, 2002, it would not be considered a new LTCH under § 412.23(e)(4), even if it had not discharged any patients or received any payments as of the implementation date of the LTCH PPS on October 1, 2002, because its first cost reporting period did not begin on or after October 1, 2002. Thus, it would be paid according to § 413.40(f)(2)(ii) from September 1, 2002 through August 30, 2003. This LTCH will not be subject to payments under the LTCH PPS until the start of

its next cost reporting period on September 1, 2003. At the beginning of its second cost reporting period as a LTCH (that is, September 1, 2003), this LTCH would be subject to the transition period in § 412.533(a)(1), because this provision applies to cost reporting periods beginning on or after October 1, 2002, and before October 1, 2003. Under the blended payments of the transition period in § 412.533(a)(1), 80 percent of payments for operating costs would be paid under the reasonable cost principles, as described in § 413.40(f)(2)(ii). (This hospital could also elect to be paid 100 percent of the Federal rate for its cost reporting period beginning September 1, 2003.)

#### X. Method of Payment

Under § 412.513, a Medicare LTCH patient is classified into a LTC-DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC-DRG is used to determine the Federal prospective payment that the LTCH will receive for the Medicare-covered Part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill. The discharge bill also provides data to allow for reclassifying the stay from payment at the full LTC-DRG rate to payment for a case as a short-stay outlier (under § 412.529) or as an interrupted stay (under § 412.531), or to determine if the case will qualify for a high-cost outlier payment (under § 412.525(a)).

Accordingly, the ICD-9-CM codes and other information used to determine if an adjustment to the full LTC-DRG payment is necessary (for example, length of stay or interrupted stay status) are recorded by the LTCH on the Medicare patient's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment made represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a QIO, which are costs paid outside the LTCH PPS.

As under the previous (reasonable cost-based) payment system, under § 412.541(b) a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h)

and may be eligible to receive accelerated payments as described in § 413.64(g).

For those LTCHs that are paid during the 5-year transition based on the blended transition methodology in § 412.533 for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, the PIP amount is based on the transition blend. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount is based on the estimated prospective payment for the year rather than on the estimated reasonable cost-based reimbursement. We exclude outlier payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, Part A costs that are not paid for under the LTCH PPS, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a QIO, are subject to the interim payment provisions (§ 412.541(c)).

Under § 412.541(d), LTCHs with unusually long lengths of stay and that are not receiving payment under the PIP method may bill on an interim basis (60 days after an admission and at intervals of at least 60 days after the date of the first interim bill) and should include any outlier payment determined as of the last day for which the services have been billed.

#### XI. Monitoring

In the August 30, 2002 final rule (67 FR 56014), we discussed our intent to develop a monitoring system that will assist us in evaluating the LTCH PPS. Specifically we discussed the monitoring of the various policies that we believed would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based prospective payment system. We also stated our intent to collect and interpret data on changes in average lengths of stay under the PPS for specific LTC-DRGs and the impact of these changes on the Medicare program. We stated that if our data indicate that changes might be warranted, we may revisit these issues and consider proposing revisions to these policies in the future. To this end, we have designed systems features that will enable CMS and the fiscal intermediary to track a beneficiary to

and from a LTCH and to and from another Medicare provider.

In that same final rule, we also explained that, given that the only unique requirement that distinguishes a LTCH from other hospitals is an average length of stay of greater than 25 days, we continue to be concerned about the extent to which LTCH services and patients differ from those services and patients treated in other Medicare covered settings (for example, SNFs and IRFs) and how the LTCH PPS will affect the access, quality, and costs across the health care continuum. Thus, we will monitor trends in the supply and utilization of LTCHs and Medicare's costs in LTCHs relative to other Medicare providers. For example, we may conduct medical record reviews of Medicare patients to monitor changes in service use (for example, ventilator use) over a LTCH episode of care and to assess patterns in the average length of stay at the facility level. We will consider future changes to LTCH coverage and payment policy based upon the results of such analyses.

## **XII. Collection of Information Requirements**

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

## **XIII. Regulatory Impact Analysis**

### *A. Introduction*

We have examined the impact of this proposed rule as required by Executive Order 12866. We also have examined the impacts of this proposed rule under the criteria of the Regulatory Flexibility Act (RFA) (Pub. L. 96-354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), and Executive Order 13132 (Federalism).

#### **1. Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for proposed and final rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more in any one year

(major rules). We have determined that this proposed rule would not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of \$100 million in any one year. As we discuss in further detail below, and in section VI.B.1.b. of the preamble of this proposed rule, we are proposing that the proposed change to the LTCH PPS rate update cycle be budget neutral. Therefore, we estimate that there would be no budgetary impact for the Medicare program as a result of the proposed change to the LTCH PPS rate update cycle. Based on the best available data for 194 LTCHs, we estimate that the proposed 2.2 percent increase in the standard Federal rate for the proposed 2004 LTCH PPS rate year would result in \$21.4 million and there are no significant redistributive effects among any groups of hospitals. (Section VI.C.6. of this preamble includes an estimate of Medicare program payments for LTCH services.)

#### **2. Regulatory Flexibility Act (RFA)**

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed and final rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$25 million or less annually. For purposes of the RFA, all hospitals are considered small entities. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity. We certify that this proposed rule would not have a significant impact on a substantial number of small entities, in accordance with RFA.

#### **3. Impact on Rural Hospitals**

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a proposed or final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. As discussed in detail in section XIII.B. of this preamble, this proposed rule would not have a substantial impact on the seven rural hospitals for which data were available that have fewer than 100 beds and that are located in rural areas.

#### **4. Unfunded Mandates**

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any proposed rule or any final rule preceded by a rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more. This proposed rule would not mandate any requirements for State, local, or tribal governments nor would it result in expenditures by the private sector of \$110 million or more in any one year.

#### **5. Federalism**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule will not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law.

#### *B. Anticipated Effects*

We discuss the impact of this proposed rule below in terms of its fiscal impact on the Federal Medicare budget and on LTCHs.

##### **1. Budgetary Impact**

Section 123(a)(1) of Pub. L. 106-113 requires us to set the payment rates contained in this proposed rule such that total payments under the LTCH PPS are projected to equal the amount that would have been paid if this PPS had not been implemented. However, as discussed in greater detail in the August 30, 2002 final rule (67 FR 56033-56036), the FY 2003 standard Federal rate (\$34,956.15) was calculated as if all LTCHs will be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section VI.C.6. of this proposed rule, we are applying a budget neutrality offset to payments to account for the monetary effect of the 5-year transition period and the policy to permit LTCHs to elect to be paid based on 100 percent of the standard Federal rate rather than a blend of Federal prospective payments and reasonable cost-based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated reasonable cost-based payments that would have been made if the LTCH PPS had not been implemented, to the projected total

Medicare program payments that would be made under the transition methodology and the option to elect payment based on 100 percent of the Federal prospective payment rate.

Our Office of the Actuary computed an update factor to update LTCH PPS payments from the current rate period (Federal FY 2003) to the proposed new LTCH PPS rate year (July 1, 2003 through June 30, 2004). The proposed LTCH PPS rate year overlaps the current rate period by 3 months (July 1, 2003 through September 30, 2003). The update for Federal FY 2003 is currently estimated at 3.5 percent and the proposed update factor for the proposed 2004 LTCH PPS rate year is estimated at 2.5 percent (as discussed in section VI.B. of the preamble of this proposed rule). Therefore, over the period from FY 2002 through the proposed 2004 LTCH PPS rate year (June 30, 2004), the cumulative increase would be 6.0 percent [ $1.035 * 1.025 = 1.060$ ]. This cumulative increase matches (within rounding) the cumulative increase calculated by using the index level in the new proposed effective period and the index level in FY 2002, such that having two separate updates result in the same cumulative update as if we had used a single update for the entire 21-month period (October 1, 2002 through June 30, 2004). Thus, the proposed change to the proposed 2004 LTCH PPS rate update cycle would not result in a higher or lower update than would have been the case (except due to rounding) if no change had been made to the LTCH PPS update cycle. In addition, as discussed in section VI.B.1.b. of the preamble of this proposed rule, we proposed to apply a budget neutrality adjustment of 0.997 in determining the proposed standard Federal rate to account for the estimated \$5.66 million budgetary impact for the Medicare program in FY 2003 as a result of the proposed change to LTCH PPS rate update cycle.

## 2. Impact on Providers

The basic methodology for determining a LTCH PPS payment is set forth in the regulations at § 412.521 through § 412.525. In addition to the basic LTC-DRG payment (standard Federal rate x LTC-DRG relative weight), we make adjustments for differences in area wage levels, cost-of-living adjustment for Alaska and Hawaii, and short-stay outliers. In addition, LTCHs may also receive high-cost outlier payments for those cases that qualify under the threshold established each rate year. Section 412.533 provides for a 5-year transition to fully prospective payments from

payment based on reasonable cost-based principles. During the 5-year transition period, payments to LTCHs are based on an increasing percentage of the LTCH PPS Federal rate and a decreasing percentage of payment based on reasonable cost-based principles. Section 412.533(c) provides for a one-time opportunity for LTCHs to elect payments based on 100 percent of the LTCH PPS Federal rate.

In order to understand the impact of the proposed changes to the LTCH PPS discussed in this proposed rule on different categories of LTCHs for the proposed 2004 LTCH PPS rate year, it is necessary to estimate payments per discharge under the current (Federal FY 2003) LTCH PPS rates and factors (see the August 30, 2002 final rule) and payments per discharge that would be made under the proposed LTCH PPS rates and factors for the proposed 2004 LTCH PPS rate year (July 1, 2003 through June 30, 2004). We also evaluated the percent change in payments per discharge of estimated FY 2003 prospective payments to estimated proposed 2004 LTCH PPS rate year payments for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and FYs 1999 through 2000 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the "unknown" category. Hospital groups include:

- Location: Large Urban/Other Urban/Rural.
- Participation Date.
- Ownership Control.
- Census Region.
- Bed Size.

To estimate the impacts among the various categories of providers during the transition period, it is imperative that reasonable cost-based principle payments and prospective payments contain similar inputs. More specifically, in the impact analysis showing the impact reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based principle payments and the option to elect payment based on 100 percent of the Federal rate (Table I below), we estimated payments only for those providers that we are able to calculate payments based on reasonable cost-based principles. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount to estimate payment under the current reasonable cost-based principles.

Using LTCH cases from the FY 2001 MedPAR file and cost data from FYs 1996 through 2000 in HCRIS to estimate

payments under the current reasonable cost-based principles, we have both case-mix and cost data for 194 LTCHs. Thus, for the impact analyses reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based principle payments and the option to elect payment based on 100 percent of the Federal rate (see Table VII. below), we used data from 194 LTCHs. However, using cases from the FY 2001 MedPAR file, we had case-mix data for 250 LTCHs. Cost data to determine current payments under reasonable cost-based principle payments are not needed to simulate payments based on 100 percent of the Federal rate. Therefore, for the impact analyses reflecting fully phased-in prospective payments (see Table VIII. below), we used data from 250 LTCHs.

These impacts reflect the estimated "losses" or "gains" among the various classifications of providers for the 12-month period from October 1, 2002 through September 30, 2003 (Federal FY 2003) compared to the 12-month period from July 1, 2003 through June 30, 2004 (proposed 2004 LTCH PPS rate year).

Proposed 2004 LTCH rate year prospective payments were based on the proposed standard Federal rate of \$35,726.64 and the hospital's estimated case-mix based on FY 2001 claims data. Prospective payments for Federal FY 2003 were based on the standard Federal rate of \$34,956.15 and the same FY 2001 claims data.

## 3. Calculation of Prospective Payments

To estimate payments under the LTCH PPS, we simulated payments on a case-by-case basis by applying the payment policy for short-stay outliers (as described in section VI.C.4.b. of this proposed rule) and the adjustments for area wage differences (as described in section VI.C.1. of this proposed rule) and for the cost-of-living for Alaska and Hawaii (as described in section VI.C.2. of this proposed rule). Additional payments would also be made for high-cost outlier cases (as described in section VI.C.3. of this proposed rule). As noted in section VI.C.5. of this proposed rule, we are not proposing to make adjustments for geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients.

The adjustment for area wage differences for estimated FY 2003 payments was done by using the applicable LTCH PPS wage index (one-fifth of the full FY 2002 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act (see

August 30, 2002, 67 FR 56057–56075). For the estimated proposed 2004 LTCH PPS rate year payments, we used a weighted average of a LTCH’s applicable wage index during the period from July 1, 2003, through June 30, 2004, since some providers may experience a change in the wage index phase-in percentage during the period from July 1, 2003 through June 30, 2004. For cost reporting periods beginning on or after October 1, 2002 and before September 30, 2003, the applicable proposed LTCH wage index is one-fifth of the full FY 2002 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. For cost reporting periods beginning on or after October 1, 2003 and before September 30, 2004, the applicable LTCH wage index would be two-fifths of the full FY 2003 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. Therefore, a provider with a cost reporting period beginning October 1, 2003, would have 3 months of payments under the one-fifth wage index value and 9 months of payment under the two-fifths wage index value. For this provider, we computed a blended wage index of 25 percent (3 months/12 months) of the one-fifth wage index value and 75 percent (9 months/12 months) of the two-fifths wage index value.

We also calculated payments using the applicable transition blend percentages. For FY 2003, the applicable transition blend percentage is 80 percent of payment based on reasonable cost-based principles and 20 percent of payment under the LTCH PPS. For the proposed 2004 LTCH PPS rate year based on the transition blend percentages set forth in § 412.533(a), some providers may experience a

change in the transition blend percentage during the period from July 1, 2003 through June 30, 2004. For example during the 12-month period from July 1, 2003 through June 30, 2004, a provider with a cost reporting period beginning on October 1, 2002 (which is paid under the 80/20 transition blend (80 percent of payments based on reasonable cost-based principles and 20 percent of payments under the LTCH PPS) beginning October 1, 2002) would have 3 months (July 1, 2003 through September 30, 2003) under the 80/20 blend and 9 months (October 1, 2003 through June 30, 2004) of payment under the 60/40-transition blend (60 percent of payments based on reasonable cost-based principles and 40 percent of payments under the LTCH PPS). (The 60 percent/40 percent blend would continue until the provider is cost report period beginning on October 1, 2004.) In estimating blended transition payments, we estimated payments based on reasonable cost-based principles in accordance with the methodology in section 1886(b) of the Act. We compared the estimated blended transition payment to the LTCH’s estimated payment if it would elect payment based on 100 percent of the Federal rate. If we estimated that a LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the transition methodology and to receive immediate prospective payments.

Then we applied the 6.6 percent reduction to payment to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments established in the August 30, 2002 final rule (67 FR 56034) to each LTCH’s estimated payments under the PPS for FY 2003. Similarly, we applied the proposed 5.7 percent reduction to payment to account for the effect of the

5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments (see section VI.C.6. of this proposed rule) to each LTCH’s estimated payments under the PPS for the proposed 2004 LTCH PPS rate year. The impact based on our projection of whether a LTCH would be paid based on the transition blend methodology or would elect payment based on 100 percent of the Federal rate is shown below in Table VII.

In Table VIII. below, we also show the impact if the LTCH PPS were fully implemented; that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH PPS for Federal FY 2003 and the proposed 2004 LTCH PPS rate year. Accordingly, the proposed 5.7 percent reduction to account for the 5-year transition methodology on LTCHs’ Medicare program payments for the proposed 2004 LTCH PPS rate year and the 6.6 percent reduction to account for the 5-year transition methodology on LTCHs’ Medicare program payments established for FY 2003 were not applied to LTCHs’ estimated payments under the PPS.

Tables VII. and VIII. below illustrate the aggregate impact of the payment system among various classifications of LTCHs. The first column, LTCH Classification, identifies the type of LTCH. The second column lists the number of LTCHs of each classification type; the third column identifies the number of long-term care cases; and the fourth column shows the estimated payment per discharge for FY 2003; the fifth column shows the estimated payment per discharge for proposed 2004 LTCH PPS rate year; and the sixth column shows the percent change of FY 2003 compared to proposed 2004 LTCH PPS rate year.

TABLE VII.—PROJECTED IMPACT REFLECTING APPLICABLE TRANSITION BLEND PERCENTAGES OF PROPOSED PROSPECTIVE PAYMENTS AND REASONABLE COST-BASED (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE <sup>1</sup>

[FY 2003 Payments Compared to Proposed 2004 LTCH Prospective Payment System Rate Year]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average Federal FY 2003 payment per case <sup>2</sup>	Average proposed 2004 LTCH prospective payment system rate year payment per case <sup>3</sup>	Percent change
All Providers .....	194	71,811	\$26,919	\$27,227	1.1
By Location:					
Rural .....	7	2,153	20,668	20,864	1.0
Urban .....	187	69,658	27,113	27,424	1.1
Large .....	113	47,705	27,445	27,742	1.1

TABLE VII.—PROJECTED IMPACT REFLECTING APPLICABLE TRANSITION BLEND PERCENTAGES OF PROPOSED PROSPECTIVE PAYMENTS AND REASONABLE COST-BASED (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE<sup>1</sup>—Continued

[FY 2003 Payments Compared to Proposed 2004 LTCH Prospective Payment System Rate Year]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average Federal FY 2003 payment per case <sup>2</sup>	Average proposed 2004 LTCH prospective payment system rate year payment per case <sup>3</sup>	Percent change
Other .....	74	21,953	26,391	26,733	1.3
By Participation Date:					
After October 1993 .....	124	41,876	28,137	28,506	1.3
Before October 1983 .....	16	7,836	20,060	20,270	1.0
October 1983—September 1993 .....	45	19,990	27,194	27,427	0.9
Unknown .....	9	2,109	25,636	25,791	0.6
By Ownership Control:					
Voluntary .....	48	17,730	24,756	25,096	1.4
Proprietary .....	136	51,626	27,688	27,990	1.1
Government .....	10	2,455	26,371	26,587	0.8
By Census Region:					
New England .....	14	9,487	20,146	20,320	0.9
Middle Atlantic .....	9	3,276	28,519	28,714	0.7
South Atlantic .....	20	6,571	31,310	31,660	1.1
East North Central .....	33	9,057	28,964	29,238	0.9
East South Central .....	10	2,863	25,761	25,905	0.6
West North Central .....	11	2,898	26,611	26,947	1.3
West South Central .....	71	30,248	26,147	26,479	1.3
Mountain .....	15	2,491	28,399	28,933	1.9
Pacific .....	11	4,920	34,145	34,608	1.4
By Bed Size:					
Beds: 0–24 .....	17	2,453	29,299	29,570	0.9
Beds: 25–49 .....	88	21,725	28,091	28,373	1.0
Beds: 50–74 .....	24	8,209	28,492	28,659	0.6
Beds: 75–124 .....	34	16,306	27,241	27,630	1.4
Beds: 125–199 .....	21	13,820	24,579	24,856	1.1
Beds: 200+ .....	9	9,218	25,231	25,636	1.6
Unknown .....	1	80	7,787	8,043	3.3

<sup>1</sup> These calculations take into account that some providers may experience a change in the blend percentage changes during the July 1, 2003 through June 30, 2004 rate cycle. For example, during the 12-month period of July 1, 2003 through June 30, 2004, a provider with a cost reporting period beginning October 1 would have 3 months (July 1, 2003 through September 30, 2003) of payments under the 80/20 blend and 9 months (October 1, 2003 through June 30, 2004) of payment under the 60/40 blend.

<sup>2</sup> Average payment per case for the 12-month period of October 1, 2002 through September 30, 2003.

<sup>3</sup> Average payment per case for the 12-month period of July 1, 2003 through June 30, 2004.

TABLE VIII.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS

[FY 2003 Payments Compared to Proposed 2004 LTCH Prospective Payment System Rate Year Payments]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average Federal FY 2003 payment per case <sup>1</sup>	Average proposed 2004 LTCH prospective payment system rate year payment per case <sup>2</sup>	Percent change
All Providers .....	250	82,625	\$26,367	\$26,959	2.2
By Location:					
Rural .....	16	4,674	20,851	21,191	1.6
Urban .....	234	77,951	26,687	27,305	2.3
Large .....	135	52,256	27,027	27,661	2.3
Other .....	99	25,695	25,996	26,581	2.2
By Participation Date:					
After October 1993 .....	177	51,656	27,308	27,822	1.9
Before October 1983 .....	17	7,897	20,826	20,780	-0.2
October 1983—September 1993 .....	45	20,004	26,724	27,719	3.7
Unknown .....	11	3,068	22,178	23,400	5.5
By Ownership Control:					
Voluntary .....	55	19,853	24,314	25,020	2.9
Proprietary .....	148	54,269	27,490	28,027	2.0
Government .....	47	8,503	23,893	24,672	3.3

TABLE VIII.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS—Continued  
[FY 2003 Payments Compared to Proposed 2004 LTCH Prospective Payment System Rate Year Payments]

LTCH classification	Number of LTCHs	Number of LTCH cases	Average Federal FY 2003 payment per case <sup>1</sup>	Average proposed 2004 LTCH prospective payment system rate year payment per case <sup>2</sup>	Percent change
By Census Region:					
New England .....	16	9,609	21,094	20,937	-0.7
Middle Atlantic .....	15	4,162	28,982	29,622	2.2
South Atlantic .....	23	7,051	30,441	31,329	2.9
East North Central .....	48	12,145	28,356	28,860	1.8
East South Central .....	14	3,722	28,561	28,523	-0.1
West North Central .....	16	3,769	26,347	27,094	2.8
West South Central .....	87	33,971	24,560	25,363	3.3
Mountain .....	19	2,993	26,529	27,705	4.4
Pacific .....	12	5,203	33,836	34,369	1.6
By Bed Size:					
Beds: 0–24 .....	21	3,073	27,130	28,027	3.3
Beds: 25–49 .....	98	24,386	27,954	28,153	0.7
Beds: 50–74 .....	27	9,310	27,556	27,665	0.4
Beds: 75–124 .....	35	16,432	26,222	27,321	4.2
Beds: 125–199 .....	21	13,838	24,945	25,564	2.5
Beds: 200+ .....	11	9,518	25,041	26,099	4.2
Unknown .....	37	6,068	23,354	24,095	3.2

<sup>1</sup> Average payment per case for the 12-month period of October 1, 2002 through September 30, 2003.

<sup>2</sup> Average payment per case for the 12-month period of July 1, 2003 through June 30, 2004.

#### 4. Results

We have prepared the following summary of the impact (as shown in Table VII.) of the LTCH PPS set forth in this proposed rule.

##### a. Location

The majority of LTCHs are in urban areas. Approximately 3 percent of the LTCHs are identified as being located in a rural area, and approximately 3 percent of all LTCH cases are treated in these rural hospitals. Impact analysis in Table VII. shows that the percent change in estimated payments per discharge for FY 2003 compared to the proposed 2004 LTCH PPS rate year for rural LTCHs would be 1.0 percent, and would be 1.1 percent for urban LTCHs. Large urban LTCHs are projected to experience a 1.1 percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year, while other urban LTCHs projected to experience a 1.3 percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year. (See Table VII.)

##### b. Participation Date

LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) after October 1993. We did not have sufficient OSCAR data on 9 LTCHs,

which we labeled as an “Unknown” category. The majority, approximately 58 percent, of the LTCH cases are in hospitals that began participating after October 1993 and are projected to experience a 1.3 percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year. Approximately 11 percent of the cases are in LTCHs that began participating in Medicare before October 1983 and are projected to experience a 1.0 percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year. (See Table VII.)

##### c. Ownership Control

LTCHs are grouped into three categories based on ownership control type—(1) voluntary; (2) proprietary; and (3) government.

Approximately 25 percent of LTCHs are government run and we expect that voluntary LTCHs would “gain” the most from the proposed changes based on our projection that they would experience a 1.4 percent increase in payments per discharge from FY 2003 compared to the proposed 2004 LTCH PPS rate year. Government and proprietary LTCHs are projected to experience a 0.8 percent and 1.1 percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year, respectively. (See Table VII.)

##### d. Census Region

LTCHs located in most regions are expected to experience an increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year. Specifically, of the nine census regions, we expect that LTCHs in the Mountain region would experience the largest percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year (1.9 percent). We expect LTCHs in the East South Central region would experience the smallest percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year (0.6 percent). (See Table VII.)

##### e. Bed Size

LTCHs were grouped into six categories based on bed size—0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds. We did not have sufficient OSCAR data on 1 LTCH, which we labeled as an “Unknown” category.

The percent increase in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year are projected to increase for all bed size categories. Most LTCHs were in bed size categories where the percent increase in payments per discharge from FY 2003 compared to the proposed 2004 LTCH PPS rate year is

estimated to be greater than 1.0 percent. Other than the LTCH whose bed size is unknown, LTCHs with 200 or more beds have the highest estimated percent change in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year (1.6 percent), while LTCHs with between 50–74 beds have the lowest projected increase in the percent change in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year (0.6 percent). (See Table VII.)

5. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be as follows:

Proposed LTCH PPS rate year	Estimated payments (\$ in billions)
2004 .....	\$2.17
2005 .....	2.29
2006 .....	2.42
2007 .....	2.56
2008 .....	2.71

These estimates are based on the current estimate of increase in the excluded hospital market with capital basket of 2.5 percent for proposed 2004 LTCH PPS rate year (adjusted to account for the proposed change in the rate update cycle discussed in section VI.B.1.b. of the preamble of this proposed rule), 3.1 percent for proposed 2005 LTCH PPS rate year, 3.0 percent for proposed 2006 LTCH PPS rate year, 2.9 percent for proposed 2007 LTCH PPS rate year, and 3.0 percent for proposed 2008 LTCH PPS rate year. We currently estimate that there would be an increase in Medicare beneficiary enrollment of 1.3 percent in proposed 2004 LTCH PPS rate year, 1.6 percent in proposed 2005 LTCH PPS rate year, 1.9 percent in proposed 2006 LTCH PPS rate year, 2.0 percent in proposed 2007 LTCH PPS rate year, 2.1 percent in proposed 2008 LTCH PPS rate year, and an estimated increase in the total number of LTCHs. Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH PPS in FY 2003 to equal the estimated aggregate payments that would be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. As we collect data from

LTCHs, we will monitor payments and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent the assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based.

Section 123 of Pub. L. 106–113 and section 307 of Pub. L. 106–554 provide the Secretary with extremely broad authority in developing the LTCH PPS, including the authority for appropriate adjustments. In accordance with this broad authority, we may discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH PPS rates to maintain budget neutrality so that the effect of the difference between actual payments and estimated payments for the first year of LTCH PPS is not perpetuated in the PPS rates for future years. As the LTCH PPS was only implemented for cost reporting periods beginning on or after October 1, 2002, we do not yet have sufficient data to determine whether such an adjustment is warranted.

6. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals will receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services will enhance the efficiency of the Medicare program.

C. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

XIV. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the DATES section of this preamble and respond to those comments in the preamble to that rule.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

In accordance with the discussion in this preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 412, as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.22 is amended by revising paragraph (h)(2) and adding a new paragraph (h)(6) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

\* \* \* \* \*

(h) *Satellite facilities.* \* \* \*

(2) Except as provided in paragraphs (h)(3) and (h)(6) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the prospective payment systems for any period:

\* \* \* \* \*

(6) The provisions of paragraph (h)(2)(i) of this section do not apply to any long-term care hospital that is subject to the long-term care hospital prospective payment system under Subpart O of this part, effective for cost reporting periods occurring on or after October 1, 2002, and that elects to be paid based on 100 percent of the Federal prospective payment rate as specified in § 412.533(c), beginning with the first cost reporting period following that election, or to a new long-term care hospital, as defined in § 412.23(e)(4).

3. Section 412.503 is amended by adding a definition of “long-term care hospital prospective payment system rate year” in alphabetical order to read as follows:

§ 412.503 Definitions.

\* \* \* \* \*

*Long-term care hospital prospective payment system rate year means the 12-month period of July 1 through June 30.*

\* \* \* \* \*

4. Section 412.523 is amended by revising paragraphs (c)(3) and (d)(3) to read as follows:

**§ 412.523 Methodology for calculating the Federal prospective payment rates.**

\* \* \* \* \*

(c) \* \* \*

(3) *Computation of the standard Federal rate.* The standard Federal rate is computed as follows:

(i) *For FY 2003.* Based on the updated costs per discharge and estimated payments for FY 2003 determined in paragraph (c)(2) of this section, CMS computes a standard Federal rate for FY 2003 that reflects, as appropriate, the adjustments described in paragraph (d) of this section. The FY 2003 standard Federal rate is effective for discharges occurring in cost reporting periods beginning on or after October 1, 2002 through June 30, 2003.

(ii) *For long-term care hospital prospective payment system rate years beginning July 1, 2003 and after.* The standard Federal rate for long-term care hospital prospective payment system rate years beginning July 1, 2003 and after will be the standard Federal rate for the previous long-term care hospital prospective payment system rate year, updated by the increase factor described in paragraph (a)(2) of this section, and adjusted as appropriate as described in paragraph (d) of this section. For the rate year from July 1, 2003 through June 30, 2004, the updated and adjusted standard Federal rate will be offset by a budget neutrality factor to account for updating the FY 2003 standard Federal rate on July 1 rather than October 1.

\* \* \* \* \*

(d) \* \* \*

(3) *One-time prospective adjustment.* The Secretary will review payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the long-term care hospital prospective payment system is not perpetuated in the prospective payment rates for future years.

\* \* \* \* \*

5. Section 412.525 is amended by revising paragraph (a) to read as follows:

**§ 412.525 Adjustments to the Federal prospective payment.**

(a) *Adjustments for high-cost outliers.*

(1) CMS provides for an additional payment to a long-term care hospital if its estimated costs for a patient exceed the adjusted LTC-DRG payment plus a fixed-loss amount. For each long-term care hospital rate year, CMS determines a fixed-loss amount that is the maximum loss that a hospital can incur under the prospective payment system for a case with unusually high costs.

(2) The fixed-loss amount is determined for the long-term care hospital rate year using the LTC-DRG relative weights that are in effect on July 1 of the rate year.

(3) The additional payment equals 80 percent of the difference between the estimated cost of the patient care (determined by multiplying the hospital-specific cost-to-charge ratios by the Medicare allowable covered charge) and the sum of the adjusted Federal prospective payment for the LTC-DRG prospective payment system payment and the fixed-loss amount.

(4)(i) For discharges occurring on or after October 1, 2002 through June 30, 2003, no retroactive adjustments will be made to outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio of the case.

(ii) For discharges occurring on or after July 1, 2003, high-cost outlier payments are subject to the provisions of § 412.84(i) and (m) for adjustments of cost-to-charge ratios.

\* \* \* \* \*

6. Section 412.529 is amended by:

A. Revising paragraph (c)(4).

B. In paragraph (d), the term "LTCH's" is removed and the term "long-term care hospital's" is added in its place.

**§ 412.529 Special payment provision for short-stay outliers.**

\* \* \* \* \*

(c) \* \* \*

(4)(i) For discharges occurring on or after October 1, 2002 through June 30, 2003, no retroactive adjustments will be made to short-stay outlier payments upon cost report settlement to account for differences between cost-to-charge ratio and the actual cost-to-charge ratio of the case.

(ii) For discharges occurring on or after July 1, 2003, short-stay outlier payments are subject to the provisions of § 412.84(i) and (m) for adjustments of cost-to-charge ratios.

\* \* \* \* \*

7. Section 412.535 is revised to read as follows:

**§ 412.535 Publication of the Federal prospective payment rates.**

CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each annual update in the **Federal Register**.

(a) Information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before June 1 prior to the start of each long-term care hospital prospective payment system rate year which begins July 1.

(b) Information on the LTC-DRG classification and associated weighting factors is published on or before August 1 prior to the beginning of each Federal fiscal year.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: December 20, 2003.

**Thomas A. Scully,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Dated: February 14, 2003.

**Tommy G. Thompson,**  
*Secretary.*

**Addendum**

This addendum contains the tables referred to throughout the preamble to this proposed rule. The tables presented below are as follows:

Table 1.—Proposed Long-Term Care Hospital Wage Index for Urban Areas for Discharges Occurring from July 1, 2003 through June 30, 2004

Table 2.—Proposed Long-Term Care Hospital Wage Index for Rural Areas for Discharges Occurring from July 1, 2003 through June 30, 2004

Table 3.—Proposed LTC-DRG Relative Weights, Geometric Mean Length of Stay, and Short-Stay Five-Sixths Average Length of Stay for the Period of July 1, 2003 through September 30, 2003

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
0040 .....	Abilene, TX			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
0060	Taylor, TX .....	0.7792	0.9558	0.9117
	Aguadilla, PR			
	Aguada, PR			
	Aguadilla, PR			
0080	Moca, PR .....	0.4587	0.8917	0.7835
	Akron, OH			
	Portage, OH			
0120	Summit, OH .....	0.9600	0.9920	0.9840
	Albany, GA			
	Dougherty, GA			
0160	Lee, GA .....	1.0594	1.0119	1.0238
	Albany-Schenectady-Troy, NY			
	Albany, NY			
	Montgomery, NY			
	Rensselaer, NY			
	Saratoga, NY			
	Schenectady, NY			
	Schoharie, NY .....	0.8384	0.9677	0.9354
0200	Albuquerque, NM			
	Bernalillo, NM			
	Sandoval, NM			
	Valencia, NM .....	0.9315	0.9863	0.9726
0220	Alexandria, LA			
	Rapides, LA .....	0.7859	0.9572	0.9144
0240	Allentown-Bethlehem-Easton, PA			
	Carbon, PA			
	Lehigh, PA			
	Northampton, PA			
0280	Altoona, PA			
	Blair, PA .....	0.9225	0.9845	0.9690
0320	Amarillo, TX			
	Potter, TX			
	Randall, TX .....	0.9034	0.9807	0.9614
0380	Anchorage, AK			
	Anchorage, AK .....	1.2358	1.0472	1.0943
0440	Ann Arbor, MI			
	Lenawee, MI			
	Livingston, MI			
	Washtenaw, MI .....	1.1103	1.0221	1.0441
0450	Anniston, AL			
	Calhoun, AL .....	0.8044	0.9609	0.9218
0460	Appleton-Oshkosh-Neenah, WI			
	Calumet, WI			
	Outagamie, WI			
	Winnebago, WI .....	0.8997	0.9799	0.9599
0470	Arecibo, PR			
	Arecibo, PR			
	Camuy, PR			
	Hatillo, PR .....	0.4337	0.8867	0.7735
0480	Asheville, NC			
	Buncombe, NC			
	Madison, NC .....	0.9876	0.9975	0.9950
0500	Athens, GA			
	Clarke, GA			
	Madison, GA			
	Oconee, GA .....	1.0211	1.0042	1.0084
0520	Atlanta, GA			
	Barrow, GA			
	Bartow, GA			
	Carroll, GA			
	Cherokee, GA			
	Clayton, GA			
	Cobb, GA			
	Coweta, GA			
	DeKalb, GA			
	Douglas, GA			
	Fayette, GA			
	Forsyth, GA			
	Fulton, GA			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
0560	Gwinnett, GA	0.9991	0.9998	0.9996
	Henry, GA			
	Newton, GA			
	Paulding, GA			
	Pickens, GA			
	Rockdale, GA			
	Spalding, GA			
0580	Walton, GA .....	1.1017	1.0203	1.0407
	Atlantic-Cape May, NJ			
0600	Atlantic, NJ	0.8325	0.9665	0.9330
	Cape May, NJ .....			
0640	Auburn-Opelika, AL	1.0264	1.0053	1.0106
	Lee, AL .....			
	Augusta-Aiken, GA-SC			
	Columbia, GA			
	McDuffie, GA			
0680	Richmond, GA	0.9637	0.9927	0.9855
	Aiken, SC			
	Edgefield, SC .....			
	Austin-San Marcos, TX			
	Bastrop, TX			
	Caldwell, TX			
0720	Hays, TX	0.9877	0.9975	0.9951
	Travis, TX			
0733	Williamson, TX .....	0.9929	0.9986	0.9972
	Bakersfield, CA			
	Kern, CA .....			
	Baltimore, MD			
	Anne Arundel, MD			
	Baltimore, MD			
	Baltimore City, MD			
0743	Carroll, MD	0.9664	0.9933	0.9866
	Harford, MD			
0760	Howard, MD	1.3202	1.0640	1.1281
	Queen Anne's, MD .....			
	Bangor, ME			
	Penobscot, ME .....			
	Barnstable-Yarmouth, MA			
0840	Barnstable, MA .....	0.8294	0.9659	0.9318
	Baton Rouge, LA			
	Ascension, LA			
	East Baton Rouge, LA			
	Livingston, LA			
0860	West Baton Rouge, LA .....	0.8324	0.9665	0.9330
	Beaumont-Port Arthur, TX			
	Hardin, TX			
0870	Jefferson, TX	1.2282	1.0456	1.0913
	Orange, TX .....			
0875	Bellingham, WA	0.8965	0.9793	0.9586
	Whatcom, WA .....			
0880	Benton Harbor, MI	1.2150	1.0430	1.0860
	Berrien, MI .....			
	Bergen-Passaic, NJ			
0920	Bergen, NJ	0.9022	0.9804	0.9609
	Passaic, NJ .....			
	Billings, MT			
0960	Yellowstone, MT .....	0.8757	0.9751	0.9503
	Biloxi-Gulfport-Pascagoula, MS			
	Hancock, MS			
	Harrison, MS			
1000	Jackson, MS .....	0.8341	0.9668	0.9336
	Binghamton, NY			
	Broome, NY			
1000	Tioga, NY .....	0.9222	0.9844	0.9689
	Birmingham, AL			
	Blount, AL			
	Jefferson, AL			
	St. Clair, AL			
	Shelby, AL .....			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
1010	Bismarck, ND Burleigh, ND Morton, ND	0.7972	0.9594	0.9189
1020	Bloomington, IN Monroe, IN	0.8907	0.9781	0.9563
1040	Bloomington-Normal, IL McLean, IL	0.9109	0.9822	0.9644
1080	Boise City, ID Ada, ID Canyon, ID	0.9310	0.9862	0.9724
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1229	1.0246	1.0492
1125	Boulder-Longmont, CO Boulder, CO	0.9689	0.9938	0.9876
1145	Brazoria, TX Brazoria, TX	0.8535	0.9707	0.9414
1150	Bremerton, WA Kitsap, WA	1.0944	1.0189	1.0378
1240	Brownsville-Harlingen-San Benito, TX Cameron, TX	0.8880	0.9776	0.9552
1260	Bryan-College Station, TX Brazos, TX	0.8821	0.9764	0.9528
1280	Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9365	0.9873	0.9746
1303	Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	1.0052	1.0010	1.0021
1310	Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4371	0.8874	0.7748
1320	Canton-Massillon, OH Carroll, OH Stark, OH	0.8932	0.9786	0.9573
1350	Casper, WY Natrona, WY	0.9690	0.9938	0.9876
1360	Cedar Rapids, IA Linn, IA	0.9056	0.9811	0.9622
1400	Champaign-Urbana, IL Champaign, IL	1.0635	1.0127	1.0254
1440	Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.9235	0.9847	0.9694
1480	Charleston, WV Kanawha, WV Putnam, WV	0.8898	0.9780	0.9559
1520	Charlotte-Gastonia-Rock Hill, NC-SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
1540	York, SC .....	0.9875	0.9975	0.9950
	Charlottesville, VA			
	Albemarle, VA			
	Charlottesville City, VA			
	Fluvanna, VA			
	Greene, VA .....	1.0438	1.0088	1.0175
1560	Chattanooga, TN-GA			
	Catoosa, GA			
	Dade, GA			
	Walker, GA			
	Hamilton, TN			
	Marion, TN .....	0.8976	0.9795	0.9590
1580	Cheyenne, WY			
	Laramie, WY .....	0.8628	0.9726	0.9451
1600	Chicago, IL			
	Cook, IL			
	DeKalb, IL			
	DuPage, IL			
	Grundy, IL			
	Kane, IL			
	Kendall, IL			
	Lake, IL			
	McHenry, IL			
	Will, IL .....	1.1044	1.0209	1.0418
1620	Chico-Paradise, CA			
	Butte, CA .....	0.9745	0.9949	0.9898
1640	Cincinnati, OH-KY-IN			
	Dearborn, IN			
	Ohio, IN			
	Boone, KY			
	Campbell, KY			
	Gallatin, KY			
	Grant, KY			
	Kenton, KY			
	Pendleton, KY			
	Brown, OH			
	Clermont, OH			
	Hamilton, OH			
	Warren, OH .....	0.9381	0.9876	0.9752
1660	Clarksville-Hopkinsville, TN-KY			
	Christian, KY			
	Montgomery, TN .....	0.8406	0.9681	0.9362
1680	Cleveland-Lorain-Elyria, OH			
	Ashtabula, OH			
	Cuyahoga, OH			
	Geauga, OH			
	Lake, OH			
	Lorain, OH			
	Medina, OH .....	0.9670	0.9934	0.9868
1720	Colorado Springs, CO			
	El Paso, CO .....	0.9916	0.9983	0.9966
1740	Columbia, MO			
	Boone, MO .....	0.8496	0.9699	0.9398
1760	Columbia, SC			
	Lexington, SC			
	Richland, SC .....	0.9307	0.9861	0.9723
1800	Columbus, GA-AL			
	Russell, AL			
	Chattahoochee, GA			
	Harris, GA			
	Muscogee, GA .....	0.8374	0.9675	0.9350
1840	Columbus, OH			
	Delaware, OH			
	Fairfield, OH			
	Franklin, OH			
	Licking, OH			
	Madison, OH			
	Pickaway, OH .....	0.9751	0.9950	0.9900
1880	Corpus Christi, TX			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
1890	Nueces, TX San Patricio, TX .....	0.8729	0.9746	0.9492
1900	Corvallis, OR Benton, OR .....	1.1453	1.0291	1.0581
1920	Cumberland, MD—WV (WV Hospital) Allegany, MD Mineral, WV .....	0.7847	0.9569	0.9139
1950	Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX .....	0.9998	1.0000	0.9999
1960	Danville, VA Danville City, VA Pittsylvania, VA .....	0.8859	0.9772	0.9544
2000	Davenport-Moline-Rock Island, IA—IL Scott, IA Henry, IL Rock Island, IL .....	0.8835	0.9767	0.9534
2020	Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH .....	0.9282	0.9856	0.9713
2030	Daytona Beach, FL Flagler, FL Volusia, FL .....	0.9071	0.9814	0.9628
2040	Decatur, AL Lawrence, AL Morgan, AL .....	0.8973	0.9795	0.9589
2080	Decatur, IL Macon, IL .....	0.8055	0.9611	0.9222
2120	Denver, CO Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO .....	1.0601	1.0120	1.0240
2160	Des Moines, IA Dallas, IA Polk, IA Warren, IA .....	0.8791	0.9758	0.9516
2180	Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI .....	1.0448	1.0090	1.0179
2190	Dothan, AL Dale, AL Houston, AL .....	0.8137	0.9627	0.9255
2200	Dover, DE Kent, DE .....	0.9356	0.9871	0.9742
2240	Dubuque, IA Dubuque, IA .....	0.8795	0.9759	0.9518
2281	Duluth-Superior, MN—WI St. Louis, MN Douglas, WI .....	1.0368	1.0074	1.0147
2290	Dutchess County, NY Dutchess, NY .....	1.0684	1.0137	1.0274
2320	Eau Claire, WI Chippewa, WI Eau Claire, WI .....	0.8952	0.9790	0.9581
	El Paso, TX			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
2330	El Paso, TX .....	0.9265	0.9853	0.9706
	Elkhart-Goshen, IN .....			
	Elkhart, IN .....	0.9722	0.9944	0.9889
2335	Elmira, NY .....			
	Chemung, NY .....	0.8416	0.9683	0.9366
2340	Enid, OK .....			
	Garfield, OK .....	0.8376	0.9675	0.9350
2360	Erie, PA .....			
	Erie, PA .....	0.8925	0.9785	0.9570
2400	Eugene-Springfield, OR .....			
	Lane, OR .....	1.0944	1.0189	1.0378
2440	Evansville-Henderson, IN-KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY .....	0.8177	0.9635	0.9271
2520	Fargo-Moorhead, ND-MN Clay, MN Cass, ND .....	0.9684	0.9937	0.9874
2560	Fayetteville, NC Cumberland, NC .....	0.8889	0.9778	0.9556
2580	Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR .....	0.8100	0.9620	0.9240
2620	Flagstaff, AZ-UT Coconino, AZ Kane, UT .....	1.0682	1.0136	1.0273
2640	Flint, MI Genesee, MI .....	1.1135	1.0227	1.0454
2650	Florence, AL Colbert, AL Lauderdale, AL .....	0.7792	0.9558	0.9117
2655	Florence, SC Florence, SC .....	0.8780	0.9756	0.9512
2670	Fort Collins-Loveland, CO Larimer, CO .....	1.0066	1.0013	1.0026
2680	Ft. Lauderdale, FL Broward, FL .....	1.0297	1.0059	1.0119
2700	Fort Myers-Cape Coral, FL Lee, FL .....	0.9680	0.9936	0.9872
2710	Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL .....	0.9823	0.9965	0.9929
2720	Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK .....	0.7895	0.9579	0.9158
2750	Fort Walton Beach, FL Okaloosa, FL .....	0.9693	0.9939	0.9877
2760	Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN .....	0.9457	0.9891	0.9783
2800	Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX .....	0.9446	0.9889	0.9778
2840	Fresno, CA Fresno, CA Madera, CA .....	1.0169	1.0034	1.0068
2880	Gadsden, AL Etowah, AL .....	0.8505	0.9701	0.9402
2900	Gainesville, FL Alachua, FL .....	0.9871	0.9974	0.9948
2920	Galveston-Texas City, TX			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
2960	Galveston, TX .....	0.9465	0.9893	0.9786
	Gary, IN .....			
	Lake, IN .....			
	Porter, IN .....	0.9584	0.9917	0.9834
2975	Glens Falls, NY .....			
	Warren, NY .....			
	Washington, NY .....	0.8281	0.9656	0.9312
2980	Goldensboro, NC .....			
	Wayne, NC .....	0.8892	0.9778	0.9557
2985	Grand Forks, ND—MN .....			
	Polk, MN .....			
	Grand Forks, ND .....	0.8897	0.9779	0.9559
2995	Grand Junction, CO .....			
	Mesa, CO .....	0.9456	0.9891	0.9782
3000	Grand Rapids—Muskegon—Holland, MI .....			
	Allegan, MI .....			
	Kent, MI .....			
	Muskegon, MI .....			
	Ottawa, MI .....	0.9525	0.9905	0.9810
3040	Great Falls, MT .....			
	Cascade, MT .....	0.8950	0.9790	0.9580
3060	Greeley, CO .....			
	Weld, CO .....	0.9237	0.9847	0.9695
3080	Green Bay, WI .....			
	Brown, WI .....	0.9502	0.9900	0.9801
3120	Greensboro—Winston—Salem—High Point, NC .....			
	Alamance, NC .....			
	Davidson, NC .....			
	Davie, NC .....			
	Forsyth, NC .....			
	Guilford, NC .....			
	Randolph, NC .....			
	Stokes, NC .....			
	Yadkin, NC .....	0.9282	0.9856	0.9713
3150	Greenville, NC .....			
	Pitt, NC .....	0.9100	0.9820	0.9640
3160	Greenville—Spartanburg—Anderson, SC .....			
	Anderson, SC .....			
	Cherokee, SC .....			
	Greenville, SC .....			
	Pickens, SC .....			
	Spartanburg, SC .....	0.9122	0.9824	0.9649
3180	Hagerstown, MD .....			
	Washington, MD .....	0.9268	0.9854	0.9707
3200	Hamilton—Middletown, OH .....			
	Butler, OH .....	0.9418	0.9884	0.9767
3240	Harrisburg—Lebanon—Carlisle, PA .....			
	Cumberland, PA .....			
	Dauphin, PA .....			
	Lebanon, PA .....			
	Perry, PA .....	0.9223	0.9845	0.9689
3283	Hartford, CT .....			
	Hartford, CT .....			
	Litchfield, CT .....			
	Middlesex, CT .....			
	Tolland, CT .....	1.1549	1.0310	1.0620
3285	<sup>2</sup> Hattiesburg, MS .....			
	Forrest, MS .....			
	Lamar, MS .....	0.7659	0.9532	0.9064
3290	Hickory—Morganton—Lenoir, NC .....			
	Alexander, NC .....			
	Burke, NC .....			
	Caldwell, NC .....			
	Catawba, NC .....	0.9028	0.9806	0.9611
3320	Honolulu, HI .....			
	Honolulu, HI .....	1.1457	1.0291	1.0583
3350	Houma, LA .....			
	Lafourche, LA .....			
	Terrebonne, LA .....	0.8317	0.9663	0.9327

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
3360 .....	Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX .....	0.9892	0.9978	0.9957
3400 .....	Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV .....	0.9636	0.9927	0.9854
3440 .....	Huntsville, AL Limestone, AL Madison, AL .....	0.8903	0.9781	0.9561
3480 .....	Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN .....	0.9717	0.9943	0.9887
3500 .....	Iowa City, IA Johnson, IA .....	0.9587	0.9917	0.9835
3520 .....	Jackson, MI Jackson, MI .....	0.9532	0.9906	0.9813
3560 .....	Jackson, MS Hinds, MS Madison, MS Rankin, MS .....	0.8607	0.9721	0.9443
3580 .....	Jackson, TN Madison, TN Chester, TN .....	0.9275	0.9855	0.9710
3600 .....	Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL .....	0.9381	0.9876	0.9752
3605 .....	Jacksonville, NC Onslow, NC .....	0.8239	0.9648	0.9296
3610 .....	Jamestown, NY Chautauqua, NY .....	0.7976	0.9595	0.9190
3620 .....	Janesville-Beloit, WI Rock, WI .....	0.9849	0.9970	0.9940
3640 .....	Jersey City, NJ Hudson, NJ .....	1.1190	1.0238	1.0476
3660 .....	Johnson City-Kingsport-Bristol, TN-VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA .....	0.8268	0.9654	0.9307
3680 .....	Johnstown, PA Cambria, PA Somerset, PA .....	0.8329	0.9666	0.9332
3700 .....	Jonesboro, AR Craighead, AR .....	0.7749	0.9550	0.9100
3710 .....	Joplin, MO Jasper, MO Newton, MO .....	0.8613	0.9723	0.9445
3720 .....	Kalamazoo-Battlecreek, MI			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
3740	Calhoun, MI	1.0595	1.0119	1.0238
	Kalamazoo, MI			
	Van Buren, MI			
3760	Kankakee, IL	1.0790	1.0158	1.0316
	Kankakee, IL			
3800	Kansas City, KS—MO	0.9736	0.9947	0.9894
	Johnson, KS			
	Leavenworth, KS			
	Miami, KS			
	Wyandotte, KS			
	Cass, MO			
	Clay, MO			
	Clinton, MO			
	Jackson, MO			
	Lafayette, MO			
	Platte, MO			
	Ray, MO			
3810	Kenosha, WI	0.9686	0.9937	0.9874
	Kenosha, WI			
3840	Killeen-Temple, TX	1.0399	1.0080	1.0160
	Bell, TX			
3850	Coryell, TX	0.8970	0.9794	0.9588
	Knoxville, TN			
	Anderson, TN			
	Blount, TN			
	Knox, TN			
	Loudon, TN			
	Sevier, TN			
Union, TN				
3870	Kokomo, IN	0.8971	0.9794	0.9588
	Howard, IN			
3880	Tipton, IN	0.9400	0.9880	0.9760
	La Crosse, WI—MN			
	Houston, MN			
3920	La Crosse, WI	0.8452	0.9690	0.9381
	Lafayette, LA			
	Acadia, LA			
	Lafayette, LA			
	St. Landry, LA			
3960	St. Martin, LA	0.9278	0.9856	0.9711
	Lafayette, IN			
3980	Clinton, IN	0.7965	0.9593	0.9186
	Tippecanoe, IN			
4000	Lake Charles, LA	0.9357	0.9871	0.9743
	Calcasieu, LA			
4040	Lakeland-Winter Haven, FL	0.9078	0.9816	0.9631
	Polk, FL			
4080	Lancaster, PA	0.9726	0.9945	0.9890
	Lancaster, PA			
	Lansing-East Lansing, MI			
4100	Clinton, MI	0.8472	0.9694	0.9389
	Eaton, MI			
4120	Ingham, MI	0.8745	0.9749	0.9498
	Laredo, TX			
4150	Webb, TX	1.1521	1.0304	1.0608
	Las Cruces, NM			
	Dona Ana, NM			
4200	Las Vegas, NV—AZ	0.8323	0.9665	0.9329
	Mohave, AZ			
4243	Clark, NV	0.8315	0.9663	0.9326
	Nye, NV			
4280	Lawrence, KS	0.9179	0.9836	0.9672
	Douglas, KS			
4280	Lawton, OK	0.9179	0.9836	0.9672
	Comanche, OK			
4280	Lewiston-Auburn, ME	0.9179	0.9836	0.9672
	Androscoggin, ME			
4280	Lexington, KY	0.9179	0.9836	0.9672
	Bourbon, KY			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
4320	Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY .....	0.8581	0.9716	0.9432
4360	Lima, OH Allen, OH Auglaize, OH .....	0.9483	0.9897	0.9793
4400	Lincoln, NE Lancaster, NE .....	0.9892	0.9978	0.9957
4420	Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR .....	0.9097	0.9819	0.9639
4480	Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX .....	0.8629	0.9726	0.9452
4520	Los Angeles-Long Beach, CA Los Angeles, CA .....	1.2001	1.0400	1.0800
4600	<sup>1</sup> Louisville, KY-IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY .....	0.9276	0.9855	0.9710
4640	Lubbock, TX Lubbock, TX .....	0.9646	0.9929	0.9858
4680	Lynchburg, VA Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA .....	0.9219	0.9844	0.9688
4720	Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA .....	0.9204	0.9841	0.9682
4800	Madison, WI Dane, WI .....	1.0467	1.0093	1.0187
4840	Mansfield, OH Crawford, OH Richland, OH .....	0.8900	0.9780	0.9560
4880	Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR .....	0.4914	0.8983	0.7966
4890	McAllen-Edinburg-Mission, TX Hidalgo, TX .....	0.8428	0.9686	0.9371
4900	Medford-Ashland, OR Jackson, OR .....	1.0498	1.0100	1.0199
4920	Melbourne-Titusville-Palm Bay, FL Brevard, FL .....	1.0253	1.0051	1.0101
4940	Memphis, TN-AR-MS Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN .....	0.8920	0.9784	0.9568
	Merced, CA			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
5000	Merced, CA .....	0.9742	0.9948	0.9897
	Miami, FL .....			
	Dade, FL .....	0.9802	0.9960	0.9921
5015	Middlesex-Somerset-Hunterdon, NJ .....			
	Hunterdon, NJ .....			
	Middlesex, NJ .....			
	Somerset, NJ .....	1.1213	1.0243	1.0485
5080	Milwaukee-Waukesha, WI .....			
	Milwaukee, WI .....			
	Ozaukee, WI .....			
	Washington, WI .....			
	Waukesha, WI .....	0.9893	0.9979	0.9957
5120	Minneapolis-St. Paul, MN-WI .....			
	Anoka, MN .....			
	Carver, MN .....			
	Chisago, MN .....			
	Dakota, MN .....			
	Hennepin, MN .....			
	Isanti, MN .....			
	Ramsey, MN .....			
	Scott, MN .....			
	Sherburne, MN .....			
	Washington, MN .....			
	Wright, MN .....			
	Pierce, WI .....			
	St. Croix, WI .....	1.0903	1.0181	1.0361
5140	Missoula, MT .....	0.9157	0.9831	0.9663
5160	Mobile, AL .....			
	Baldwin, AL .....			
	Mobile, AL .....	0.8108	0.9622	0.9243
5170	Modesto, CA .....			
	Stanislaus, CA .....	1.0498	1.0100	1.0199
5190	Monmouth-Ocean, NJ .....			
	Monmouth, NJ .....			
	Ocean, NJ .....	1.0674	1.0135	1.0270
5200	Monroe, LA .....			
	Ouachita, LA .....	0.8137	0.9627	0.9255
5240	Montgomery, AL .....			
	Autauga, AL .....			
	Elmore, AL .....			
	Montgomery, AL .....	0.7734	0.9547	0.9094
5280	Muncie, IN .....			
	Delaware, IN .....	0.9284	0.9857	0.9714
5330	Myrtle Beach, SC .....			
	Horry, SC .....	0.8976	0.9795	0.9590
5345	Naples, FL .....			
	Collier, FL .....	0.9754	0.9951	0.9902
5360	Nashville, TN .....			
	Cheatham, TN .....			
	Davidson, TN .....			
	Dickson, TN .....			
	Robertson, TN .....			
	Rutherford, TN .....			
	Sumner, TN .....			
	Williamson, TN .....			
	Wilson, TN .....	0.9578	0.9916	0.9831
5380	Nassau-Suffolk, NY .....			
	Nassau, NY .....			
	Suffolk, NY .....	1.3357	1.0671	1.1343
5483	New Haven-Bridgeport-Stamford-Waterbury- Danbury, CT .....			
	Fairfield, CT .....			
	New Haven, CT .....	1.2408	1.0482	1.0963
5523	New London-Norwich, CT .....			
	New London, CT .....	1.1767	1.0353	1.0707
5560	New Orleans, LA .....			
	Jefferson, LA .....			
	Orleans, LA .....			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
5600	Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA .....	0.9046	0.9809	0.9618
5640	New York, NY Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY .....	1.4414	1.0883	1.1766
5660	Newark, NJ Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ .....	1.1381	1.0276	1.0552
5720	Newburgh, NY-PA Orange, NY Pike, PA .....	1.1387	1.0277	1.0555
5775	Norfolk-Virginia Beach-Newport News, VA-NC Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City VA Williamsburg City, VA York, VA .....	0.8574	0.9715	0.9430
5790	Oakland, CA Alameda, CA Contra Costa, CA .....	1.5072	1.1014	1.2029
5800	Ocala, FL Marion, FL .....	0.9402	0.9880	0.9761
5880	Odessa-Midland, TX Ector, TX Midland, TX .....	0.9397	0.9879	0.9759
5910	Oklahoma City, OK Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK .....	0.8900	0.9780	0.9560
5920	Olympia, WA Thurston, WA .....	1.0960	1.0192	1.0384
5945	Omaha, NE-IA Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE .....	0.9978	0.9996	0.9991
5960	Orange County, CA Orange, CA .....	1.1474	1.0295	1.0590
	Orlando, FL Lake, FL Orange, FL Osceola, FL			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
5990	Seminole, FL .....	0.9640	0.9928	0.9856
	Owensboro, KY .....			
	Daviess, KY .....	0.8344	0.9669	0.9338
6015	Panama City, FL .....			
	Bay, FL .....	0.8865	0.9773	0.9546
6020	Parkersburg-Marietta, WV-OH .....			
	Washington, OH .....			
	Wood, WV .....	0.8127	0.9625	0.9251
6080	Pensacola, FL .....			
	Escambia, FL .....			
	Santa Rosa, FL .....	0.8610	0.9722	0.9444
6120	Peoria-Pekin, IL .....			
	Peoria, IL .....			
	Tazewell, IL .....			
	Woodford, IL .....	0.8739	0.9748	0.9496
6160	Philadelphia, PA-NJ .....			
	Burlington, NJ .....			
	Camden, NJ .....			
	Gloucester, NJ .....			
	Salem, NJ .....			
	Bucks, PA .....			
	Chester, PA .....			
	Delaware, PA .....			
	Montgomery, PA .....			
	Philadelphia, PA .....	1.0713	1.0143	1.0285
6200	Phoenix-Mesa, AZ .....			
	Maricopa, AZ .....			
	Pinal, AZ .....	0.9820	0.9964	0.9928
6240	Pine Bluff, AR .....			
	Jefferson, AR .....	0.7962	0.9592	0.9185
6280	Pittsburgh, PA .....			
	Allegheny, PA .....			
	Beaver, PA .....			
	Butler, PA .....			
	Fayette, PA .....			
	Washington, PA .....			
	Westmoreland, PA .....	0.9365	0.9873	0.9746
6323	Pittsfield, MA .....			
	Berkshire, MA .....	1.0235	1.0047	1.0094
6340	Pocatello, ID .....			
	Bannock, ID .....	0.9372	0.9874	0.9749
6360	Ponce, PR .....			
	Guayanilla, PR .....			
	Juana Diaz, PR .....			
	Penuelas, PR .....			
	Ponce, PR .....			
	Villalba, PR .....			
	Yauco, PR .....	0.5169	0.9034	0.8068
6403	Portland, ME .....			
	Cumberland, ME .....			
	Sagadahoc, ME .....			
	York, ME .....	0.9794	0.9959	0.9918
6440	Portland-Vancouver, OR-WA .....			
	Clackamas, OR .....			
	Columbia, OR .....			
	Multnomah, OR .....			
	Washington, OR .....			
	Yamhill, OR .....			
	Clark, WA .....	1.0667	1.0133	1.0267
6483	Providence-Warwick-Pawtucket, RI .....			
	Bristol, RI .....			
	Kent, RI .....			
	Newport, RI .....			
	Providence, RI .....			
	Washington, RI .....	1.0854	1.0171	1.0342
6520	Provo-Orem, UT .....			
	Utah, UT .....	0.9984	0.9997	0.9994
6560	Pueblo, CO .....			
	Pueblo, CO .....	0.8820	0.9764	0.9528

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
6580 .....	Punta Gorda, FL			
6600 .....	Charlotte, FL .....	0.9218	0.9844	0.9687
6600 .....	Racine, WI			
6640 .....	Racine, WI .....	0.9334	0.9867	0.9734
6640 .....	Raleigh-Durham-Chapel Hill, NC			
	Chatham, NC			
	Durham, NC			
	Franklin, NC			
	Johnston, NC			
	Orange, NC			
	Wake, NC .....	0.9990	0.9998	0.9996
6660 .....	Rapid City, SD			
6680 .....	Pennington, SD .....	0.8846	0.9769	0.9538
6680 .....	Reading, PA			
6690 .....	Berks, PA .....	0.9295	0.9859	0.9718
6690 .....	Redding, CA			
6720 .....	Shasta, CA .....	1.1135	1.0227	1.0454
6720 .....	Reno, NV			
6740 .....	Washoe, NV .....	1.0648	1.0130	1.0259
6740 .....	Richland-Kennewick-Pasco, WA			
	Benton, WA			
	Franklin, WA .....	1.1491	1.0298	1.0596
6760 .....	Richmond-Petersburg, VA			
	Charles City County, VA			
	Chesterfield, VA			
	Colonial Heights City, VA			
	Dinwiddie, VA			
	Goochland, VA			
	Hanover, VA			
	Henrico, VA			
	Hopewell City, VA			
	New Kent, VA			
	Petersburg City, VA			
	Powhatan, VA			
	Prince George, VA			
	Richmond City, VA .....	0.9477	0.9895	0.9791
6780 .....	Riverside-San Bernardino, CA			
	Riverside, CA			
	San Bernardino, CA .....	1.1365	1.0273	1.0546
6800 .....	Roanoke, VA			
	Botetourt, VA			
	Roanoke, VA			
	Roanoke City, VA			
	Salem City, VA .....	0.8614	0.9723	0.9446
6820 .....	Rochester, MN			
6840 .....	Olmsted, MN .....	1.2139	1.0428	1.0856
6840 .....	Rochester, NY			
	Genesee, NY			
	Livingston, NY			
	Monroe, NY			
	Ontario, NY			
	Orleans, NY			
	Wayne, NY .....	0.9194	0.9839	0.9678
6880 .....	Rockford, IL			
	Boone, IL			
	Ogle, IL			
	Winnebago, IL .....	0.9625	0.9925	0.9850
6895 .....	Rocky Mount, NC			
	Edgecombe, NC			
	Nash, NC .....	0.9228	0.9846	0.9691
6920 .....	Sacramento, CA			
	El Dorado, CA			
	Placer, CA			
	Sacramento, CA .....	1.1500	1.0300	1.0600
6960 .....	Saginaw-Bay City-Midland, MI			
	Bay, MI			
	Midland, MI			
	Saginaw, MI .....	0.9650	0.9930	0.9860
6980 .....	St. Cloud, MN			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
7000	Benton, MN Stearns, MN .....	0.9700	0.9940	0.9880
	St. Joseph, MO			
7040	Andrew, MO Buchanan, MO .....	0.9544	0.9909	0.9818
	St. Louis, MO—IL			
	Clinton, IL			
	Jersey, IL			
	Madison, IL			
	Monroe, IL			
	St. Clair, IL			
	Franklin, MO			
	Jefferson, MO			
	Lincoln, MO			
	St. Charles, MO			
	St. Louis, MO			
	St. Louis City, MO			
	Warren, MO .....			
	7080			
7120	Marion, OR Polk, OR .....	1.0500	1.0100	1.0200
	Salinas, CA			
7160	Monterey, CA .....	1.4623	1.0925	1.1849
	Salt Lake City-Ogden, UT			
7200	Davis, UT Salt Lake, UT Weber, UT .....	0.9945	0.9989	0.9978
	San Angelo, TX			
	Tom Green, TX .....			
	San Antonio, TX			
7240	Bexar, TX Comal, TX Guadalupe, TX Wilson, TX .....	0.8374	0.9675	0.9350
	San Diego, CA			
	San Diego, CA .....			
	San Francisco, CA			
7320	Marin, CA San Francisco, CA San Mateo, CA .....	0.8753	0.9751	0.9501
	San Jose, CA			
	Santa Clara, CA .....			
7360	San Juan-Bayamon, PR	1.1131	1.0226	1.0452
	Aguas Buenas, PR			
	Barceloneta, PR			
	Bayamon, PR			
	Canovanas, PR			
	Carolina, PR			
	Catano, PR			
	Ceiba, PR			
	Comerio, PR			
	Corozal, PR			
	Dorado, PR			
	Fajardo, PR			
	Florida, PR			
	Guaynabo, PR			
	Humacao, PR			
	Juncos, PR			
	Los Piedras, PR			
	Loiza, PR			
	Luguillo, PR			
	Manati, PR			
	Morovis, PR			
	Naguabo, PR			
	Naranjito, PR			
	Rio Grande, PR			
	San Juan, PR			
	Toa Alta, PR			
	Toa Baja, PR			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
	Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR .....	0.4741	0.8948	0.7896
7460 .....	San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo, CA .....	1.1271	1.0254	1.0508
7480 .....	Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara, CA .....	1.0481	1.0096	1.0192
7485 .....	Santa Cruz-Watsonville, CA Santa Cruz, CA .....	1.3646	1.0729	1.1458
7490 .....	Santa Fe, NM Los Alamos, NM Santa Fe, NM .....	1.0712	1.0142	1.0285
7500 .....	Santa Rosa, CA Sonoma, CA .....	1.3046	1.0609	1.1218
7510 .....	Sarasota-Bradenton, FL Manatee, FL Sarasota, FL .....	0.9425	0.9885	0.9770
7520 .....	Savannah, GA Bryan, GA Chatham, GA Effingham, GA .....	0.9376	0.9875	0.9750
7560 .....	Scranton—Wilkes-Barre-Hazleton, PA Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA .....	0.8599	0.9720	0.9440
7600 .....	Seattle-Bellevue-Everett, WA Island, WA King, WA Snohomish, WA .....	1.1474	1.0295	1.0590
7610 .....	Sharon, PA Mercer, PA .....	0.7869	0.9574	0.9148
7620 .....	Sheboygan, WI Sheboygan, WI .....	0.8697	0.9739	0.9479
7640 .....	Sherman-Denison, TX Grayson, TX .....	0.9255	0.9851	0.9702
7680 .....	Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA .....	0.8987	0.9797	0.9595
7720 .....	Sioux City, IA—NE Woodbury, IA Dakota, NE .....	0.9046	0.9809	0.9618
7760 .....	Sioux Falls, SD Lincoln, SD Minnehaha, SD .....	0.9257	0.9851	0.9703
7800 .....	South Bend, IN St. Joseph, IN .....	0.9802	0.9960	0.9921
7840 .....	Spokane, WA Spokane, WA .....	1.0852	1.0170	1.0341
7880 .....	Springfield, IL Menard, IL Sangamon, IL .....	0.8659	0.9732	0.9464
7920 .....	Springfield, MO Christian, MO Greene, MO Webster, MO .....	0.8424	0.9685	0.9370
8003 .....	Springfield, MA Hampden, MA Hampshire, MA .....	1.0927	1.0185	1.0371
8050 .....	State College, PA Centre, PA .....	0.8941	0.9788	0.9576
8080 .....	Steubenville-Weirton, OH—WV (WV Hospitals) Jefferson, OH Brooke, WV Hancock, WV .....	0.8804	0.9761	0.9522
8120 .....	Stockton-Lodi, CA San Joaquin, CA .....	1.0506	1.0101	1.0202

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
8140 .....	Sumter, SC			
	Sumter, SC .....	0.8273	0.9655	0.9309
8160 .....	Syracuse, NY			
	Cayuga, NY			
	Madison, NY			
	Onondaga, NY			
	Oswego, NY .....	0.9714	0.9943	0.9886
8200 .....	Tacoma, WA			
	Pierce, WA .....	1.0940	1.0188	1.0376
8240 .....	Tallahassee, FL			
	Gadsden, FL			
	Leon, FL .....	0.8504	0.9701	0.9402
8280 .....	Tampa-St. Petersburg-Clearwater, FL			
	Hernando, FL			
	Hillsborough, FL			
	Pasco, FL			
	Pinellas, FL .....	0.9065	0.9813	0.9626
8320 .....	Terre Haute, IN			
	Clay, IN			
	Vermillion, IN			
	Vigo, IN .....	0.8599	0.9720	0.9440
8360 .....	Texarkana, AR-Texarkana, TX			
	Miller, AR			
	Bowie, TX .....	0.8088	0.9618	0.9235
8400 .....	Toledo, OH			
	Fulton, OH			
	Lucas, OH			
	Wood, OH .....	0.9810	0.9962	0.9924
8440 .....	Topeka, KS			
	Shawnee, KS .....	0.9199	0.9840	0.9680
8480 .....	Trenton, NJ			
	Mercer, NJ .....	1.0432	1.0086	1.0173
8520 .....	Tucson, AZ			
	Pima, AZ .....	0.8911	0.9782	0.9564
8560 .....	Tulsa, OK			
	Creek, OK			
	Osage, OK			
	Rogers, OK			
	Tulsa, OK			
	Wagoner, OK .....	0.8332	0.9666	0.9333
8600 .....	Tuscaloosa, AL			
	Tuscaloosa, AL .....	0.8130	0.9626	0.9252
8640 .....	Tyler, TX			
	Smith, TX .....	0.9521	0.9904	0.9808
8680 .....	Utica-Rome, NY			
	Herkimer, NY			
	Oneida, NY .....	0.8465	0.9693	0.9386
8720 .....	Vallejo-Fairfield-Napa, CA			
	Napa, CA			
	Solano, CA .....	1.3354	1.0671	1.1342
8735 .....	Ventura, CA			
	Ventura, CA .....	1.1096	1.0219	1.0438
8750 .....	Victoria, TX			
	Victoria, TX .....	0.8756	0.9751	0.9502
8760 .....	Vineland-Millville-Bridgeton, NJ			
	Cumberland, NJ .....	1.0031	1.0006	1.0012
8780 .....	Visalia-Tulare-Porterville, CA			
	Tulare, CA .....	0.9418	0.9884	0.9767
8800 .....	Waco, TX			
	McLennan, TX .....	0.8073	0.9615	0.9229
8840 .....	Washington, DC—MD—VA—WV			
	District of Columbia, DC			
	Calvert, MD			
	Charles, MD			
	Frederick, MD			
	Montgomery, MD			
	Prince Georges, MD			
	Alexandria City, VA			
	Arlington, VA			

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

MSA	Urban area (Constituent counties)	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
	Clarke, VA			
	Culpeper, VA			
	Fairfax, VA			
	Fairfax City, VA			
	Falls Church City, VA			
	Fauquier, VA			
	Fredericksburg City, VA			
	King George, VA			
	Loudoun, VA			
	Manassas City, VA			
	Manassas Park City, VA			
	Prince William, VA			
	Spotsylvania, VA			
	Stafford, VA			
	Warren, VA			
	Berkeley, WV			
8920	Jefferson, WV .....	1.0851	1.0170	1.0340
	Waterloo-Cedar Falls, IA			
8940	Black Hawk, IA .....	0.8069	0.9614	0.9228
	Wausau, WI			
	Marathon, WI .....	0.9782	0.9956	0.9913
8960	West Palm Beach-Boca Raton, FL			
	Palm Beach, FL .....	0.9939	0.9988	0.9976
9000	Wheeling, WV—OH			
	Belmont, OH			
	Marshall, WV			
9040	Ohio, WV .....	0.7670	0.9534	0.9068
	Wichita, KS			
	Butler, KS			
	Harvey, KS			
9080	Sedgwick, KS .....	0.9520	0.9904	0.9808
	Wichita Falls, TX			
	Archer, TX			
9140	Wichita, TX .....	0.8498	0.9700	0.9399
	Williamsport, PA			
9160	Lycoming, PA .....	0.8544	0.9709	0.9418
	Wilmington-Newark, DE—MD			
	New Castle, DE			
9200	Cecil, MD .....	1.1173	1.0235	1.0469
	Wilmington, NC			
	New Hanover, NC			
9260	Brunswick, NC .....	0.9640	0.9928	0.9856
	Yakima, WA			
9270	Yakima, WA .....	1.0569	1.0114	1.0228
	Yolo, CA			
9280	Yolo, CA .....	0.9434	0.9887	0.9774
	York, PA			
9320	York, PA .....	0.9026	0.9805	0.9610
	Youngstown-Warren, OH			
	Columbiana, OH			
	Mahoning, OH			
9340	Trumbull, OH .....	0.9358	0.9872	0.9743
	Yuba City, CA			
	Sutter, CA			
9360	Yuba, CA .....	1.0276	1.0055	1.0110
	Yuma, AZ			
	Yuma, AZ	0.8589	0.9718	0.9436

<sup>1</sup> Prereclassification wage index from Federal FY 2003 based on fiscal year 1999 audited acute care hospital inpatient wage data that excludes wages for services provided by teaching physicians, interns and residents, and nonphysician anesthetists under Part B of the Medicare program.

<sup>2</sup> One-fifth of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2002 through September 30, 2003 (Federal FY 2203). For example, for a LTCH's cost reporting period begins during Federal in FY 2003 and located in Chicago, Illinois (MSA 1600), the 1/5 of the wage index value is computed as  $(1.1044 + 4)/5 = 1.0209$ . For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this proposed rule.

<sup>3</sup> Two-fifths of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2003 (Federal FY 2004). For example, for a LTCH's cost reporting period begins during Federal in FY 2004 and located in Chicago, Illinois (MSA 1600), the 2/5 of the wage index value is computed as  $((2 \cdot 1.1044) + 3)/5 = 1.0418$ . For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this proposed rule.

TABLE 2.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004

Nonurban area	Full wage index <sup>1</sup>	1/5 wage index <sup>2</sup>	2/5 wage index <sup>3</sup>
Alabama	0.7660	0.9532	0.9064
Alaska	1.2293	1.0459	1.0917
Arizona	0.8493	0.9699	0.9397
Arkansas	0.7666	0.9533	0.9066
California	0.9899	0.9980	0.9960
Colorado	0.9015	0.9803	0.9606
Connecticut	1.2394	1.0479	1.0958
Delaware	0.9128	0.9826	0.9651
Florida	0.8827	0.9765	0.9531
Georgia	0.8230	0.9646	0.9292
Hawaii	1.0255	1.0051	1.0102
Idaho	0.8747	0.9749	0.9499
Illinois	0.8204	0.9641	0.9282
Indiana	0.8755	0.9751	0.9502
Iowa	0.8315	0.9663	0.9326
Kansas	0.7900	0.9580	0.9160
Kentucky	0.8079	0.9616	0.9232
Louisiana	0.7580	0.9516	0.9032
Maine	0.8874	0.9775	0.9550
Maryland	0.8946	0.9789	0.9578
Massachusetts	1.1288	1.0258	1.0515
Michigan	0.9009	0.9802	0.9604
Minnesota	0.9151	0.9830	0.9660
Mississippi	0.7680	0.9536	0.9072
Missouri	0.7881	0.9576	0.9152
Montana	0.8481	0.9696	0.9392
Nebraska	0.8204	0.9641	0.9282
Nevada	0.9577	0.9915	0.9831
New Hampshire	0.9839	0.9968	0.9936
New Jersey <sup>4</sup>			
New Mexico	0.8872	0.9774	0.9549
New York	0.8542	0.9708	0.9417
North Carolina	0.8669	0.9734	0.9468
North Dakota	0.7788	0.9558	0.9115
Ohio	0.8613	0.9723	0.9445
Oklahoma	0.7590	0.9518	0.9036
Oregon	1.0259	1.0052	1.0104
Pennsylvania	0.8462	0.9692	0.9385
Puerto Rico	0.4356	0.8871	0.7742
Rhode Island <sup>4</sup>			
South Carolina	0.8607	0.9721	0.9443
South Dakota	0.7815	0.9563	0.9126
Tennessee	0.7877	0.9575	0.9151
Texas	0.7821	0.9564	0.9128
Utah	0.9312	0.9862	0.9725
Vermont	0.9345	0.9869	0.9738
Virginia	0.8504	0.9701	0.9402
Washington	1.0179	1.0036	1.0072
West Virginia	0.7975	0.9595	0.9190
Wisconsin	0.9162	0.9832	0.9665
Wyoming	0.9007	0.9801	0.9603

<sup>1</sup> Pre-reclassification wage index from Federal FY 2003 based on fiscal year 1999 audited acute care hospital inpatient wage data that exclude wages for services provided by teaching physicians, residents, and nonphysician anesthetists under Part B of the Medicare program.

<sup>2</sup> One-fifth of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2002 through September 30, 2003 (Federal FY 2203). For example, for a LTCH's cost reporting period begins during Federal in FY 2003 and located in rural Illinois, the 1/5 of the wage index value is computed as  $(0.8204 + 4)/5 = 0.9641$ . For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this proposed rule.

<sup>3</sup> Two-fifths of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2003 (Federal FY 2004). For example, for a LTCH's cost reporting period begins during Federal in FY 2004 and located in rural Illinois, the 2/5 of the wage index value is computed as  $((2 \cdot 0.8204) + 3)/5 = 0.9282$ . For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this proposed rule.

<sup>4</sup> All counties within the State are classified as urban.

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003

LTC-DRG	Description	Relative weight	Geometric mean length of stay	Short-stays of 5/6 average length of stay
1	CRANIOTOMY AGE >17 W CC <sup>5</sup>	1.8783	46.3	38.5
2	CRANIOTOMY AGE > 17 W/O CC <sup>5</sup>	1.8783	46.3	38.5
3	CRANIOTOMY AGE 0–17*	1.8783	46.3	38.5
4	SPINAL PROCEDURES <sup>4</sup>	1.2493	31.3	26.0
5	EXTRACRANIAL VASCULAR PROCEDURES <sup>4</sup>	1.2493	31.3	26.0
6	CARPAL TUNNEL RELEASE*	0.4055	16.8	14.0
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.7829	43.8	36.5
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC4	1.2493	31.3	26.0
9	SPINAL DISORDERS & INJURIES	1.4118	34.6	28.8
10	NERVOUS SYSTEM NEOPLASMS W CC <sup>7</sup>	0.8537	24.5	20.4
11	NERVOUS SYSTEM NEOPLASMS W/O CC <sup>7</sup>	0.8537	24.5	20.4
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.7773	27.1	22.5
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7207	25.6	21.3
14	INTERCRANIAL HEMORRHAGE & STROKE W INFARCT	0.8816	26.6	22.1
15	NONSPECIFIC CVA & PRECEREBRAL OCCULSION W/O INFARCT	0.9053	29.4	24.5
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.8864	27.0	22.5
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC <sup>2</sup>	0.6655	21.9	18.2
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.7770	24.9	20.7
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.5486	22.0	18.3
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.2331	29.3	24.4
21	VIRAL MENINGITIS <sup>1</sup>	0.4055	16.8	14.0
22	HYPERTENSIVE ENCEPHALOPATHY <sup>2</sup>	0.6655	21.9	18.2
23	NONTRAUMATIC STUPOR & COMA	0.9623	27.2	22.6
24	SEIZURE & HEADACHE AGE >17 W CC	0.8831	24.8	20.6
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.4830	20.4	17.0
26	SEIZURE & HEADACHE AGE 0–17*	0.4055	16.8	14.0
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.1126	31.6	26.3
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE>17 W CC	1.1507	29.0	24.1
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE>17 W/O CC	0.9268	27.2	22.6
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17*	0.8284	23.3	19.4
31	CONCUSSION AGE >17 W CC <sup>2</sup>	0.6655	21.9	18.2
32	CONCUSSION AGE >17 W/O CC*	0.4055	16.8	14.0
33	CONCUSSION AGE 0–17*	0.4055	16.8	14.0
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.8385	25.1	20.9
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6561	25.3	21.0
36	RETINAL PROCEDURES*	0.4055	16.8	14.0
37	ORBITAL PROCEDURES*	0.4055	16.8	14.0
38	PRIMARY IRIS PROCEDURES*	0.4055	16.8	14.0
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY*	0.4055	16.8	14.0
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17*	0.4055	16.8	14.0
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17*	0.4055	16.8	14.0
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS*	0.4055	16.8	14.0
43	HYPHEMA <sup>3</sup>	0.8284	23.3	19.4
44	ACUTE MAJOR EYE INFECTIONS <sup>2</sup>	0.6655	21.9	18.2
45	NEUROLOGICAL EYE DISORDERS <sup>1</sup>	0.4055	16.8	14.0
46	OTHER DISORDERS OF THE EYE AGE >17 W CC <sup>2</sup>	0.6655	21.9	18.2
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC <sup>1</sup>	0.4055	16.8	14.0
48	OTHER DISORDERS OF THE EYE AGE 0–17*	0.4055	16.8	14.0
49	MAJOR HEAD & NECK PROCEDURES*	1.8783	46.3	38.5
50	SIALOADENECTOMY*	0.6655	21.9	18.2
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY*	0.6655	21.9	18.2
52	CLEFT LIP & PALATE REPAIR*	0.6655	21.9	18.2
53	SINUS & MASTOID PROCEDURES AGE >17*	0.6655	21.9	18.2
54	SINUS & MASTOID PROCEDURES AGE 0–17*	0.6655	21.9	18.2
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES <sup>2</sup>	0.6655	21.9	18.2
56	RHINOPLASTY*	0.6655	21.9	18.2
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17*	0.6655	21.9	18.2
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17*	0.6655	21.9	18.2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17*	0.6655	21.9	18.2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17*	0.6655	21.9	18.2
61	MYRINGOTOMY W TUBE INSERTION AGE >17 <sup>5</sup>	1.8783	46.3	38.5
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17*	0.6655	21.9	18.2
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES <sup>5</sup>	1.8783	46.3	38.5
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0447	25.5	21.2
65	DYSEQUILIBRIUM	0.5056	19.8	16.5
66	EPISTAXIS <sup>1</sup>	0.4055	16.8	14.0

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geo-metric mean length of stay	Short-stays of % average length of stay
67	EPIGLOTTITIS <sup>1</sup>	0.4055	16.8	14.0
68	OTITIS MEDIA & URI AGE >17 W CC <sup>3</sup>	0.8284	23.3	19.4
69	OTITIS MEDIA & URI AGE >17 W/O CC <sup>3</sup>	0.8284	23.3	19.4
70	OTITIS MEDIA & URI AGE 0–17*	0.4055	16.8	14.0
71	LARYNGOTRACHEITIS*	0.4055	16.8	14.0
72	NASAL TRAUMA & DEFORMITY <sup>1</sup>	0.4055	16.8	14.0
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.8097	23.7	19.7
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17*	0.4055	16.8	14.0
75	MAJOR CHEST PROCEDURES <sup>5</sup>	1.8783	46.3	38.5
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7674	50.6	42.1
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC <sup>5</sup>	1.8783	46.3	38.5
78	PULMONARY EMBOLISM	0.6348	20.5	17.0
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	0.8916	22.2	18.5
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.7947	22.8	19.0
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17*	0.4055	16.8	14.0
82	RESPIRATORY NEOPLASMS	0.7976	20.9	17.4
83	MAJOR CHEST TRAUMA W CC	0.7384	24.8	20.6
84	MAJOR CHEST TRAUMA W/O CC <sup>1</sup>	0.4055	16.8	14.0
85	PLEURAL EFFUSION W CC	0.8207	23.6	19.6
86	PLEURAL EFFUSION W/O CC	0.6194	21.1	17.5
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.6597	32.3	26.9
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.7532	20.9	17.4
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.8533	23.6	19.6
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7921	23.0	19.1
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17*	0.8284	23.3	19.4
92	INTERSTITIAL LUNG DISEASE W CC	0.7251	19.1	15.9
93	INTERSTITIAL LUNG DISEASE W/O CC	0.5573	18.5	15.4
94	PNEUMOTHORAX W CC	0.7885	22.7	18.9
95	PNEUMOTHORAX W/O CC <sup>1</sup>	0.4055	16.8	14.0
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8173	24.2	20.1
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5940	17.9	14.9
98	BRONCHITIS & ASTHMA AGE 0–17*	0.4055	16.8	14.0
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.1164	27.3	22.7
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0015	25.4	21.1
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.9763	23.4	19.5
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.9313	24.5	20.4
103	HEART TRANSPLANT <sup>6</sup>	0.0000	0.0	0.0
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH*	1.8783	46.3	38.5
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH*	1.8783	46.3	38.5
106	CORONARY BYPASS W PTCA*	1.8783	46.3	38.5
107	CORONARY BYPASS W CARDIAC CATH*	1.8783	46.3	38.5
108	OTHER CARDIOTHORACIC PROCEDURES <sup>2</sup>	0.6655	21.9	18.2
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH*	1.8783	46.3	38.5
110	MAJOR CARDIOVASCULAR PROCEDURES W CC <sup>5</sup>	1.8783	46.3	38.5
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC <sup>5</sup>	1.8783	46.3	38.5
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.4103	36.9	30.7
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.3377	40.2	33.5
115	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P <sup>5</sup>	1.8783	46.3	38.5
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT <sup>3</sup>	0.8284	23.3	19.4
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT*	0.4055	16.8	14.0
118	CARDIAC PACEMAKER DEVICE REPLACEMENT <sup>1</sup>	0.4055	16.8	14.0
119	VEIN LIGATION & STRIPPING*	0.6655	21.9	18.2
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.4091	36.4	30.3
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.7167	21.6	18.0
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.5144	19.0	15.8
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.9412	20.9	17.4
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG <sup>3</sup>	0.8284	23.3	19.4
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG <sup>5</sup>	1.8783	46.3	38.5
126	ACUTE & SUBACUTE ENDOCARDITIS	0.7689	24.8	20.6
127	HEART FAILURE & SHOCK	0.7616	22.4	18.6
128	DEEP VEIN THROMBOPHLEBITIS	0.6042	20.8	17.3
129	CARDIAC ARREST, UNEXPLAINED	1.0534	20.9	17.4
130	PERIPHERAL VASCULAR DISORDERS W CC	0.7914	24.8	20.6
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7081	23.7	19.7
132	ATHEROSCLEROSIS W CC	0.8183	21.8	18.1
133	ATHEROSCLEROSIS W/O CC	0.5484	18.5	15.4

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geometric mean length of stay	Short-stays of 5/6 average length of stay
134	HYPERTENSION	0.6985	24.0	20.0
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.7331	20.3	16.9
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7075	21.0	17.5
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17*	0.6655	21.9	18.2
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7187	23.4	19.5
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6482	20.4	17.0
140	ANGINA PECTORIS	0.7690	20.1	16.7
141	SYNCOPE & COLLAPSE W CC	0.6252	23.2	19.3
142	SYNCOPE & COLLAPSE W/O CC	0.5452	21.5	17.9
143	CHEST PAIN	0.7316	22.7	18.9
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.7870	21.9	18.2
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7637	25.0	20.8
146	RECTAL RESECTION W CC <sup>4</sup>	1.2493	31.3	26.0
147	RECTAL RESECTION W/O CC*	1.2493	31.3	26.0
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	2.8488	47.6	39.6
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC <sup>2</sup>	0.6655	21.9	18.2
150	PERITONEAL ADHESIOLYSIS W CC <sup>1</sup>	0.4055	16.8	14.0
151	PERITONEAL ADHESIOLYSIS W/O CC*	0.4055	16.8	14.0
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC <sup>4</sup>	1.2493	31.3	26.0
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC*	0.8284	23.3	19.4
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC <sup>4</sup>	1.2493	31.3	26.0
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC*	0.8284	23.3	19.4
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17*	0.8284	23.3	19.4
157	ANAL & STOMAL PROCEDURES W CC <sup>1</sup>	0.4055	16.8	14.0
158	ANAL & STOMAL PROCEDURES W/O CC*	0.4055	16.8	14.0
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC <sup>4</sup>	1.2493	31.3	26.0
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC*	0.6655	21.9	18.2
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC*	0.6655	21.9	18.2
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC*	0.6655	21.9	18.2
163	HERNIA PROCEDURES AGE 0-17*	0.6655	21.9	18.2
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC*	0.8284	23.3	19.4
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC*	0.8284	23.3	19.4
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC*	0.6655	21.9	18.2
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC*	0.6655	21.9	18.2
168	MOUTH PROCEDURES W CC <sup>3</sup>	0.8284	23.3	19.4
169	MOUTH PROCEDURES W/O CC*	0.6655	21.9	18.2
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.5543	35.0	29.1
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC <sup>3</sup>	0.8284	23.3	19.4
172	DIGESTIVE MALIGNANCY W CC	0.8553	24.2	20.1
173	DIGESTIVE MALIGNANCY W/O CC	0.5513	18.9	15.7
174	G.I. HEMORRHAGE W CC	0.8741	23.6	19.6
175	G.I. HEMORRHAGE W/O CC	0.8359	25.6	21.3
176	COMPLICATED PEPTIC ULCER	0.7661	24.4	20.3
177	UNCOMPLICATED PEPTIC ULCER W CC <sup>3</sup>	0.8284	23.3	19.4
178	UNCOMPLICATED PEPTIC ULCER W/O CC <sup>2</sup>	0.6655	21.9	18.2
179	INFLAMMATORY BOWEL DISEASE	1.0975	23.4	19.5
180	G.I. OBSTRUCTION W CC	0.8457	22.8	19.0
181	G.I. OBSTRUCTION W/O CC	0.5638	19.5	16.2
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.8829	25.9	21.5
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.6913	21.5	17.9
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17*	0.6655	21.9	18.2
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17 <sup>3</sup>	0.8284	23.3	19.4
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17*	0.8284	23.3	19.4
187	DENTAL EXTRACTIONS & RESTORATIONS*	0.8284	23.3	19.4
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0490	24.2	20.1
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5852	17.4	14.5
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17*	0.6655	21.9	18.2
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC <sup>5</sup>	1.8783	46.3	38.5
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC*	1.2493	31.3	26.0
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC <sup>4</sup>	1.2493	31.3	26.0
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC*	0.8284	23.3	19.4
195	CHOLECYSTECTOMY W C.D.E. W CC*	0.8284	23.3	19.4
196	CHOLECYSTECTOMY W C.D.E. W/O CC*	0.8284	23.3	19.4
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC <sup>5</sup>	1.8783	46.3	38.5
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC <sup>5</sup>	1.8783	46.3	38.5
199	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY <sup>3</sup>	0.8284	23.3	19.4

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geometric mean length of stay	Short-stays of 5/6 average length of stay
200	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY <sup>4</sup>	1.2493	31.3	26.0
201	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES <sup>5</sup>	1.8783	46.3	38.5
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.5736	18.4	15.3
203	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS	0.5897	18.2	15.1
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	0.9444	22.1	18.4
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.6825	21.5	17.9
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC <sup>2</sup>	0.6655	21.9	18.2
207	DISORDERS OF THE BILIARY TRACT W CC	0.6979	21.5	17.9
208	DISORDERS OF THE BILIARY TRACT W/O CC <sup>1</sup>	0.4055	16.8	14.0
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY <sup>5</sup>	1.8783	46.3	38.5
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC <sup>4</sup>	1.2493	31.3	26.0
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC*	0.8284	23.3	19.4
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17*	0.8284	23.3	19.4
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.2591	33.0	27.5
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE <sup>4</sup>	1.2493	31.3	26.0
217	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS	1.3602	38.8	32.3
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC <sup>3</sup>	0.8284	23.3	19.4
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC*	0.8284	23.3	19.4
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17*	0.8284	23.3	19.4
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC <sup>4</sup>	1.2493	31.3	26.0
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC <sup>1</sup>	0.4055	16.8	14.0
225	FOOT PROCEDURES <sup>4</sup>	1.2493	31.3	26.0
226	SOFT TISSUE PROCEDURES W CC <sup>4</sup>	1.2493	31.3	26.0
227	SOFT TISSUE PROCEDURES W/O CC <sup>3</sup>	0.8284	23.3	19.4
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC*	0.6655	21.9	18.2
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC <sup>2</sup>	0.6655	21.9	18.2
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR <sup>1</sup>	0.4055	16.8	14.0
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR <sup>5</sup>	1.8783	46.3	38.5
232	ARTHROSCOPY*	0.4055	16.8	14.0
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC <sup>4</sup>	1.2493	31.3	26.0
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC <sup>1</sup>	0.4055	16.8	14.0
235	FRACTURES OF FEMUR	0.7540	28.5	23.7
236	FRACTURES OF HIP & PELVIS	0.7381	27.2	22.6
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH <sup>2</sup>	0.6655	21.9	18.2
238	OSTEOMYELITIS	0.8275	27.5	22.9
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	0.6689	21.9	18.2
240	CONNECTIVE TISSUE DISORDERS W CC	0.9260	26.0	21.6
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.5805	22.7	18.9
242	SEPTIC ARTHRITIS	0.7725	26.3	21.9
243	MEDICAL BACK PROBLEMS	0.6596	23.4	19.5
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5756	20.6	17.1
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4426	17.5	14.5
246	NON-SPECIFIC ARTHROPATHIES	0.6053	21.4	17.8
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5590	20.4	17.0
248	TENDONITIS, MYOSITIS & BURISITIS	0.7288	23.9	19.9
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8005	27.1	22.5
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8373	31.8	26.5
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6904	26.0	21.6
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17*	0.4055	16.8	14.0
253	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC	0.8054	28.0	23.3
254	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC	0.6999	26.4	22.0
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0-17*	0.4055	16.8	14.0
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.8002	25.1	20.9
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC <sup>2</sup>	0.6655	21.9	18.2
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC*	0.6655	21.9	18.2
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC*	0.6655	21.9	18.2
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC*	0.6655	21.9	18.2
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION*	0.4055	16.8	14.0
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY <sup>1</sup>	0.4055	16.8	14.0
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.5388	45.0	37.5
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.1645	38.8	32.3
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.6569	45.6	38.0
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC <sup>3</sup>	0.8284	23.3	19.4
267	PERIANAL & PILONIDAL PROCEDURES*	0.4055	16.8	14.0
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES <sup>4</sup>	1.2493	31.3	26.0
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.3915	41.7	34.7

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geometric mean length of stay	Short-stays of 5/6 average length of stay
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.3879	41.6	34.6
271	SKIN ULCERS	0.9714	31.1	25.9
272	MAJOR SKIN DISORDERS W CC	0.6846	21.0	17.5
273	MAJOR SKIN DISORDERS W/O CC <sup>2</sup>	0.6655	21.9	18.2
274	MALIGNANT BREAST DISORDERS W CC <sup>7</sup>	0.7872	22.0	18.3
275	MALIGNANT BREAST DISORDERS W/O CC <sup>7</sup>	0.7872	22.0	18.3
276	NON-MALIGANT BREAST DISORDERS <sup>2</sup>	0.6655	21.9	18.2
277	CELLULITIS AGE >17 W CC	0.7704	24.4	20.3
278	CELLULITIS AGE >17 W/O CC	0.6353	22.4	18.6
279	CELLULITIS AGE 0-17*	0.6655	21.9	18.2
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	1.0097	30.9	25.7
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7363	27.4	22.8
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17*	0.6655	21.9	18.2
283	MINOR SKIN DISORDERS W CC	0.8574	24.8	20.6
284	MINOR SKIN DISORDERS W/O CC <sup>1</sup>	0.4055	16.8	14.0
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	1.3692	31.7	26.4
286	ADRENAL & PITUITARY PROCEDURES*	1.2493	31.3	26.0
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.3195	39.6	33.0
288	O.R. PROCEDURES FOR OBESITY <sup>5</sup>	1.8783	46.3	38.5
289	PARATHYROID PROCEDURES*	0.4055	16.8	14.0
290	THYROID PROCEDURES <sup>1</sup>	0.4055	16.8	14.0
291	THYROGLOSSAL PROCEDURES*	0.4055	16.8	14.0
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC <sup>4</sup>	1.2493	31.3	26.0
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC*	0.6655	21.9	18.2
294	DIABETES AGE >35	0.7678	25.1	20.9
295	DIABETES AGE 0-35 <sup>3</sup>	0.8284	23.3	19.4
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.7710	24.3	20.2
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6321	21.1	17.5
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17*	0.6655	21.9	18.2
299	INBORN ERRORS OF METABOLISM <sup>3</sup>	0.8284	23.3	19.4
300	ENDOCRINE DISORDERS W CC	0.8670	23.3	19.4
301	ENDOCRINE DISORDERS W/O CC <sup>1</sup>	0.4055	16.8	14.0
302	KIDNEY TRANSPLANT <sup>6</sup>	0.0000	0.0	0.0
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM <sup>5</sup>	1.8783	46.3	38.5
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC <sup>4</sup>	1.2493	31.3	26.0
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC <sup>2</sup>	0.6655	21.9	18.2
306	PROSTATECTOMY W CC <sup>3</sup>	0.8284	23.3	19.4
307	PROSTATECTOMY W/O CC <sup>1</sup>	0.4055	16.8	14.0
308	MINOR BLADDER PROCEDURES W CC <sup>3</sup>	0.8284	23.3	19.4
309	MINOR BLADDER PROCEDURES W/O CC*	0.4055	16.8	26.0
310	TRANSURETHRAL PROCEDURES W CC <sup>4</sup>	1.2493	31.3	14.0
311	TRANSURETHRAL PROCEDURES W/O CC <sup>1</sup>	0.4055	16.8	38.5
312	URETHRAL PROCEDURES, AGE >17 W CC <sup>5</sup>	1.8783	46.3	14.0
313	URETHRAL PROCEDURES, AGE >17 W/O CC*	0.4055	16.8	14.0
314	URETHRAL PROCEDURES, AGE 0-17*	0.4055	16.8	14.0
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.5800	39.5	32.9
316	RENAL FAILURE	0.9308	24.1	20.0
317	ADMIT FOR RENAL DIALYSIS <sup>4</sup>	1.2493	31.3	26.0
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	0.8075	21.5	17.9
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC <sup>2</sup>	0.6655	21.9	18.2
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7424	23.9	19.9
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6123	20.4	17.0
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17*	0.6655	21.9	18.2
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY <sup>2</sup>	0.6655	21.9	18.2
324	URINARY STONES W/O CC <sup>2</sup>	0.6655	21.9	18.2
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.8123	26.7	22.2
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC <sup>2</sup>	0.6655	21.9	18.2
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17*	0.4055	16.8	14.0
328	URETHRAL STRICTURE AGE >17 W CC*	0.6655	21.9	18.2
329	URETHRAL STRICTURE AGE >17 W/O CC <sup>1</sup>	0.4055	16.8	14.0
330	URETHRAL STRICTURE AGE 0-17*	0.4055	16.8	14.0
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9267	24.6	20.5
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6393	20.9	17.4
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17*	0.4055	16.8	14.0
334	MAJOR MALE PELVIC PROCEDURES W CC*	1.2493	31.3	26.0
335	MAJOR MALE PELVIC PROCEDURES W/O CC*	0.8284	23.3	19.4

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geometric mean length of stay	Short-stays of 5/6 average length of stay
336	TRANSURETHRAL PROSTATECTOMY W CC <sup>3</sup>	0.8284	23.3	19.4
337	TRANSURETHRAL PROSTATECTOMY W/O CC*	0.6655	21.9	18.2
338	TESTES PROCEDURES, FOR MALIGNANCY*	0.6655	21.9	18.2
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 <sup>1</sup>	0.4055	16.8	14.0
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17*	0.4055	16.8	14.0
341	PENIS PROCEDURES <sup>2</sup>	0.6655	21.9	18.2
342	CIRCUMCISION AGE >17 <sup>4</sup>	1.2493	31.3	26.0
343	CIRCUMCISION AGE 0-17	0.4055	16.8	14.0
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY <sup>4</sup>	1.2493	31.3	26.0
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY <sup>3</sup>	0.8284	23.3	19.4
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.7070	21.6	18.0
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC <sup>2</sup>	0.6655	21.9	18.2
348	BENIGN PROSTATIC HYPERTROPHY W CC <sup>1</sup>	0.4055	16.8	14.0
349	BENIGN PROSTATIC HYPERTROPHY W/O CC*	0.4055	16.8	14.0
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6058	19.9	16.5
351	STERILIZATION, MALE*	0.4055	16.8	14.0
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES <sup>3</sup>	0.8284	23.3	19.4
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY*	1.8783	46.3	38.5
354	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC*	1.2493	31.3	26.0
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC*	1.2493	31.3	26.0
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES*	1.2493	31.3	26.0
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY*	1.2493	31.3	26.0
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC <sup>5</sup>	1.8783	46.3	38.5
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC <sup>1</sup>	0.4055	16.8	14.0
360	VAGINA, CERVIX & VULVA PROCEDURES <sup>1</sup>	0.4055	16.8	14.0
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION*	0.6655	21.9	18.2
362	ENDOSCOPIC TUBAL INTERRUPTION*	0.6655	21.9	18.2
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY*	0.8284	23.3	19.4
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY*	0.6655	21.9	18.2
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES <sup>5</sup>	1.8783	46.3	38.5
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9654	23.9	19.9
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC <sup>3</sup>	0.8284	23.3	19.4
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM <sup>4</sup>	1.2493	31.3	26.0
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS <sup>2</sup>	0.6655	21.9	18.2
370	CESAREAN SECTION W CC*	0.8284	23.3	19.4
371	CESAREAN SECTION W/O CC*	0.6655	21.9	18.2
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES*	0.6655	21.9	18.2
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES*	0.4055	16.8	14.0
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C*	0.4055	16.8	14.0
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C*	0.4055	16.8	14.0
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE*	0.4055	16.8	14.0
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE*	0.4055	16.8	14.0
378	ECTOPIC PREGNANCY*	0.6655	21.9	18.2
379	THREATENED ABORTION*	0.4055	16.8	14.0
380	ABORTION W/O D&C*	0.4055	16.8	14.0
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY*	0.4055	16.8	14.0
382	FALSE LABOR*	0.4055	16.8	14.0
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS*	0.4055	16.8	14.0
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS*	0.4055	16.8	14.0
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY*	0.4055	16.8	14.0
386	EXTREME IMMATUREITY*	0.6655	21.9	18.2
387	PREMATURITY W MAJOR PROBLEMS*	0.6655	21.9	18.2
388	PREMATURITY W/O MAJOR PROBLEMS*	0.4055	16.8	14.0
389	FULL TERM NEONATE W MAJOR PROBLEMS <sup>4</sup>	1.2493	31.3	26.0
390	NEONATE W OTHER SIGNIFICANT PROBLEMS*	0.6655	21.9	18.2
391	NORMAL NEWBORN*	0.4055	16.8	14.0
392	SPLENECTOMY AGE >17*	0.8284	23.3	19.4
393	SPLENECTOMY AGE 0-17*	0.6655	21.9	18.2
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS <sup>5</sup>	1.8783	46.3	38.5
395	RED BLOOD CELL DISORDERS AGE >17	0.8584	25.1	20.9
396	RED BLOOD CELL DISORDERS AGE 0-17*	0.4055	16.8	14.0
397	COAGULATION DISORDERS	0.7567	19.4	16.1
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.9008	23.4	19.5
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC <sup>1</sup>	0.4055	16.8	14.0
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE <sup>3</sup>	0.8284	23.3	19.4
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC <sup>4</sup>	1.2493	31.3	26.0

TABLE 3.—PROPOSED LTC—DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geometric mean length of stay	Short-stays of % average length of stay
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC*	0.8284	23.3	19.4
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.9651	23.9	19.9
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8980	19.1	15.9
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17*	0.6655	21.9	18.2
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC <sup>5</sup>	1.8783	46.3	38.5
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC*	0.8284	23.3	19.4
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC <sup>4</sup>	1.2493	31.3	26.0
409	RADIOTHERAPY	0.5220	19.5	16.2
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS <sup>1</sup>	0.4055	16.8	14.0
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY*	0.4055	16.8	14.0
412	HISTORY OF MALIGNANCY W ENDOSCOPY*	0.4055	16.8	14.0
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC <sup>7</sup>	0.9061	23.7	19.7
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC <sup>7</sup>	0.9061	23.7	19.7
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.4933	38.7	32.2
416	SEPTICEMIA AGE >17	0.9612	25.9	21.5
417	SEPTICEMIA AGE 0-17*	0.8284	23.3	19.4
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.8771	25.8	21.5
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.5948	20.5	17.0
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC <sup>1</sup>	0.4055	16.8	14.0
421	VIRAL ILLNESS AGE >17 <sup>4</sup>	1.2493	31.3	26.0
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17*	0.4055	16.8	14.0
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	0.8701	24.7	20.5
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS <sup>5</sup>	1.8783	46.3	38.5
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.6177	26.0	21.6
426	DEPRESSIVE NEUROSES	0.5739	26.9	22.4
427	NEUROSES EXCEPT DEPRESSIVE <sup>2</sup>	0.6655	21.9	18.2
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL <sup>4</sup>	1.2493	31.3	26.0
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.5466	25.0	20.8
430	PSYCHOSES	0.4479	22.9	19.0
431	CHILDHOOD MENTAL DISORDERS	0.4345	22.7	18.9
432	OTHER MENTAL DISORDER DIAGNOSES <sup>2</sup>	0.6655	21.9	18.2
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2489	13.1	10.9
439	SKIN GRAFTS FOR INJURIES	1.3200	42.5	35.4
440	WOUND DEBRIDEMENTS FOR INJURIES	1.3567	40.1	33.4
441	HAND PROCEDURES FOR INJURIES*	0.6655	21.9	18.2
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.6442	39.7	33.0
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC <sup>2</sup>	0.6655	21.9	18.2
444	TRAUMATIC INJURY AGE >17 W CC	0.9614	30.7	25.5
445	TRAUMATIC INJURY AGE >17 W/O CC	0.8448	27.3	22.7
446	TRAUMATIC INJURY AGE 0-17*	0.8284	23.3	19.4
447	ALLERGIC REACTIONS AGE >17 <sup>2</sup>	0.6655	21.9	18.2
448	ALLERGIC REACTIONS AGE 0-17*	0.4055	16.8	14.0
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC <sup>3</sup>	0.8284	23.3	19.4
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC <sup>2</sup>	0.6655	21.9	18.2
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17*	0.4055	16.8	14.0
452	COMPLICATIONS OF TREATMENT W CC	0.9596	25.5	21.2
453	COMPLICATIONS OF TREATMENT W/O CC	0.6666	23.1	19.2
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC <sup>3</sup>	0.8284	23.3	19.4
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC <sup>1</sup>	0.4055	16.8	14.0
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.3383	38.0	31.6
462	REHABILITATION	0.6469	23.5	19.5
463	SIGNS & SYMPTOMS W CC	0.7618	26.8	22.3
464	SIGNS & SYMPTOMS W/O CC	0.6234	24.3	20.2
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS <sup>3</sup>	0.8284	23.3	19.4
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.8119	23.9	19.9
467	OTHER FACTORS INFLUENCING HEALTH STATUS <sup>2</sup>	0.6655	21.9	18.2
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2177	45.5	37.9
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS <sup>6</sup>	0.0000	0.0	0.0
470	UNGROUPABLE <sup>6</sup>	0.0000	0.0	0.0
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY*	1.8783	46.3	38.5
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.8047	17.1	14.2
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.0906	35.5	29.5
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS <sup>5</sup>	1.8783	46.3	38.5
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.6791	39.7	33.0
478	OTHER VASCULAR PROCEDURES W CC	1.6244	37.8	31.5
479	OTHER VASCULAR PROCEDURES W/O CC <sup>2</sup>	0.6655	21.9	18.2

TABLE 3.—PROPOSED LTC–DRG RELATIVE WEIGHTS, GEOMETRIC MEAN LENGTH OF STAY, AND SHORT-STAYS OF FIVE-SIXTHS AVERAGE LENGTH OF STAY FOR THE PERIOD OF JULY 1, 2003 THROUGH SEPTEMBER 30, 2003—Continued

LTC-DRG	Description	Relative weight	Geo-metric mean length of stay	Short-stays of 5/6 average length of stay
480	LIVER TRANSPLANT <sup>6</sup>	0.0000	0.0	0.0
481	BONE MARROW TRANSPLANT*	1.8783	46.3	38.5
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES*	0.6655	21.9	18.2
483	TRACH W MECH VENT 96+ HRS OR PDX EXCEPT FACE, MOUTH & NECK DIAG	3.2319	54.6	45.5
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA*	1.8783	46.3	38.5
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR*	1.8783	46.3	38.5
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA <sup>3</sup>	0.8284	23.3	19.4
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.0885	29.5	24.5
488	HIV W EXTENSIVE O.R. PROCEDURE <sup>5</sup>	1.8783	46.3	38.5
489	HIV W MAJOR RELATED CONDITION	0.8846	22.9	19.0
490	HIV W OR W/O OTHER RELATED CONDITION	0.6952	20.4	17.0
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY*	1.8783	46.3	38.5
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS <sup>3</sup>	0.8284	23.3	19.4
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC <sup>3</sup>	0.8284	23.3	19.4
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC <sup>1</sup>	0.4055	16.8	14.0
495	LUNG TRANSPLANT <sup>6</sup>	0.0000	0.0	0.0
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION*	1.2493	31.3	26.0
497	SPINAL FUSION W CC <sup>5</sup>	1.8783	46.3	38.5
498	SPINAL FUSION W/O CC <sup>3</sup>	0.8284	23.3	19.4
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC <sup>5</sup>	1.8783	46.3	38.5
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC*	0.8284	23.3	19.4
501	KNEE PROCEDURES W PDX OF INFECTION W CC <sup>5</sup>	1.8783	46.3	38.5
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC*	0.8284	23.3	19.4
503	KNEE PROCEDURES W/O PDX OF INFECTION <sup>5</sup>	1.8783	46.3	38.5
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT*	1.8783	46.3	38.5
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT <sup>4</sup>	1.2493	31.3	26.0
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA <sup>5</sup>	1.8783	46.3	38.5
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA*	0.8284	23.3	19.4
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA <sup>3</sup>	0.8284	23.3	19.4
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA <sup>3</sup>	0.8284	23.3	19.4
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.0734	32.2	26.8
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA <sup>3</sup>	0.8284	23.3	19.4
512	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT <sup>6</sup>	0.0000	0.0	0.0
513	PANCREAS TRANSPLANT <sup>6</sup>	0.0000	0.0	0.0
514	CARDIAC DEFIBRILATOR IMPLANT W CARDIAC CATH*	0.8284	23.3	19.4
515	CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH <sup>4</sup>	1.2493	31.3	26.0
516	PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI*	0.8284	23.3	19.4
517	PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI <sup>5</sup>	1.8783	46.3	38.5
518	PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI <sup>4</sup>	1.2493	31.3	26.0
519	CERVICAL SPINAL FUSION W CC <sup>3</sup>	0.8284	23.3	19.4
520	CERVICAL SPINAL FUSION W/O CC <sup>2</sup>	0.6655	21.9	18.2
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.3755	18.6	15.5
522	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC <sup>1</sup>	0.4055	16.8	14.0
523	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O CC	0.3860	21.2	17.6
524	TRANSIENT ISCHEMIA	0.6250	23.1	19.2
525	HEART ASSIST SYSTEM IMPLANT*	1.8783	46.3	38.5
526	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI*	0.8284	23.3	19.4
527	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI*	0.8284	23.3	19.4

\* Relative weights for these LTC–DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2001 MedPAR.

<sup>1</sup> Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 1.

<sup>2</sup> Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 2.

<sup>3</sup> Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 3.

<sup>4</sup> Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 4.

<sup>5</sup> Relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 5.

<sup>6</sup> Relative weights for these LTC–DRGs were assigned a value of 0.0.

<sup>7</sup> Relative weights for these LTC–DRGs were determined after adjusting to account for nonmonotonically (see step 5 above).



# Federal Register

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**Friday,  
March 7, 2003**

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## **Part IV**

# **Department of Health and Human Services**

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**42 CFR Part 83**

**Procedure for Designating Classes of  
Employees as Members of the Special  
Exposure Cohort Under the Energy  
Employees Occupational Illness  
Compensation Program Act of 2000;  
Notice of Proposed Rulemaking; Proposed  
Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 83**

RIN 0920-AA07

**Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Notice of Proposed Rulemaking**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document describes how the Department of Health and Human Services (“HHS”) proposes to consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000 (“EEOICPA”). Under EEOICPA, and Executive Order 13179, the Secretary of HHS is authorized to make such designations, which take effect 180 days after Congress is notified unless Congress provides otherwise. An individual member (or the survivors of a member) of a class of employees added to the Special Exposure Cohort would be entitled to compensation if the Department of Labor (“DOL”) finds that employee incurred a specified cancer and the claim meets other requirements established under EEOICPA. HHS previously published a proposal for these procedures on June 25, 2002 (67 FR 42962). Public comment on the original proposal has led HHS to make substantial changes to the procedures that require issuance of this second notice of proposed rulemaking.

**DATES:** HHS invites comments on this notice of proposed rulemaking from interested parties. Comments must be received by April 7, 2003.

**ADDRESSES:** Address written comments on the notice of proposed rulemaking to the NIOSH Docket Officer electronically by e-mail to

*NIOCINDOCKET@CDC.GOV*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-R45, Cincinnati, OH

45226, Telephone (513) 841-4498 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*

**SUPPLEMENTARY INFORMATION:**

**I. Comments Invited**

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this proposal.

Comments should identify the author(s), return address, and phone number, in case clarification is needed. Comments can be submitted by e-mail to: *NIOCINDOCKET@CDC.GOV*. If submitting comments by e-mail, they may be provided as e-mail text or as a Word or Word Perfect file attachment. Printed comments can also be submitted to the address above. All communications received on or before the closing date for comments will be fully considered by the Secretary. An electronic docket containing all comments submitted will be available over the Internet on the National Institute for Occupational Safety and Health (“NIOSH”), Office of Compensation Analysis and Support Web page at *www.cdc.gov/niosh/ocas*, or comments will be available in writing by request.

**II. Background**

*A. Statutory Authority*

The Energy Employees Occupational Illness Compensation Program Act, 42 U.S.C. 7384-7385 [1994, supp. 2001], EEOICPA, established a compensation program to provide a lump sum payment of \$150,000 and prospective medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy (“DOE”) and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees.

EEOICPA instructed the President to designate one or more Federal Agencies to carry out the compensation program. Pursuant to this statutory provision, the President issued Executive Order 13179 (“Providing Compensation to America’s Nuclear Weapons Workers”), which assigned primary responsibility for administering the compensation program to the Department of Labor (“DOL”). 65 FR 77487 (December 7, 2000). DOL published a final rule governing DOL’s administration of

EEOICPA on December 26, 2002 (67 FR 78874).

The executive order directed the HHS to perform several technical and policymaking roles in support of the DOL program:

(1) HHS is to develop procedures for considering petitions to be added to the Special Exposure Cohort established under EEOICPA by classes of employees at DOE and Atomic Weapons Employer (“AWE”) facilities. HHS is also to apply these procedures in response to such petitions. Covered employees included in the Special Exposure Cohort who have a specified cancer, and eligible survivors of these employees, qualify for compensation under EEOICPA. The procedures HHS is proposing to use for considering Special Exposure Cohort petitions were initially proposed as a notice of proposed rulemaking on June 25, 2002 (67 FR 42962) under 42 CFR Part 83 and are the subject of this second notice of proposed rulemaking.

(2) HHS is to develop guidelines by regulation to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duty at a DOE or AWE facility. HHS published a final rule establishing these “Probability of Causation” guidelines on May 2, 2002 (67 FR 22296) under 42 CFR Part 81.

(3) HHS is also to develop methods by regulation to estimate radiation doses (“dose reconstruction”) for certain individuals with cancer applying for benefits under the DOL program. HHS published a final rule promulgating these methods under 42 CFR Part 82 on May 2, 2002 (67 FR 22314). HHS is applying these methods to conduct the program of dose reconstruction required by EEOICPA.

(4) Finally, HHS is to provide the Advisory Board on Radiation and Worker Health with administrative and other necessary support services. The Board, a federal advisory committee whose members are appointed by the President, is advising HHS in implementing its roles under EEOICPA described here.

42 U.S.C. 7384p requires HHS to implement its responsibilities with the assistance of the National Institute for Occupational Safety and Health (NIOSH), an Institute of the Centers for Disease Control and Prevention, HHS.

*B. What Is the Special Exposure Cohort?*

The Special Exposure Cohort (“the Cohort”) is a category of employees defined under 42 U.S.C. 7384l(14). In this definition, Congress specified which employees comprise the Cohort initially, including employees of DOE,

DOE contractors or subcontractors, or AWEs who worked an aggregate of at least 250 days before February 1, 1992 at a gaseous diffusion plant in (1) Paducah, Kentucky, (2) Portsmouth, Ohio, or (3) Oak Ridge, Tennessee and who were monitored using dosimetry badges or worked in a job that had exposures comparable to a job that is or was monitored using dosimetry badges; or (4) employees of DOE or DOE contractors or subcontractors employed before January 1, 1974 on Amchitka Island, Alaska and exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests. Employees included in the Cohort who incur a specified cancer<sup>1</sup> qualify for compensation (see DOL regulations 20 CFR part 30 for details). Cancer claims submitted by these employees or their survivors do not require DOL to evaluate the probability that the cancer was caused by radiation doses incurred during the performance of duty for nuclear weapons programs of DOE, as is required for other cancer claims covered by EEOICPA.

#### *C. Purpose of the Proposed Procedures*

EEOICPA authorized the President to designate classes of employees to be added to the Cohort, while providing Congress with the opportunity to review these decisions and expedite or reverse them. As noted previously, the President has delegated his authority in this matter to the Secretary of HHS. The purpose of this notice of proposed rulemaking is to establish procedures by which the Secretary of HHS will determine whether to add to the Cohort new classes of employees from DOE and AWE facilities. The procedures are intended to ensure that petitions for additions to the Cohort are given uniform, fair, scientific consideration, that petitioners and interested parties are provided the opportunity for appropriate involvement in the process, and to comply with specific statutory requirements of EEOICPA. The procedures also address, within their relevant scope, the stated congressional purpose of the compensation program to provide timely compensation to covered employees or their survivors for covered illnesses incurred by such employees in the performance of duty.

<sup>1</sup> Specified cancers are a limited group of cancers that are compensable under provisions governing compensation for members of the Cohort. The list of specified cancers can be found in this rule under section 83.5.

#### *D. Statutory Requirements for Designating Classes of Employees as Members of the Cohort*

EEOICPA includes several requirements for these procedures. The Advisory Board on Radiation and Worker Health (“the Board”) is authorized to provide advice to the President (delegated to the Secretary of HHS) concerning the designation of additional classes as members of the Cohort. The Board’s advice is to be based on “exposure assessments by radiation health professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate.” 42 U.S.C. 7384q. Section 7384q specifies that HHS obtain the advice of the Board “after consideration of petitions by classes of employees \* \* \* for such advice.” This section also mandates two broad criteria to govern HHS decisions, which are to be made after receiving the advice of the Board. Members of a class of employees at a DOE or AWE facility may be treated as members of the Cohort for purposes of the compensation program if HHS “determines that: (1) It is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.”

Finally, 42 U.S.C. 7384l(14)(C) requires the Secretary to submit a report to Congress for each class of employees the Secretary designates to be added to the Cohort. The report must define the class of employees covered by the designation and specify the criteria used to make the designation. This section requires that the designation take effect 180 days after the date on which HHS submits the report to Congress “unless Congress otherwise provides.”

#### *E. Relationship of Proposed Procedures to Existing Rule Promulgated by HHS To Implement EEOICPA*

These procedures complement the HHS final rule: “Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000” promulgated by HHS on May 2, 2002 at 42 CFR Part 82 (67 FR 22314).

The rule 42 CFR part 82 provides the methods by which NIOSH is conducting dose reconstructions to estimate the radiation doses incurred by individual covered employees who have incurred cancer. These estimates are required by EEOICPA to adjudicate a cancer claim for an employee who is not a member of the Cohort or whose claim is not

covered by provisions of EEOICPA for compensating members of the Cohort. The methods to arrive at these estimates, however, will be directly considered by HHS in reviewing petitions to add classes of employees to the Cohort. In particular, HHS will consider these methods in determining for a petitioning class of employees, as required by EEOICPA, whether “it is not feasible to estimate with sufficient accuracy the radiation dose that the [individual members of] the class received.”

#### **III. Summary of Public Comments**

On June 25, 2002, HHS promulgated a notice of proposed rulemaking specifying procedures for adding classes of employees to the Cohort (42 CFR part 83; see 67 FR 42962). Public comments were solicited from June 25, 2002 to August 26, 2002. During this period, comments were also submitted by the Advisory Board on Radiation and Worker Health.

HHS received comments from nine organizations and 36 individuals. Organizations commenting included several labor organizations representing DOE workers, the Defense Threat Reduction Agency (which conducts radiation dose reconstructions for a compensation program serving U.S. Atomic Veterans), the Health Physics Society, and two advocacy groups. A summary of these comments and HHS responses is provided below. These are organized by general topical area. The HHS responses in this section also serve to explain changes made to the original proposal and the intent of the new rule provisions.

##### *A. Feasibility of Dose Reconstructions*

As noted above, EEOICPA requires HHS to find that it is “not feasible to estimate with sufficient accuracy the radiation dose that the class received” as a condition for adding the class to the Cohort. HHS received comments from several labor organizations and an advocacy group recommending that the rule establish one or more clear tests defining when dose reconstructions would not be feasible, some commenters distinguishing this requirement as separate and apart from the requirement for “sufficient accuracy.” One specific recommendation is that HHS establish a time limit for completing dose reconstructions, the expiration of which would determine the dose reconstruction to be not feasible. HHS has consistently heard concern about the duration of processes for adjudicating cancer claims and its impact on claimants in failing health and their families. These concerns were

presented by DOE and AWE employees and their survivors during four public meetings convened to present the proposed rule during the comment period in July and August, 2002.

HHS has not established in the proposed rule a feasibility test as to whether dose reconstructions for the class could be completed within a time limit. The factors that might delay a dose reconstruction would typically be specific to an individual employee, versus a class of employees, since the informational demands of a dose reconstruction are cancer specific and employee specific. HHS also notes that the development of the NIOSH dose reconstruction program has delayed all dose reconstructions required to date, but that this is an inevitable consequence of establishing a technical program of this unprecedented scale and complexity, and of DOE's development of a commensurately large records identification and retrieval system to support the NIOSH dose reconstruction program.

Nevertheless, the development of the most efficient processes possible to assist DOL in achieving timely adjudication of cancer claims is a high priority for HHS. For this purpose, NIOSH will consider the establishment of a time limit or guidelines concerning the duration of individual dose reconstructions conducted under 42 CFR part 82, once the dose reconstruction program reaches its full operating capacity.

#### *B. Accuracy of Dose Reconstructions*

NIOSH received various comments and recommendations that relate to the determination, discussed above, as to whether it is feasible to estimate doses to members of a class of employees with "sufficient accuracy."

Four labor organizations, an advocacy group, and several individuals questioned the ability of NIOSH to reconstruct doses with sufficient accuracy when DOE records are incomplete, lacking personal monitoring records, alleged to be fraudulent, limited to co-worker data, or lacking energy-specific dosimetry.

Most of these limitations are standard for a radiation dose reconstruction program. The purpose of dose reconstructions is specifically to estimate doses when records are incomplete or otherwise inadequate. EEOICPA explicitly recognizes this fact and requires that dose reconstructions be performed under precisely such circumstances. Moreover, as discussed in the first notice of proposed rulemaking, sufficient accuracy of estimates for a compensation program,

in contrast to estimates used for epidemiological research, is defined by the extent that it assures the fair adjudication of claims, rather than any arbitrary degree of precision. Hence, for the purposes of a compensation program, a dose estimate is sufficiently accurate if it is reasonably certain to be at least as high as the highest dose that could plausibly have been received.

The labor organizations and advocacy group commenting on this rule also requested that HHS provide one or more clear tests for when a dose estimate would be sufficiently accurate.

NIOSH has established the use of maximum doses based on worst-case assumptions in its dose reconstruction program whenever sufficient information is available to support this approach and the additional information needed for a more precise estimate is unavailable. Accordingly, the more limited the dose information available for a claim, the more likely it is a dose reconstruction will overestimate the level of radiation dose, and the greater the degree of overestimation, to achieve the objective of minimizing the possibility of ever underestimating the radiation doses used to adjudicate a claim.

This dose reconstruction approach allows HHS to establish a more qualified standard for sufficient accuracy than provided under the initial notice of proposed rulemaking. Under section 83.13 of the current proposal, radiation doses can be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose that could have been incurred by any member of the class, based on the information available and using "worst-case" assumptions. As discussed above, such a maximum dose estimate would be used in dose reconstructions, if available information is inadequate to establish more precise estimates. This standard for sufficient accuracy is supported in comments on this rule by the Health Physics Society and the Defense Threat Reduction Agency. HHS believes this represents a fair standard for sufficient accuracy under EEOICPA, since it provides that dose reconstructions will be restricted to claims for which information is sufficient to prevent the underestimation of an employee's dose.

The proposed rule also specifies some general guidance for potential petitioners to consider with respect to whether there is sufficient information for NIOSH to estimate doses. In addition, NIOSH will publicize summaries of specific circumstances in

which NIOSH is unable to complete dose reconstructions with sufficient accuracy, as such cases arise through the NIOSH dose reconstruction program. These findings will be made available to the public on the Internet at <http://www.cdc.gov/niosh/ocas> or by request. Finally, NIOSH will work with the Board to develop other generic guidance, to the extent additional generic guidance is possible, concerning the feasibility of dose reconstructions.

The Health Physics Society further recommended that determinations of the feasibility of estimating doses with sufficient accuracy be limited to relevant cancers. This comment reflects the fact that the feasibility of a dose reconstruction can be specific to certain cancer sites in the body and hence to the type of cancer an employee incurs. For example, internal doses of radiation resulting from inhalation, ingestion, or absorption of internal emitters, such as radon progeny or uranium, only concentrate and significantly irradiate certain organs and tissues. Hence, it may be appropriate to limit the finding that it is not feasible to estimate radiation doses with sufficient accuracy to certain tissue-specific cancer sites relevant to individuals with specific types of cancers.

HHS has added provisions under sections 83.13 (b)(1)(iv), 83.13(b)(2)(iii), and 83.13(c)(4) of this rule to allow HHS to limit the definition of a class to those individuals who incur one or more of a limited set of types of cancers, when appropriate, as discussed above. These provisions will allow HHS to adhere fully to the statutory requirement that HHS find that "it is not feasible to estimate with sufficient accuracy the radiation dose that the class received." It will mean that in certain cases, HHS might add to the Cohort a class of employees whose membership is limited to employees who have incurred a cancer from a set of one or more types of cancers specified in the definition of the class established by HHS. (The cancer type or types HHS would specify in such cases could include one or more cancer types that are not included in the list of specified cancers established under EEOICPA and defined in section 83.5(k) of this rule,<sup>2</sup> as well as one or

<sup>2</sup> Readers should note that while HHS could define a class of employees by a type of cancer that is not in the list of specified cancers, DOL can only award compensation to members of such a class as a member of the Cohort if they incur one or more of the specified cancers, as required by EEOICPA (42 U.S.C. 7384(9)(A)). Hence, members included in the class because they have a type of cancer that is not in the specified cancer list must also have or develop a type of cancer that is in the specified cancer list to receive compensation as a member of the Cohort.

more cancers included in the list of specified cancers.) Co-workers of the employees who do not incur any of the cancers included by HHS would not be included as members of the class added to the Cohort. NIOSH would conduct dose reconstructions for cancer claims covering these co-workers.

### C. Health Endangerment

The four labor organizations and two advocacy groups commenting on the rule, and one individual opposed the use of risk models (NIOSH-IREP) to establish whether or not the health of a class of employees petitioning to be added to the Cohort was endangered. The commenters believe health physicists could not make reliable determinations as to whether the dose to which a class may have been exposed could have exceeded the dose benchmark that was to be established using risk models. The commenters also questioned the procedure for using the risk models, which they found insufficiently detailed, and were concerned that use of risk models would set too stringent a standard for health endangerment. In place of using risk models, the commenters recommended either the use of physician opinion or the employment and monitoring criteria that Congress specified to be used for the statutorily defined members of the Cohort employed by the gaseous diffusion plants in EEOICPA (see 42 U.S.C. 7384l(14)). Alternatively, several individual commenters recommended use of epidemiological analyses, comparing the health of employees at the sites included by Congress in the Cohort to the health of groups of employees at other sites petitioning to be added to the Cohort.

The current proposed standard to be used by NIOSH for establishing sufficient accuracy in section 83.13 would allow HHS to omit the use of risk models in establishing health endangerment. Under this standard, when NIOSH is unable to estimate doses with sufficient accuracy, then, by definition, NIOSH will not be able to estimate the maximum dose that employees in the class might have incurred. Lacking a factual basis for establishing such a cap or upper bound to the possible level of radiation exposure, NIOSH cannot quantitatively evaluate health endangerment. The procedure that remains in the rule for establishing that health may have been endangered is described under section 83.13(b)(3). As recommended by several labor organizations, the advocacy groups, and individual commenters, this procedure is similar to the approach taken by Congress in 42 U.S.C.

7384l(14), but it allows NIOSH greater flexibility to make use of detailed information that might be available.

First, instead of using a general monitoring criterion to indicate which employees had radiation exposure, NIOSH will specifically identify, by job title and other employment parameters, employees with potential exposure, as provided under section 83.13. This allows NIOSH to specifically include within a class those employees with potential for radiation exposure whose doses cannot be estimated with sufficient accuracy.

Second, NIOSH might not universally apply the 250 day employment criterion that Congress specified in 42 U.S.C. § 7384l(14)(A). NIOSH will use the 250 day employment criterion only when it lacks sufficient basis to establish a lower minimum duration.

Specifically, when the exposure of concern occurred during a discrete incident likely to have involved exceptionally high level exposures, such as nuclear criticality incidents or other events involving similarly high levels of exposures resulting from the failure of radiation protection controls, the proposed rule would allow NIOSH to specify presence during the incident as sufficient employment duration for including members in the class. In these cases, it would be impossible to specify any duration of exposure that would delimit the potential for health endangerment, and the 250 day default criterion would be irrelevant.

HHS has not incorporated into the rule the recommendation of one labor organization to establish health endangerment on the basis of a physician's opinion. The commenter suggested this model would be appropriate because it is used for making determinations in workers' compensation programs. Physicians evaluate occupational causation and degree of impairment for patients seeking workers' compensation, but under this rule there is no patient to evaluate, only very limited exposure information pertaining to a class of employees. A physician could not judge health endangerment with respect to exposure to ionizing radiation without dose information on the class of employees and specification of the cancers incurred by the employees.

HHS also has not incorporated into the rule the recommendation to base determinations of health endangerment on epidemiological comparisons between the health of congressionally established classes and future classes to be designated by the Secretary, or on the basis of any other epidemiological comparisons.

Epidemiological comparisons would require health data that would not be available in reasonable time. Moreover, there would be numerous methodological difficulties in making such comparisons, as was generally recognized by the commenters making this recommendation. For example, comparisons would require populations of sufficient size for analysis, whereas the size of classes of employees may often be too small to permit valid analyses.

### D. Timeliness of Dose Reconstructions and Petition Decisions

The four labor organizations, two advocacy groups, and several individuals expressed concern about the time that may be required to conduct a dose reconstruction and, if a dose reconstruction is not feasible, the additional time required to add a class of employees to the Cohort. They recommended NIOSH establish a time limit on its dose reconstructions, the tolling of which would determine the dose reconstruction to be infeasible, and they recommended time limits on actions involved in considering a petition for adding a class to the Cohort. Individual commenters were specifically concerned about the time required to add a claimant with cancer to the Cohort, if NIOSH determines that it cannot complete his dose reconstruction.

HHS agrees that it should achieve a reasonable balance between the duration of effort to obtain data for a dose reconstruction and the speed with which it can complete a dose reconstruction. The NIOSH dose reconstruction rule (42 CFR part 82) and program incorporate efficiency measures to address precisely this concern. Taking this a step further, as discussed above, NIOSH will consider establishing a time limit or time guidelines for the completion of a dose reconstruction.

In addition to these measures, section 83.14 has been added to the proposed rule to expedite the consideration of petitions by claimants for whom NIOSH has found it cannot complete dose reconstructions under 42 CFR part 82. The new section would allow NIOSH to establish for evaluation a class of employees based only on the information obtained during the attempt to conduct the dose reconstruction for the employee covered by such a claim, so that adding the employee to the Cohort, together with other employees who match the same essential characteristics, could be considered by the Board and HHS without delay. HHS would then, through collection and

analysis of additional information, separately evaluate the possibility that there might be additional groups of employees whose circumstances are similar and would hence constitute a broader class of employees at the facility that should be added to the Cohort, under the procedures specified in section 83.13. This system should effectively ensure that classes of employees including a cancer claimant for whom NIOSH could not complete a dose reconstruction are considered for addition to the Cohort as quickly as possible.

HHS has not adopted the recommendation to apply regulatory time limits to the evaluation of petitions, the tolling of which would, without other consideration, result in the addition of such petitioning classes to the Cohort. Such a policy would conflict with the requirements under EEOICPA that Cohort additions be limited to classes of employees for whom it is not feasible to estimate radiation doses with sufficient accuracy and whose health may have been endangered by radiation doses. It could also broadly undermine the intent under EEOICPA to adjudicate cancer claims, whenever feasible, consistently with the requirements cited above: on the basis of whether it is "at least as likely as not" that such cancers were caused by radiation doses incurred in the performance of duty for nuclear weapons programs.

The establishment of regulatory time limits for petitions would be imprudent as well, since HHS cannot control the scope or volume of petitions it receives. A single petition could cover thousands of employees involved in hundreds of different occupations and activities over many years of operations at a facility. HHS could also receive hundreds of petitions simultaneously. In either of these circumstances, the resources of HHS and the Board to evaluate the petitions within a fixed deadline could readily be overwhelmed. HHS would then be required by regulation to add these classes of employees to the Cohort automatically.

HHS also received recommendations from individuals, employees, survivors, and a labor organization, to achieve timeliness by streamlining processes as much as possible, and in particular, again, for claimants for whom NIOSH has already established the infeasibility of completing their dose reconstruction.

As discussed above, HHS has added special procedures to streamline the petition decision process for claimants. In addition, based on a recommendation by the Board, HHS has eliminated a requirement that the Board review

NIOSH decisions to deny evaluations of petitions that do not meet minimal petition requirements. Under section 83.11 of the rule, the Board now has the option, rather than the duty, to advise NIOSH concerning such decisions.

One labor organization recommended against the use of notices in the **Federal Register** to notify the public about relevant actions with respect to a petition. The commenter expressed concern that such notices would prolong the time required to consider petitions. An advocacy group, however, specifically commended the use of such notices and recommended another opportunity within the procedures to provide such notice.

The notices proposed have been retained. These notices can be issued by HHS without delaying the evaluation of petitions. The notices serve the intended purpose of officially informing the public of HHS actions of consequence. They also serve as a basis for further disseminating this information through the NIOSH and other federal agency communications, public media, and other information outlets serving interested parties.

One labor organization recommended that the Board meet frequently to minimize delays with respect to its role in advising the Secretary on Cohort decisions.

HHS intends to convene the Board as frequently as necessary and possible for this purpose.

#### *E. Defining a "Class" and Its Membership*

Several individual commenters questioned the meaning of a "class" of employees. Relevant to this, one commenter wanted to know what would happen if a class included some members for whom dose reconstruction is feasible and others for whom it is not feasible. Another commenter wanted to know whether a petition could cover all the employees of an entire facility, as a single class. Finally, the two advocacy groups recommended the definition of a class allow for the possibility that a class of employees was employed at multiple facilities. Such classes might include certain crews of construction or maintenance workers that might have been assigned to work at several facilities.

The concept of a class is defined generically in section 83.5 of the rule. To summarize, a class is a group of employees whose members must have two factors in common: they must have worked at the same facility; and the availability of records and information must be comparable with respect to the feasibility of estimating their radiation

doses with sufficient accuracy. Petitioners will be encouraged to define a class as specifically as possible and appropriate with respect to other parameters, such as dates of employment, occupations, specific locations of work, specific operations of concern, etc.

One result of the process of evaluating a petition will be to establish the final definition of the class, which may differ from the class definition as it was proposed initially by the petitioner(s). The class might be redefined because the proposed definition mixed employees whose doses can be estimated with others whose doses cannot be estimated, as commented above. Classes will be very specifically defined, as described under provisions of section 83.13, with respect to a variety of employment parameters, such as dates of employment or job titles, to precisely identify the group of employees included in the decision by the Secretary to add or denying adding the class to the Cohort.

It is allowable under section 83.9 of this proposed rule to submit a petition defining the class as all the employees at the facility or any subset thereof, insofar as the petition provides adequate justification for being broadly inclusive. This section of the rule is intended, however, to require as much specificity as is consistent with the justification. It is in the interest of the petitioners to specify the class as narrowly as warranted. In general, the broader the petitioner(s) defines the class, the more time will be required to evaluate the petition, since HHS will have to determine whether the proposed class includes heterogeneous groups of employees with respect to the requirements of this rule. For example, if a petition defines a class as all employees who worked in a certain building without specifying the relevant time period or relevant occupations, HHS would have to determine whether all occupations were potentially exposed to radiation doses that cannot be estimated. It is possible that monitoring or records might be deficient only for employees working during a certain period of time, or for certain occupations employed in the building.

By defining the class more broadly than warranted, the petitioner(s) also risks HHS's determining against the petition in its entirety, despite the possibility that some subgroups covered by the class definition might qualify. HHS will be diligent in evaluating major subgroups of employees that HHS discerns under a broad class definition, but the more broadly the class is

defined, the less likely HHS is to identify all possible subgroups.

HHS has not revised the definition of class to allow for a class of employees defined as having been employed at multiple facilities, as proposed by commenters. The statutory language used by Congress in the section of EEOICPA describing the procedure for designating additional members of the Cohort (42 U.S.C. 7384q) does not allow HHS to define a class as a group of employees from multiple facilities. Congress refers to "facility" in the singular form in each place it is used in this section ("class of employees at *any* Department of Energy *facility* who likely were exposed to radiation at *that facility*" in 42 U.S.C. 7384q(a)(1); "*a* Department of Energy *facility* or at an atomic weapons employer *facility*" in 42 U.S.C. 7384q(b); (emphasis added in both sections)). This limitation would not, however, prevent a petitioner(s) from submitting petitions separately for employees at each facility at which the class was employed, defining separate, facility-specific classes.

#### *F. Modifications and Cancellations of Cohort Additions*

Two labor organizations, the two advocacy groups, and several individuals commented on the provisions under section 83.18 of the current proposal allowing the Secretary to cancel or modify a class once it is established. The commenters recommended such a decision by the Secretary should only apply prospectively, for the adjudication of future claims. In other words, they recommended such a decision should not affect claimants who have already been compensated as a member of the Cohort, by potentially requiring the cessation of medical benefits or the return of the lump sum cash benefit.

DOL will determine the relevance of such decisions by HHS with respect to claims that DOL has already decided and claimants who have already received compensation.

#### *G. Submission of Petitions to the Board*

The two advocacy groups and one labor organization recommended that all petitions evaluated by NIOSH be submitted to the Board as well. This comment appears to refer to the Board's recommendation that it not have a role in deciding whether or not a petition meets the minimal requirements to be evaluated by NIOSH, the Board, and HHS (see Board recommendations in the following section). The Board considered its role to be limited to the evaluation of qualified petitions and recommended that NIOSH or HHS have

the exclusive administrative role to ensure that petitions meet basic requirements.

HHS has revised the rule consistently with the view of the Board. Under section 83.12, the Board will receive all petitions that NIOSH ultimately finds meet the requirements for evaluation. Under section 83.10, however, the Board will not review petitions that NIOSH finds do not meet the requirements for evaluation. It should be noted that before making such a final decision, NIOSH will first provide petitioners with guidance and time to remedy petitions that initially do not meet the requirements. In light of this provision, HHS seeks comment on whether HHS should provide an option for petitioners to seek an administrative review of adverse final decisions.

#### *H. Petitions by Claimants*

Several individuals recommended against requiring claimants to petition when NIOSH has found that it cannot complete their dose reconstructions. They suggested NIOSH should initiate action to evaluate such classes automatically, upon establishing such a finding.

HHS interprets EEOICPA as requiring the submission of a petition to initiate consideration for adding a class of employees to the Cohort. However, as specified under the dose reconstruction rule (42 CFR part 82.12), NIOSH will encourage claimants in these circumstances to file a petition. In addition, HHS has designed the requirements and procedures to minimize the burden on these claimants as petitioners. As provided under section 83.9, the claimant is required only to authorize a petition. No other documentation or information is required.

#### *I. Use of Information by the Board for Evaluating a Petition*

Two labor organizations commented that the statute allows the Board to provide advice concerning a petition using information other than exposure assessments by radiation health professionals and information from DOE. This provision of EEOICPA is specifically quoted under the "statutory requirements. . ." sections of this and the previous notices (see section II.D above).

The initial proposal did not limit the information the Board could obtain and consider. However, in response to the comment, under section 83.15 of the current proposal, HHS has specifically authorized the Board to obtain and consider such information as it considers appropriate.

#### *J. Use of Federal Register Notices by HHS in the Petition Process*

Two advocacy groups recommended that HHS issue a **Federal Register** notice, in addition to those already proposed, to inform the public that HHS has sent a report to Congress designating a class for addition to the Cohort, for review by Congress.

HHS omitted such a notice from the original proposal out of concern that notifying the public of affirmative decisions prior to their review by Congress might be confusing, particularly if Congress were to reverse such a decision. It is probably more important, however, that interested parties are informed to ensure they have the opportunity to make their views known to Congress. Hence, HHS agrees with the recommendation and has added such a notice.

#### *K. Publicizing HHS Decisions*

One labor organization recommended that HHS use other announcement procedures, in addition to publication in the **Federal Register**, to notify classes of their addition to the Cohort or of modifications of an added class.

HHS intends to work with DOE, DOL, AWEs, public media, labor organizations, and others to publicize decisions. Such activities, however, do not require specification in the rule.

#### *L. Transmission of Designations of New Classes to DOL*

Two advocacy groups and one labor organization recommended that HHS transmit designations adding classes to the Cohort to DOL on the first business day following expiration of the 180 day congressional review period.

HHS has committed in the current proposal to transmit designations within five days of either expiration of the congressional review period or final congressional action, whichever occurs first. The five day period is a maximum, not a minimum, and allows for the potential for delay in communications between Congress and HHS and for administrative processes within HHS.

#### *M. Eligible Petitioners*

The initial proposal defined eligible petitioners to include employees, survivors, and labor organizations. One individual recommended adding to the list of eligible petitioners the [management] staff of DOE field offices and sites, on the basis that they may have expertise on employee classes with radiation exposure for whom dose reconstructions may not be feasible. The two advocacy groups recommended that non-union worker advocacy groups be added to the list.

In section 83.7(c) of the proposal, HHS has allowed for a worker or survivor to authorize any individual or entity, such as a worker advocacy group, to petition on behalf of a class. HHS has not specifically added the management staff of DOE field offices and sites. Employees of DOE sites and field offices with work experience at DOE sites are generally included among those eligible to submit petitions under section 83.7(a) (if they would themselves be included among the proposed class of employees) and (c) (if, in the proper discharge of their official duties, they are petitioning on behalf of other employees who would be included in the proposed class).

One individual raised concerns about one of the introductory sections of the rule (section 83.2), as it was initially proposed. The commenter believed it could be interpreted to require employees or survivors to submit a claim for compensation to DOL as a prerequisite to petitioning for addition to the Cohort.

The text of concern, which was explanatory and not procedural, has been deleted from the rule to streamline the rule as much as possible. Employees and their survivors are not required to submit a claim as a prerequisite to petitioning for a class. On the other hand, HHS and DOL encourage any employee who has incurred a cancer and hence is eligible to submit a claim to do so immediately. Medical benefits for a cancer claim awarded under EEOICPA are established based on the date on which the claim is submitted to DOL. Any medical costs for the cancer incurred before the date the claim is submitted would not be covered. For this reason, employees with cancer should submit claims to DOL without delay.

#### *N. Petition Informational Requirements*

Labor organizations and the two advocacy groups submitted a variety of comments concerning the informational requirements of a petition, and recommended not requiring the use of a form for petitioning. In general, these comments argued for less burden on petitioners.

Under section 83.9, HHS has reduced the informational requirements substantially to comprise a minimal basis for justifying a petition. HHS has eliminated the requirement that petitioners have sought records from DOE or AWEs to demonstrate a basis for concern about the feasibility of estimating radiation doses for the class. HHS recognizes that such efforts could be of little practical value to the evaluation of a petition. HHS has also

eliminated the requirement that petitioners demonstrate a basis for suspecting the health of the class may have been endangered, since the basis for establishing health endangerment under the proposal (a finding that doses cannot be estimated with sufficient accuracy and a determination as to whether this finding applies to radiation exposure during a discrete exposure incident or during routine operations) does not require information available to the petitioners.

The procedures continue to require petitioners to justify their concern that it may not be feasible to estimate the radiation dose incurred by employees of the class with sufficient accuracy. HHS has attempted to specify clear and minimal requirements for this justification. The procedures also may require petitioners to substantiate the occurrence of discrete exposure incidents potentially involving high level exposures, when such an incident comprises the basis of the petition and if NIOSH is otherwise unable to verify the occurrence of incident through other sources. The evidence that may be required in these cases, however, is similar to informational requirements that were included in the initial proposed rule.

Finally, HHS has made optional the use of a petition form for the submission of petitions, although its use should assist, rather than burden, petitioners.

#### *O. Technical Assistance for Petitioners*

One labor organization and the two advocacy groups recommended HHS sponsor technical assistance or training for petitioners to address informational requirements. The commenters suggested some petitioners are unlikely to have sufficient expertise to address these requirements without assistance.

Although NIOSH will provide guidance to petitioners, HHS does not intend to sponsor independent technical experts to assist petitioners in developing the basis for a petition. The purpose of a petition, as discussed in the rule, is to identify classes of employees that should be considered for addition to the Cohort. In other words, it is to bring to the attention of the Board, NIOSH, and HHS, classes of employees who were exposed to radiation at a DOE or AWE facility but for whom there are reasonable grounds to suspect radiation doses cannot be estimated with sufficient accuracy. If a petitioner lacks reasonable grounds for identifying such a class, as defined in the rule, they should not file a petition. In addition, in cases where members of the class submit claims and NIOSH determines that it cannot complete dose

reconstructions for them, this finding can serve as the basis for a Cohort petition.

#### *P. Basis for Petitioning*

One labor organization recommended that petitioners should be permitted to petition on the basis of qualitative or quantitative information, and any such information as the Board deems appropriate. The commenter further recommended that the petitioner should not be required to prove that doses cannot be estimated or that health was endangered.

In this rule, HHS has identified minimal requirements for a petition. A petition that does not meet these minimal requirements would not present a substantial likelihood of identifying a class that should be added to the Cohort, according to the statutory requirements for making such additions.

Meeting these petition requirements does not prove, however, that the statutory requirements will be met; the petitioner is not proving that it is not feasible to estimate doses with sufficient accuracy and that doses may have endangered the health of members of the class. These statutory requirements will be determined in the course of evaluating the petition.

The Board has had the opportunity to recommend alternatives to the petition requirements in the initial proposal. The Board's recommendations on requirements for petitions are reflected in the current proposal without exception, as discussed in Section IV below. The Board will have the opportunity again to recommend requirements during the public comment period on this second notice. HHS will consider any such alternatives for use in the final rule. In addition, section 83.11(c) of the current proposal would allow the Board to advise NIOSH concerning a petition after NIOSH has preliminarily found the petition does not meet the requirements specified in the rule.

#### *Q. Deciding Whether To Petition*

Several individuals sought guidance concerning how one should decide whether or not to petition to be added to the Cohort. One commenter noted that he had a claim awaiting dose reconstruction and wanted to know whether he should petition immediately or await the outcome of the dose reconstruction. Another commenter noted more generally that an employee may want to consider whether he has a better chance of being compensated as a member of the Cohort or through dose reconstruction. The commenter recommended that HHS provide in the

rule as much guidance as possible concerning these decisions.

The rule provides clear requirements explaining who is eligible to petition and identifying the information required of the petitioners. In terms of helping individuals decide whether to petition, as discussed in the HHS rule on dose reconstruction (42 CFR part 82.12), NIOSH will directly encourage any claimant for whom it cannot complete a dose reconstruction to petition. As discussed above, HHS and DOL also encourage any employee who has incurred a cancer to submit a claim to DOL immediately, whether or not they submit a petition to HHS, since medical benefits only cover medical costs incurred for the cancer beginning on the date a claim is submitted. Otherwise, HHS generally encourages petitions whenever there is justification, as specified in the rule; in other words, whenever it is known that a class of employees was exposed to radiation that was not monitored, either by personal dosimetry such as radiation badges and biological tests, or by monitoring of the area in which the class of employees worked. Knowledge that the records of such monitoring were destroyed, lost, or falsified would also justify submitting a petition. The rule also specifies expert sources that may justify a petition.

Petitioners should understand, however, that having justification to petition does not mean that the petition will be successful. For example, in some cases NIOSH may be able to conduct dose reconstructions even when no radiation monitoring information is available, using knowledge of health physics and with sufficient information on the radiation source, quantity, and the relevant work processes that might involve radiation exposures.

It also may be useful for potential petitioners to understand how HHS plans to prioritize petitions for evaluation. The highest priority petitions will be those based on NIOSH finding that it is unable to complete a dose reconstruction for a claimant. These petitions will be evaluated first because in these cases, HHS already knows there is a class of employees for whom dose reconstructions are infeasible and among whom one or more individuals have incurred cancer, for which a claimant is awaiting a decision on a claim. The second highest priority will be petitions for a class of employees that does not include current claimants awaiting dose reconstructions. The lowest priority will be petitions including current claimants awaiting dose reconstructions, since the dose reconstruction process will determine whether or not it is feasible

to estimate doses with sufficient accuracy for these claimants. If NIOSH finds the dose reconstructions cannot be completed for these claimants, then their petition process will be expedited, as described above.

#### *R. Use of Unspecified Procedures by HHS*

One labor organization recommended that HHS strike provisions in the initially proposed rule (section 83.14(e)) that would have allowed the Secretary to make Cohort determinations based on factors and procedures other than those specified in the rule.

HHS has omitted this provision from the current proposed rule. The provision was intended to permit the Secretary flexibility in responding to novel, unforeseen issues that might arise in the course of considering the addition of a particular class of employees. Upon further consideration, HHS believes the specified procedures of this rule will fully and expeditiously serve its purpose.

#### *S. Decisionmaking Authority*

HHS received several comments concerning its authority to determine whether or not to add a class of employees to the Cohort. One labor organization recommended HHS be required to comply with the recommendation of the Board. Another labor organization and an advocacy group recommended the Secretary delegate authority for such determinations to the Director of NIOSH to expedite the determinations.

Section 3626 of EEOICPA (42 U.S.C. 7384q) specifically authorizes the President (delegated to the Secretary of HHS) to determine whether or not to add a class of employees to the Cohort and specifically limits the role of the Board to providing advice related to such determinations. Hence, this rule cannot make the recommendations of the Board binding on the Secretary. Moreover, the Federal Advisory Committee Act, under which the Board is established, specifies the following: "Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government." (5 U.S.C.A. App. 2 § 9(b)).

The Secretary can delegate authority to the Director of NIOSH to determine the designation of classes of employees.

The Secretary may consider such a delegation of authority for the designation of certain classes of employees if, upon experience, the Secretary finds this is likely to improve the effectiveness and efficiency of the program.

#### *T. Regulatory Approach*

HHS received several comments concerning the regulatory approach to establishing these procedures. One labor organization and the two advocacy groups recommended this rule be issued as an interim final rule to allow HHS and petitioners to obtain experience with certain elements of the rule before rulemaking is completed. Three other labor organizations recommended that these procedures be issued as a general statement of policy rather than a rule, asserting that more flexibility is required in such procedures than could be encompassed in a rule. The commenters did not specify, however, the provisions that require greater flexibility.

As discussed below, HHS has determined that the rule, as initially proposed, required changes that were not discussed in the initial notice of proposed rulemaking and that could not reasonably have been anticipated based on a reading of the initial notice. For this reason, HHS is issuing this second notice of proposed rulemaking and obtaining public comment on this revised proposal.

For the same reason, HHS does not find sufficient justification to publish these procedures as an interim final rule with a request for comments. If HHS were to issue the current proposal as an interim final rule, the rule and determinations the Secretary would make under the rule could be legally contested on the basis of HHS not having provided sufficient notice and opportunity for public comment in advance of issuing the rule. Such a contest could delay implementation of these procedures more substantially than issuance of this second notice.

HHS considered the issuance of a statement of policy, versus a rule, before issuing the initial proposed rule in June 2002. HHS found then, and continues to find, that these procedures are regulatory in nature, comprising requirements that are binding on petitioners and on HHS.

#### *U. Congressional Review Period*

One individual commented that the 180 day congressional review period should be eliminated or shortened to 60 days or less.

HHS must allow for the full 180 day review period as required by law under

section 3621(14)(C)(ii) of EEOICPA (42 U.S.C. 7384(14)(C)(ii)). Under section 3621(14)(C)(ii), however, Congress can reduce this review period to expedite the addition of a class to the Cohort. This is acknowledged under section 83.17 of this rule.

*V. Non-regulatory Comment: Dose Reconstructions for Cohort Members With Non-Specified Cancers*

HHS received several comments on matters extraneous to the rule, but relevant to the Cohort.

The two advocacy groups and a labor organization questioned how NIOSH would handle cancer claims for individuals in the Cohort who have a cancer that is not one of the specified cancers.

DOL refers claims for individuals in the Cohort who have a cancer that is not one of the specified cancers to NIOSH for dose reconstruction. NIOSH will conduct these dose reconstructions if sufficient information is available. The situation becomes complicated, however, if the individual may have incurred radiation doses that NIOSH cannot estimate, because the necessary information is not available. This will be true for classes of employees added to the Cohort by the Secretary.

NIOSH will develop dose reconstruction procedures with the advice of the Board to address these circumstances. The procedures will have to resolve the issue of whether or not to assign a radiation dose covering a potential exposure that cannot be estimated with sufficient accuracy, and if so, how to determine the characteristics and quantity of dose to be assigned. This issue is further discussed under section IV in response to a recommendation by the Board.

*W. Non-Regulatory Comment: Giving Claimants the Benefit of the Doubt in Dose Reconstructions*

One labor organization commented that NIOSH dose reconstructions should give the benefit of the doubt to the claimants when making assumptions concerning potentially unknown factors, such as the solubility of a radioactive material.

NIOSH gives the benefit of the doubt to claimants when making assumptions concerning unknown factors, except when the claim involves recorded doses sufficiently high to qualify for compensation without full development of the dose estimate. The NIOSH implementation guides for dose reconstructions, which are available from NIOSH, consistently illustrate this policy.

*X. Non-Regulatory Comment: Basis for Including Employees of the Gaseous Diffusion Plants in the Cohort*

Several individuals questioned the basis for the decision by Congress to include employees of the gaseous diffusion plants in the Cohort. The commenters believe the potential for health endangering radiation exposure was as great or greater at other DOE facilities. For this reason, the commenters indicated that Congress should have included other DOE facilities in the Cohort.

This is a matter that was decided by Congress and is beyond the control of HHS. Therefore, HHS has not responded to the comment.

*Y. Non-Regulatory Comment: Basis for Limiting Cohort Provisions to the 22 Specified Cancers*

Several individuals questioned the decision by Congress to limit the diseases covered by EEOICPA for the compensation of employees as members of the Cohort to 22 specified cancers. Commenters questioned why other cancers are not included, as well as other illnesses such as acute health effects from high levels of radiation and diseases related to exposure to asbestos and heavy metals.

This is a matter that was decided by Congress and is beyond the control of HHS. Therefore, HHS has not responded to the comment.

HHS notes that Congress also established Part D of EEOICPA to assist DOE contractor employees in seeking compensation through the appropriate state workers' compensation systems for occupational illnesses related to toxic exposures at DOE facilities.

*Z. Non-Regulatory Comment: Recommendations for Adding Specific Classes to the Cohort*

A labor organization, an advocacy group, and several individuals recommended the addition of specific employee classes to the Cohort.

This rule must be promulgated through the issuance of a final rule before petitions can be evaluated. NIOSH will notify individuals and organizations who have indicated an interest in petitioning at that time.

**IV. Recommendations of the Advisory Board on Radiation and Worker Health**

HHS requested the Board to consider issues related to making additions to the Cohort. As discussed above, the Board has an integral role in the evaluation of petitions to add classes of employees to the Cohort.

The Board reviewed issues related to the Cohort during its public meeting on

May 2–3, and reviewed the initial notice of proposed rulemaking during its public meetings on July 1–2, August 14–15, and August 22, 2002. In preparation for the July meeting, the Board members individually reviewed the initial notice of proposed rulemaking, which was published on June 25, 2002. The members also considered public comments on these rules provided during public meetings of the Board and at four regional meetings held in July and August 2002. In addition, NIOSH staff members gave formal presentations on the proposed rule and related issues during the Board meetings. The transcripts and minutes of these meetings are included in the NIOSH docket for this rule and are available to the public.

All of the Board members participated in the review of these guidelines and the members present at the August 22 meeting concurred in establishing the Board findings and recommendations. The Board provided recommendations on general issues related to the rule, as well as recommendations for text and other changes to specific sections of the rule. The recommendations, which are available to the public from the NIOSH Docket, are summarized below, together with responses by HHS to the recommendations.

*A. Dose Reconstruction for Members of the Cohort*

Claims for cancers that are not included among the specified cancers cannot be compensated under provisions of EEOICPA covering members of the Cohort. These claims will require a NIOSH dose reconstruction and a probability of causation determination by DOL, despite the fact that the employee is a member of the Cohort. The Board recommended that NIOSH review the proposed rule to ensure it does not preclude appropriate handling of these dose reconstructions. Relatedly, the Board also recommended that NIOSH develop procedures [for dose reconstructions] for claims for which the employee's dose history is partially but not completely covered in the employment parameters that define a Cohort class.

As discussed in response to similar public comments, this proposed rule would not affect claims that require dose reconstructions. The determination by the Secretary to add a class of employees to the Cohort does, however, have implications for the conduct of dose reconstructions for these members of the Cohort. When HHS adds members to the Cohort, HHS will have determined that radiation doses for

those members cannot be estimated with sufficient accuracy. Hence, NIOSH may not be able to complete dose reconstructions for these members.

The ability of NIOSH to conduct such dose reconstructions may depend on whether the claim is for an employee who had radiation exposures that were not considered in designating his class of employees as part of the Cohort. If the employee had sufficient radiation exposure outside of his work experience as a member of the Cohort to qualify for compensation, then his dose reconstruction could be completed on the basis of this extraneous work history. In addition, the ability to complete such dose reconstructions may depend on whether NIOSH determines it could assign doses that cannot be estimated, and on the procedures that would be established for such claims. NIOSH will discuss with the Board this option to assign doses. Of particular importance, NIOSH cannot establish a procedure that conflicts with provisions of EEOICPA. EEOICPA strictly limits the list of specified cancers that can presumptively qualify members of the Cohort for compensation.

#### *B. Procedures for Determining Health Endangerment*

HHS initially proposed that health endangerment would be evaluated using cancer risk models (NIOSH-IREP) to determine a level of dose that would constitute health endangerment and then by determining, subjectively if necessary, whether a class of employees could have incurred such a dose level or higher. The Board considered these procedures to be inadequately justified and potentially unfair. It recommended, without specificity, that NIOSH consider other procedures.

HHS finds these comments from the Board and similar public comments to be persuasive and is thus proposing substantially different procedures for determining health endangerment that do not make use of cancer risk models. Instead, HHS is proposing to define the class members who have potential exposures that cannot be estimated with sufficient accuracy and will use a duration of employment criterion. The specific 250 day criterion applied by Congress in defining which employees of the gaseous diffusion plants are included in the Cohort under 42 U.S.C. 7384l(14) will serve as a default value, when a shorter duration cannot be justified.

#### *C. Dose Reconstructions Guidelines*

The Board recommended HHS clarify in the preamble of this rule the criteria for determining when it is not possible

to complete an individual dose reconstruction with sufficient accuracy. This would assist potential petitioners to understand the criteria that will be used to evaluate a petition. The Board also recommended NIOSH develop guidelines outlining the criteria for determining that the available data are not adequate for conducting dose reconstructions, and recommended HHS consider the use of time limits. The Board recommended the Board serve as a reviewer of these guidelines.

As discussed in response to similar comments from the public, HHS has included in the proposed rule a criterion and guidance for how it would determine under this rule that it is not feasible to estimate radiation doses with sufficient accuracy. This guidance for the public will be supplemented by NIOSH reports summarizing conditions in which it finds it is unable to complete a dose reconstruction, as such cases arise. In addition, NIOSH will consider the use of a time limit or time guidelines for individual dose reconstructions under 42 CFR part 82, once the program has reached full operating capacity.

NIOSH will also consult with the Board to supplement the criterion and guidance provided in the rule in the form of dose reconstruction guidelines. It is possible, however, that the basis for these determinations will not be definable by additional, broadly applicable criteria, beyond the criterion and guidance provided in the rule. If so, case-specific summaries of circumstances when NIOSH could not complete dose reconstructions, as discussed above, might provide the best possible guidance on this issue.

#### *D. Regulatory Approach*

The Board recommended that HHS consider issuing these regulations as an interim final rule rather than a final rule. The Board was concerned that certain aspects of the final rule, if similar to the rule initially proposed in June 2002, might prove through implementation to require additional changes. If this were to occur, consideration of petitions would be substantially delayed while HHS conducted another rulemaking with a new proposal for notice and public comment.

As discussed above in response to public comments, HHS has made substantial changes to the proposed rule that require issuing another notice of proposed rulemaking. In addition, as discussed previously, HHS believes this is likely to be the most expeditious approach to establishing procedures

under which petitions can be considered.

#### *E. Recommendations for Section 83.1 and 83.2*

The Board recommended that HHS add text to this introductory section of the rule to specify that NIOSH would take an active role in identifying classes that should consider petitioning and in assisting employees in such classes to petition.

The dose reconstruction rule (42 CFR part 82.12) specifies the active role NIOSH will take to encourage and assist claimants to petition for the addition of a class, on the basis that their dose reconstructions could not be completed. In addition, this proposed rule specifies the assistance NIOSH will provide to petitioners who have not initially provided sufficient information for their petition.

HHS does not agree that the proposed rule should also include a commitment for NIOSH to identify employees for whom it has not conducted dose reconstructions, to encourage and assist them in petitioning. However, if, in the course of its work in obtaining information for dose reconstructions, NIOSH learns of other classes of employees that have a basis for petitioning, NIOSH would attempt to assist them.

The Board also recommended HHS revise section 83.1 or 83.2 to clarify that the purpose of petitions is not to serve as an appeal for claimants whose dose reconstructions did not lead to compensation. DOL has established procedures under 20 CFR part 30 for claimants who want to contest the factual determinations or how NIOSH conducted their dose reconstructions.

HHS has added text to section 83.1 to make this clarification.

#### *F. Recommendation for Section 83.5*

The Board recommended the definition of "class" include the stipulation that the members of a class have worked during a common time period.

Section 83.13 allows NIOSH to define class membership in terms of the time period as well as other potentially relevant employment parameters. In contrast, the generic definition of class provided in section 83.5 is intended to describe briefly only the invariable characteristics of a class, to aid readers of the rule. Time period may not always be a defining characteristic. It is possible there will be classes comprising workers from several distinct time periods relating to intermittent operations. Also, the time period could be irrelevant if a class

comprised all individuals who performed a certain task or manned a certain type of operation at a facility.

#### *G. Recommendations for Section 83.9*

The Board recommended HHS eliminate the proposed requirement that petitioners obtain from DOE or an AWE a response to a request for records, indicating that dosimetry records are unavailable pertaining to radiation exposures incurred by employees. The Board noted that it may not be possible for petitioners to obtain such a response from AWEs and from DOE for certain DOE employees. The Board suggested HHS consider requiring a "good faith effort" to obtain records instead.

As discussed in response to this comment from the public, HHS agrees and has eliminated this proposed requirement. HHS has decided not to propose any requirement with respect to the procurement of records, even for a good faith effort, since this would be burdensome to petitioners and often without value to the evaluation of the petition.

The Board also recommended that HHS add an element to this section allowing petitioners to submit a government report or published scientific report concerning a deficiency of dosimetry records as a basis for petitioning. HHS agrees and has added this option.

#### *H. Recommendation for Section 83.10*

Section 83.10 of the initially proposed rule (now section 83.11) included the Board in the process for selecting petitions for evaluation. The Board would review each petition that HHS proposes to deny an evaluation (because the petition does not meet requirements specified in section 83.9) prior to HHS's making a decision.

The Board recommended HHS independently select petitions for evaluation, without the involvement of the Board. The Board was particularly concerned about its ability to handle this work load and did not consider as crucial its judgment on the qualifications of a petition to receive an evaluation.

HHS has revised the petition selection process in response to the concerns of the Board. Accordingly, the Board will not review petitions that NIOSH finds do not meet the requirements for a petition. This change should also be considered in light of the clarified and simplified petition requirements specified in this current proposal, and the process by which NIOSH will assist petitioners whose petitions do not initially meet the requirements, before making a final decision. HHS seeks

comment, however, on whether petitioners should have the option to seek an administrative review of adverse final decisions.

#### *I. Recommendation on Section 83.13*

Section 83.13 of the initially proposed rule (now section 83.15) specifies the process by which the Board will review petitions. This section includes a provision for inviting petitioners to present directly to the Board concerning their petition and NIOSH evaluation findings addressing their petition.

The Board recommended changes to this section to emphasize that the Board's role is advisory, not adjudicatory; and to clarify that the recommendations of the Board are only part of the information to be considered by the Secretary in making a decision with respect to a petition.

HHS has revised section 83.15 and 83.16 to address the concerns of the Board. As recommended by the Board, the term "evidence" is omitted from section 83.15, and section 83.16 clearly specifies that the Board recommendations are only part of the information to be considered by the Secretary in reaching a decision.

#### *J. Recommendation on Section 83.14*

Section 83.14 of the initially proposed rule provided the Secretary with flexibility to make use of unspecified procedures and information to address novel, unforeseen circumstances in the evaluation of a petition. The Board was concerned about the broad latitude that this authority would provide the Secretary, and recommended that the rule require that such unspecified procedures as might be applied under this broad authority would not conflict with procedures specified in the rule.

As discussed in response to similar public comments, HHS has omitted from the current rule authority for the Secretary to make use of unspecified procedures under this rule. Upon further consideration, HHS believes the specified procedures of this rule will fully and expeditiously serve its purpose.

#### **V. Publication of a Second Notice of Proposed Rulemaking**

HHS is publishing this second notice of proposed rulemaking to provide opportunity for public comment on the changes to the initial proposal discussed above. Some of these changes are substantial and were not discussed as options in the initial notice, nor were they otherwise foreseeable extensions, abbreviations, or variations of the initial proposal. These substantial changes include: a more qualified definition of

sufficient accuracy; revised procedures for establishing health endangerment, which eliminate the use of cancer risk models and of subjective judgments to quantify potential radiation doses; the potential for defining a class to be added to the Cohort by type of cancer in addition to previously specified employment parameters; and expedited procedures for evaluating petitions by claimants for whom NIOSH lacked sufficient information to complete dose reconstructions.

#### **VI. Regulatory Assessment Requirements**

##### *A. Executive Order 12866*

Under executive order (E.O) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the executive order.

Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. This notice of proposed rulemaking is being treated as a "significant regulatory action" within the meaning of the executive order because it meets the criterion of section 3(f)(4) in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. It proposes to establish practical procedures, grounded in current science, by which the Secretary of HHS can fairly consider petitions to add classes of employees to the Cohort. The financial cost to the federal government of responding to these petitions is likely to vary from several thousand dollars to as much as tens of thousands of dollars, depending on the availability of information and scope of the petition.

The notice of proposed rulemaking carefully explains the manner in which the procedures are consistent with the

mandate of 42 U.S.C. 7384q and implements the detailed requirements of that section. The proposal does not interfere with State, local, and tribal governments in the exercise of their governmental functions.

The proposal is not considered economically significant, as defined in § 3(f)(1) of the E.O. 12866. It has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule fulfills the requirements of E.O. 12866 and provides estimates of the aggregate cost of benefits and administrative expenses of implementing EEOICPA under its rule (see 66 FR 28948, May 25, 2001). OMB has reviewed this proposal for consistency with the President's priorities and the principles set forth in E.O. 12866.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This proposal affects only DOL, DOE, HHS, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

#### *C. What Are the Paperwork and Other Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under This Proposed Rule, and How Are Comments Submitted?*

Under the Paperwork Reduction Act of 1995, a Federal agency shall not conduct or sponsor a collection of information from ten or more persons other than Federal employees unless the agency has submitted a Standard Form 83, Clearance Request, and Notice of Action, to the Director of the Office of Management and Budget (OMB), and the Director has approved the proposed collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Paperwork Reduction Act is applicable to the data collection aspects of these proposed procedures. The Centers for Disease Control and Prevention will publish a separate notice in the **Federal Register**

announcing its intent to collect this data and seek OMB approval of the data collection instrument.

#### *D. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this proposed rule prior to its effective date. The report will state that the Department has concluded that this proposed rule is not a "major rule" because it is not likely to result in an annual effect on the economy of \$100 million or more. However, this proposed rule has a subordinate role in the adjudication of claims under EEOICPA, serving as one element of an adjudication process administered by DOL under 20 CFR parts 1 and 30. DOL has determined that its rule is a "major rule" because it will likely result in an annual effect on the economy of \$100 million or more.

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

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of \$100 million by State, local or tribal governments in the aggregate, or by the private sector.

#### *F. Executive Order 12988 (Civil Justice)*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform and will not unduly burden the Federal court system. HHS adverse decisions may be reviewed in United States District Courts pursuant to the Administrative Procedure Act. HHS has attempted to minimize that burden by providing petitioners an opportunity to seek administrative review of adverse decisions. HHS has provided a clear legal standard it will apply in considering petitions. This proposed rule has been reviewed carefully to eliminate drafting errors and ambiguities.

#### *G. Executive Order 13132 (Federalism)*

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding

federalism, and has determined that it does not have "federalism implications." The proposed rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

#### *H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the proposed rule would have no effect on children.

#### *I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that the proposed rule will not have a significant adverse effect on them.

#### **List of Subjects in 42 CFR Part 83**

Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

#### **Text of the Rule**

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR Chapter I by adding Part 83 to read as follows:

#### **PART 83—PROCEDURES FOR DESIGNATING CLASSES OF EMPLOYEES AS MEMBERS OF THE SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000**

##### **Subpart A—Introduction**

Sec.

- 83.0 Background information on the procedures in this part.
- 83.1 What is the purpose of the procedures in this part?
- 83.2 How will DOL use the designations established under the procedures in this part?

##### **Subpart B—Definitions**

- 83.5 Definitions of terms used in the procedures in this part.

##### **Subpart C—Procedures for Adding Classes of Employees to the Cohort**

- 83.6 Overview of the procedures in this part.

- 83.7 Who can submit a petition on behalf of a class of employees?
- 83.8 How is a petition submitted?
- 83.9 What information must a petition include?
- 83.10 If a petition satisfies all relevant requirements under § 83.9, does this mean the class will be added to the Cohort?
- 83.11 What happens to petitions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?
- 83.12 How will NIOSH notify petitioners, the Board, and the public of petitions that have been selected for evaluation?
- 83.13 How will NIOSH evaluate petitions, other than petitions by claimants covered under § 83.14?
- 83.14 How will NIOSH evaluate a petition by a claimant whose dose reconstruction NIOSH could not complete under 42 CFR Part 82?
- 83.15 How will the Board consider and advise the Secretary on a petition?
- 83.16 How will the Secretary decide the outcome of a petition?
- 83.17 What is the role of Congress in acting upon the final decision of the Secretary to add a class of employees to the Cohort?
- 83.18 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?

**Authority:** 42 U.S.C. 7384q; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

### Subpart A—Introduction

#### § 83.0 Background information on the procedures in this part.

The Energy Employees Occupational Illness Compensation Program Act, as amended (“EEOICPA” or “the Act”), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered employees and, where applicable, survivors of such employees, of the United States Department of Energy (“DOE”), its predecessor agencies and certain of its contractors and subcontractors. Among the types of illnesses for which compensation may be provided are cancers. There are two methods set forth in the statute for claimants to establish that a cancer incurred by a covered worker is compensable under EEOICPA. The first is to establish that the cancer is at least as likely as not related to covered employment at a DOE or Atomic Weapons Employer (“AWE”) facility pursuant to guidelines issued by the Department of Health and Human Services (“HHS”), which are found at 42 CFR part 81. The second method to establish that a cancer incurred by a covered worker is compensable under EEOICPA is to establish that the worker is a member of the Special Exposure Cohort (“the Cohort”) and suffered a specified cancer after beginning employment at a DOE or AWE facility.

Section 3621(14) of EEOICPA (42 U.S.C. 7384l(14)) includes certain classes of employees in the Cohort. Section 3626 of the Act (42 U.S.C. 7384q) authorizes the addition to the Cohort of other classes of employees. This authority has been delegated to the Secretary of HHS by Executive Order 13179.

#### § 83.1 What is the purpose of the procedures in this part?

EEOICPA authorizes the President to add classes of employees to the Cohort, while providing Congress with the opportunity to review and expedite or reverse these decisions. The President delegated his authority to the Secretary of HHS. This part specifies the procedures by which HHS will determine whether to add new classes of employees from DOE and AWE facilities to the Cohort. HHS will consider adding new classes of employees in response to petitions by or on behalf of such classes of employees. The procedures specify requirements for petitions and for their consideration. These requirements are intended to ensure that petitions are submitted by authorized parties, are justified, and receive uniform, fair, scientific consideration. The procedures are also designed to give petitioners and interested parties opportunity for appropriate involvement in the process, and to ensure that the process is timely and consistent with requirements specified in EEOICPA. The procedures are not intended to provide a second opportunity to qualify a claim for compensation, once HHS has completed the dose reconstruction and DOL has determined that the cancer subject to the claim was not “at least as likely as not” caused by the estimated radiation doses. DOL has established procedures separate from those covered by this rule, under 20 CFR part 30, for cancer claimants who want to contest the factual determinations or how NIOSH conducted their dose reconstructions.

#### § 83.2 How will DOL use the designations established under the procedures in this part?

DOL will adjudicate compensation claims for members of classes of employees added to the Cohort according to the same general procedures that apply to the statutorily defined classes of employees in the Cohort. Specifically, DOL will determine whether the claim is for a qualified member of the Cohort with a specified cancer, pursuant to the procedures set forth in 20 CFR Part 30.

### Subpart B—Definitions

#### § 83.5 Definitions of Terms Used in the Procedures in this part.

(a) *Advisory Board on Radiation and Worker Health (“the Board”)* is a federal advisory committee established under EEOICPA and appointed by the President to advise HHS in implementing its responsibilities under EEOICPA.

(b) *Atomic Weapons Employer (“AWE”)* is a statutory term of EEOICPA which means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of EEOICPA.

(c) *Class of employees* means, for the purposes of this rule, a group of employees who work or worked at the same DOE or AWE facility, and for whom the availability of information and recorded data on radiation exposures is comparable with respect to the informational needs of dose reconstructions conducted under 42 CFR part 82.

(d) *HHS* is the U.S. Department of Health and Human Services.

(e) *DOE* is the U.S. Department of Energy, which includes predecessor agencies of DOE, including the Manhattan Engineering District.

(f) *DOL* is the U.S. Department of Labor.

(g) *Employee*, for the purposes of these procedures, means a person who is or was, for the purposes of EEOICPA, an employee of DOE, a DOE contractor or subcontractor, or an Atomic Weapons Employer.

(h) *NIOSH* is the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(i) *Radiation* means ionizing radiation, including alpha particles, beta particles, gamma rays, x rays, neutrons, protons and other particles capable of producing ions in the body. For the purposes of the proposed procedures, radiation does not include sources of non-ionizing radiation such as radio-frequency radiation, microwaves, visible light, and infrared or ultraviolet light radiation.

(j) *Secretary* is the Secretary of Health and Human Services.

(k) *Specified cancer* as defined in § 3621 of EEOICPA (42 U.S.C. 7384l(17)) and the DOL regulation implementing EEOICPA (20 CFR 30.5(dd)) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that onset of the disease was at least two years after initial occupational exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers;

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease);

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary;

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(l) Survivor means a surviving spouse, child, parent, grandchild and grandparent of a deceased covered employee as defined in EEOICPA.

### Subpart C—Procedures for Adding Classes of Employees to the Cohort

#### § 83.6 Overview of the procedures in this part.

The procedures in this part specify who may petition to add a class of employees to the Cohort, the requirements for such a petition, how a petition will be selected for evaluation by NIOSH and for the advice of the Board, and the process NIOSH, the Board, and the Secretary will use to consider a petition, leading to the Secretary's final determination to accept or deny adding a class to the Cohort. Special procedures are included for considering the addition of a class of employees to the Cohort when NIOSH finds, through the process of attempting a dose reconstruction for an employee under 42 CFR 82.12, that available information is insufficient to complete

the dose reconstruction. As required by EEOICPA, the procedures in this part include formal notice to Congress of any decision by the Secretary to add a class to the Cohort, and the opportunity for Congress to expedite or change the outcome of the decision.

#### § 83.7 Who can submit a petition on behalf of a class of employees?

A petitioner or petitioners must be one or more of the following:

(a) One or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors; or

(b) One or more labor organizations representing or formerly having represented DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees; or

(c) One or more individuals or entities authorized in writing by one or more DOE, DOE contractor or subcontractor, or AWE employees, who would be included in the proposed class of employees, or their survivors.

#### § 83.8 How is a petition submitted?

The petitioner(s) must send a petition in writing to NIOSH. A petition must provide identifying and contact information on the petitioner(s) and information to justify the petition, as specified under § 83.9. Detailed instructions for preparing and submitting a petition, including an optional petition form, are available from NIOSH through direct request (1-800-35-NIOSH) or on the Internet at [www.cdc.gov/niosh/ocas](http://www.cdc.gov/niosh/ocas).

#### § 83.9 What information must a petition include?

(a) All petitions must provide identifying and contact information on the petitioner(s). The information required to justify a petition differs, depending on the basis of the petition. If the petition is by a claimant in response to a finding by NIOSH that the dose reconstruction for the claimant cannot be completed, then the petition must provide only the justification specified under paragraph (b) of this section. All other petitions must provide only the information specified under paragraph (c) of this section. The informational requirements for petitions are also summarized in Table 1 at the end of this section.

(b) The petition must notify NIOSH that the claimant is petitioning on the basis that NIOSH found, under 42 CFR 82.12, that the dose reconstruction for the claimant could not be completed due to insufficient records and information.

(c) The petition must include the following:

(1) A proposed class definition<sup>1</sup> specifying:

(i) The DOE or AWE facility at which the class worked;

(ii) The location or locations at the facility covered by the petition (*e.g.*, building, technical area);

(iii) The job titles and/or job duties of the class members;

(iv) The period of employment relevant to the petition;

(v) Identification of any exposure incident that was unmonitored, unrecorded, or inadequately monitored or recorded, if such incident comprises the basis of the petition; and

(2) A description of the petitioner's (petitioners') basis for believing records and information available are inadequate to estimate the radiation doses incurred by members of the proposed class of employees with sufficient accuracy. This description must include one of the following elements:

(i) Documentation or statements provided by affidavit indicating that radiation exposures and doses to members of the proposed class were not monitored, either through personal or area monitoring; or

(ii) Documentation or statements provided by affidavit indicating that radiation monitoring records for members of the proposed class have been lost, falsified, or destroyed; or

(iii) A report from a health physicist or other individual with expertise in dose reconstruction documenting the limitations of existing DOE or AWE records on radiation exposures at the facility, as relevant to the petition, and specifying the basis for finding these documented limitations might prevent the completion of dose reconstructions for members of the class under 42 CFR part 82 and related NIOSH technical implementation guidelines; or

(iv) A report published by a scientific government agency or published in a peer-reviewed scientific journal that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by the petition and also finds that such information might be essential to produce such estimates.

(3) If the petition is based on an exposure incident as described under paragraph (c)(1)(v) of this section, the petitioner(s) may be required to provide evidence that the incident occurred, if

<sup>1</sup> HHS will determine the final class definition for each petition (see § 83.16 of these procedures).

NIOSH is unable to obtain records or confirmation of the occurrence of such an incident from sources independent of the petitioner(s). In such cases, either of the following may qualify as evidence:  
 (i) Medical evidence that one or more members of the class may have incurred

a high level radiation dose from the incident, such as a depressed white blood cell count associated with radiation exposure or the application of chelation therapy; or  
 (ii) Confirmation by affidavit from two employees who witnessed the incident,

providing this evidence is consistent with other information available to HHS.

TABLE 1 FOR § 83.9.—SUMMARY OF INFORMATIONAL REQUIREMENTS FOR PETITIONS

[Petitioner(s) must submit identifying and contact information and either A. or B. of this table]

<p>A. The claimant's authorization of the petition, based on NIOSH having found it could not complete a dose reconstruction for the claimant submitting the petition; or</p>	<p>B. (1) Proposed class definition identifying: (i) Facility, (ii) relevant locations at the facility; (iii) job titles/duties, (iv) period of employment, and if relevant, (v) exposure incident.                  (2) Basis for infeasibility of dose reconstruction; either: (i) Lack of monitoring; or (ii) destruction, falsification, or loss of records; or (iii) expert report; or (iv) published scientific report.</p>
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**§ 83.10 If a petition satisfies all relevant requirements under § 83.9, does this mean the class will be added to the Cohort?**

Satisfying the informational requirements for a petition does not mean the class will be added to the Cohort. It means the petition will receive a full evaluation by NIOSH, the Board, and HHS, as described under §§ 83.13 through 83.16. The role of the petitioner(s) is to identify classes of employees that should be considered for addition to the Cohort.

**§ 83.11 What happens to petitions that do not satisfy all relevant requirements under §§ 83.7 through 83.9?**

(a) NIOSH will notify the petitioner(s) of any requirements that are not met by the petition, assist the petitioner(s) with guidance in developing relevant information, and provide 30 calendar days for the petitioner(s) to revise the petition accordingly.

(b) After 30 calendar days from the date of notification under paragraph (a) of this section, NIOSH will notify the petitioner(s) of its decision to evaluate the petition, or its final decision that the petition has failed to meet the requirements for evaluation and the basis for this decision.

(c) Based on new information, NIOSH may, at its discretion, reconsider a decision not to select a petition for evaluation.

**§ 83.12 How will NIOSH notify petitioners, the Board, and the public of petitions that have been selected for evaluation?**

(a) NIOSH will notify the petitioner(s) in writing that it has selected the petition for evaluation. NIOSH will also provide the petitioner(s) with information on the steps of the evaluation and other processes required pursuant to these procedures.

(b) NIOSH will combine separate petitions and evaluate them as a single petition if, at this or at any point in the evaluation process, NIOSH finds such

petitions represent the same class of employees.

(c) NIOSH will present petitions selected for evaluation to the Board with plans specific to evaluating each petition. Each evaluation plan will include the following elements:

(1) An initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation conducted under § 83.13; and

(2) A list of activities for evaluating the radiation exposure potential of the class and the adequacy of existing records and information needed to conduct dose reconstructions for all class members under 42 CFR part 82.

(d) NIOSH may initiate work to evaluate a petition immediately, prior to presenting the petition and evaluation plan to the Board.

(e) NIOSH will publish a notice in the **Federal Register** notifying the public of its decision to evaluate a petition.

**§ 83.13 How will NIOSH evaluate petitions, other than petitions by claimants covered under § 83.14?**

(a) NIOSH will collect information on the types and levels of radiation exposures that potential members of the class may have incurred, as specified under 42 CFR 82.14, from the following potential sources, as necessary:

(1) The petition or petitions submitted on behalf of the class;

(2) DOE and AWE facility records and information;

(3) Potential members of the class and their survivors;

(4) Labor organizations who represent or represented employees at the facility during the relevant period of employment;

(5) Managers, radiation safety officials, and other witnesses present during the relevant period of employment at the DOE or AWE facility;

(6) NIOSH records from epidemiological research on DOE

populations and records from dose reconstructions conducted under 42 CFR part 82;

(7) Records from research, dose reconstructions, medical screening programs, and other related activities conducted to evaluate the health and/or radiation exposures of employees of DOE, DOE contractors or subcontractors, and the AWEs; and

(8) Other sources.

(b) NIOSH will evaluate records and information collected to make the following determinations:

(1) *Is it feasible to estimate the level of radiation doses of individual members of the class with sufficient accuracy?*

(i) Radiation doses can be estimated with sufficient accuracy if NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose that could have been incurred in plausible circumstances by any member of the class.

(ii) In general, to establish a positive finding under paragraph (b)(1)(i) of this section would require, at a minimum, that NIOSH have access to reliable information on the identity or set of possible identities and maximum quantity of each radioisotope (the radioactive source material) to which members of the class were potentially exposed without adequate protection. Alternatively, if members of the class were potentially exposed without adequate protection to unmonitored radiation from radiation generating equipment (e.g., particle accelerator, industrial x-ray equipment), in general, NIOSH would require relevant equipment design and performance specifications or information on maximum emissions.

(iii) In general, access to personal dosimetry data and area monitoring data are not necessary to estimate the maximum radiation doses that could

have been incurred by any member of the class.

(iv) If NIOSH determines that it is not feasible to estimate radiation doses with sufficient accuracy, NIOSH will also determine whether such finding is limited to radiation doses incurred at certain tissue-specific cancer sites, and hence limited to specific types of cancers (whether or not such cancer(s) is a specified cancer under § 83.5(k)).

(2) *How should the class be defined, consistent with the findings of the analysis discussed under paragraph (b)(1) of this section?* NIOSH will define the following characteristics of a class, taking into account the class definition proposed by the petition and modified as necessary to reflect the results of the evaluation under paragraph (b)(1) of this section:

(i) Any of the following employment parameters, as necessary to identify members included in the class: facility, job titles, duties, and/or specific work locations within the facility or site, the relevant time period, and any additional identifying characteristics of employment;

(ii) If applicable, the identification of a exposure incident, when unmonitored radiation exposure during such an incident comprises the basis of the petition or the class definition;

(iii) If applicable, the identification of a set of one or more types of cancers to which NIOSH's finding that it was not feasible to estimate radiation doses with sufficient accuracy is limited.

(3) If it is not feasible to estimate with sufficient accuracy radiation doses for members of the class, as provided under paragraph (b)(1) of this section, then NIOSH must also make the following determination as required by statute [see 42 U.S.C. 7384q(b)(2)]: Is there a "reasonable likelihood that such radiation dose may have endangered the health of members of the class?"

(i) For classes of employees that may have been exposed to radiation during discrete incidents likely to have involved exceptionally high level exposures, such as nuclear criticality incidents or other events involving similarly high levels of exposures resulting from the failure of radiation protection controls, NIOSH will assume for the purposes of this section that any duration of unprotected exposure could cause a specified cancer, and hence may have endangered the health of members of the class. Presence with potential exposure during the discrete incident, rather than a quantified duration of potential exposure, will satisfy the health endangerment criterion.

(ii) For health endangerment not established on the basis of a discrete

incident, as described under paragraph (b)(3)(i) of this section, NIOSH will specify a minimum duration of employment to satisfy the health endangerment criterion as having been employed for a number of work days aggregating at least 250 work days within the employment parameters established for the class.

(c) NIOSH will submit a report of its evaluation findings to the Board and to the petitioner(s). The report will include the following elements:

(1) An identification of the relevant petitions;

(2) A proposed definition of the class or classes of employees to which the evaluation applies, and a summary of the basis for this definition, including, as necessary:

(i) Any justification that may be needed for the inclusion of groups of employees who were not specified in the original petition(s);

(ii) The identification of any groups of employees who were identified in the original petition(s) who should constitute a separate class of employees; or

(iii) The merging of multiple petitions that represent a single class of employees.

(3) The proposed class definition will address the following employment parameters:

(i) The DOE facility or the AWE facility that employed the class;

(ii) The job titles and/or job duties and/or work locations of class members;

(iii) The period of employment within which a class member must have been employed at the facility under the job titles and/or performing the job duties and/or working in the locations specified in this class definition;

(iv) If applicable, identification of an exposure incident, when potential radiation exposure during such an incident comprises the basis of the class definition;

(v) If necessary, any other parameters that serve to define the membership of the class; and

(vi) For a class for which it is not feasible to estimate radiation doses with sufficient accuracy, a minimum duration of employment within the employment parameters of the class for inclusion in the class, as defined under § 83.13(b)(3).

(4) The proposed class definition may also specify that members of the class are limited to employees who incur a cancer from a set of one or more types of cancers specified by NIOSH. This provision applies to classes of employees for which the finding that it is not feasible to estimate radiation doses with sufficient accuracy is limited

to certain tissue-specific cancer sites, relevant to individuals with specific types of cancers.

(5) a summary of the findings concerning the adequacy of existing records and information for reconstructing doses for individual members of the class under the methods of 42 CFR part 82; and a description of the evaluation methods and information upon which these findings are based.

(6) for a class for which it is not feasible to estimate radiation doses with sufficient accuracy, a summary of the basis for establishing the duration of employment requirement with respect to health endangerment.

**§ 83.14 How will NIOSH evaluate a petition by a claimant whose dose reconstruction NIOSH could not complete under 42 CFR part 82?**

(a) NIOSH may establish two classes for evaluation, to permit the timely adjudication of the existing cancer claim:

(1) A class of employees defined using the research and analyses already completed in attempting the dose reconstruction for the employee identified in the claimant's petition; and

(2) A class of co-workers similar to the class defined under paragraph (a)(1) of this section, to be defined by NIOSH on the basis of further research and analyses, using the procedures outlined under § 83.13.

(b) NIOSH will determine the health endangerment criteria for adding the class under paragraph (a)(1) of this section to the Cohort, using the procedures outlined under § 83.13. NIOSH will report to the Board the results of this determination, together with its finding under 42 CFR part 82 that there was insufficient information to complete the dose reconstruction.

(c) NIOSH will evaluate the petition as it may concern a class of co-workers, as described under paragraph (a)(2) of this section, according to the procedures under § 83.13.

**§ 83.15 How will the Board consider and advise the Secretary on a petition?**

(a) NIOSH will publish a notice in the **Federal Register** providing notice of a Board meeting at which a petition will be considered, and summarizing the petition to be considered by the Board at the meeting and the findings of NIOSH from evaluating the petition.

(b) The Board will consider the petition and the NIOSH evaluation report at the meeting, to which the petitioner(s) will be invited to present views and information on the petition and the NIOSH evaluation findings.

(c) In considering the petition, the Board may obtain and consider

additional information not addressed in the petition or the initial NIOSH evaluation report.

(d) NIOSH may decide to further evaluate a petition, upon the request of the Board. If NIOSH conducts further evaluation, it will report new findings to the Board and the petitioner(s).

(e) Upon the completion of NIOSH evaluations and deliberations of the Board concerning a petition, the Board will develop and transmit to the Secretary a report containing its recommendations. The Board's report will include the following:

(1) The identification and inclusion of the relevant petition(s);

(2) The definition of the class of employees covered by the recommendation;

(3) A recommendation as to whether or not the Secretary should designate the class as an addition to the Cohort;

(4) The criteria and information upon which the recommendation is based, including NIOSH evaluation reports, information provided by the petitioners, any other information considered by the Board, and the deliberations of the Board.

**§ 83.16 How will the Secretary decide the outcome of a petition?**

(a) The Secretary will propose, and transmit to all affected petitioners, a decision to add or deny adding classes of employees to the Cohort. This decision will take into consideration the evaluations of NIOSH and the recommendations of the Board, and may also take into consideration information presented to the Board and its deliberations.

(b) HHS will provide the petitioner(s) 30 calendar days to contest the proposed decision of the Secretary. If the petitioner(s) submits to HHS a challenge that includes substantial evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures, then HHS will consider the evidence submitted by the petitioner(s) prior to issuing a final decision. Challenges to decisions of the Secretary under these procedures must be submitted in writing, with accompanying documentation

supporting the assertions of the challenge.

(c) HHS will issue a final decision on the designation and definition of the class, and transmit a report of the decision and the criteria and information upon which the decision is based to the petitioner(s). HHS will also publish notice of the decision in the **Federal Register**, including a definition of the class and a summary of the criteria and information upon which the decision is based.

**§ 83.17 What is the role of Congress in acting upon the final decision of the Secretary to add a class of employees to the Cohort?**

(a) If the Secretary designates a class of employees to be added to the Cohort, the Secretary will transmit to Congress a report providing the designation, the definition of the class of employees covered by the designation, and the criteria and information upon which the designation was based.<sup>2</sup>

(b) A designation of the Secretary will take effect 180 calendar days after the date on which the report of the Secretary is submitted to Congress, unless Congress takes an action that reverses or expedites the designation.

(c) Within five work days of either expiration of the congressional review period or final congressional action, whichever comes first, the Secretary will transmit to DOL a report providing the definition of the class and one of the following outcomes:

(1) The addition of the class to the Cohort; or

(2) The result of any action by Congress to reverse or expedite the decision of the Secretary to add the class to the Cohort.

(d) The report specified under paragraph (c) of this section will be published on the Internet at [www.cdc.gov/niosh/ocas](http://www.cdc.gov/niosh/ocas) and in the **Federal Register**.

**§ 83.18 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?**

(a) The Secretary can cancel a final decision to add a class to the Cohort, or can modify a final decision to reduce the scope of a class added by the

Secretary, if HHS obtains records relevant to radiation exposures of members of the class that enable NIOSH to estimate the radiation doses incurred by individual members of the class through dose reconstructions conducted under the requirements of 42 CFR part 82.

(b) Before cancelling a final decision to add a class or modifying a final decision to reduce the scope of a class, the Secretary intends to follow evaluation procedures that are substantially similar to those described in this part for adding a class of employees to the Cohort. The procedures will include the following:

(1) Publication of a notice in the **Federal Register** informing the public of the intent of the Secretary to review the final decision on the basis of new information and describing procedures for this review;

(2) An analysis by NIOSH of the utility of the new information for conducting dose reconstructions under 42 CFR part 82; the analysis will be performed consistently with the requirements for analysis of a petition by NIOSH under §§ 83.13(b)(1)and(2), and 83.13(c)(2)and(3);

(3) A recommendation by the Board to the Secretary as to whether or not the Secretary should cancel or modify its final decision that added the class to the Cohort, based upon a review by the Board of the NIOSH analysis and any other relevant information considered by the Board;

(4) An opportunity for members of the class to contest a proposed decision by the Secretary to cancel or modify the prior final decision that added the class to the Cohort, including a reasonable and timely effort by the Secretary to notify members of the class of this opportunity; and

(5) Publication in the **Federal Register** of a final decision to cancel or modify the prior final decision that added the class to the Cohort.

Dated: March 5, 2003.

**Tommy G. Thompson,**

*Secretary, Department of Health and Human Services.*

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<sup>2</sup> See 42 U.S.C. 7384l(14)(C)(ii).

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**S. 141/P.L. 108-8**

To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

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