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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV02–923–1 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Establishment of Procedures To Allow the Grading or Packing of Sweet Cherries Outside the Production Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule allowing the grading or packing of sweet cherries outside the production area established under the Washington sweet cherry marketing order which regulates the handling of sweet cherries grown in designated counties in Washington. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Washington Cherry Marketing Committee (Committee) on forms provided by the Committee. The reporting requirement will provide the Committee with safeguard information on the grading or packing of sweet cherries outside the production area to assure that acceptable quality fruit is shipped. This rule will provide greater flexibility in the grading, packing, and marketing of Washington sweet cherries. In some cases, the facilities outside the production area are closer to where the fruit is produced, and the ability to grade and pack outside the production area could reduce costs. This rule was recommended unanimously by the Committee, the agency responsible for local administration of the order.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Order No. 923, both as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

Minimum grade, size, maturity, container, pack and inspection requirements are currently established under the order. This rule continues in effect procedures and safeguard requirements that allow for the grading or packing of Washington sweet cherries outside the production area. Persons desiring to ship Washington sweet cherries for grading or packing outside the production area will apply and report to the Committee on forms provided by the Committee.

Consistent with the authorities and procedures outlined in the Act, the order was amended on November 21, 2001 (66 FR 58350). One of the amendments increased the size of the production area to include all counties east of the Cascade Mountain Range and provided authority in § 923.54 for the establishment of procedures to allow the shipment of Washington sweet cherries outside the production area for grading and packing. Section 923.54 also provides authority for the establishment of such safeguards as may be necessary to ensure the sweet cherries are handled in accordance with the order's provisions.

The Committee met on May 14, 2002, and unanimously recommended the establishment of procedures and safeguard requirements to allow the grading or packing of sweet cherries outside the production area. Currently, all cherries are required to be graded and packed before leaving the production area. Committee members believe that this will give shippers an opportunity to choose those grading and packing facilities that will be most beneficial to their individual circumstances. The grading and packing costs that are charged to growers may be different among different handlers in the production area or packing facilities outside the production area. There may be differences in the type of packaging or other services offered by packing facilities within or outside the production area.

For example, a packing facility outside the area of production is

experimenting with modified atmosphere packaging that increases the shelf life of sweet cherries. There are also Washington sweet cherry growers who are part owners of packing facilities that are located outside the area of production, and it may be advantageous for them to be able to deliver to those facilities for grading and packing. Finally, some of the facilities are closer to where the fruit is produced, and allowing these facilities to be used for grading, packing, or both could reduce grower and handler delivery costs.

The Committee believes that the minimum grade, size, maturity, container, and pack requirements established under the order are very important to the industry. The Committee believes such requirements create orderly marketing, are good for consumers, encourage repeat purchases, and ultimately improve returns to growers. Therefore, the Committee also recommended the establishment of safeguards to ensure that all sweet cherries graded and packed outside the production area are ultimately inspected and certified by the Federal or Federal-State Inspection Service as meeting the minimum grade, size, maturity, container, and pack requirements established under the order. Persons desiring to ship or receive sweet cherries for grading or packing outside the production area will apply to the Committee on a *Shippers/Receivers Application for Special Purpose Shipment Certificate.* Such applicants will submit an application each year prior to shipping or receiving sweet cherries for grading or packing outside the production area. Information collected on the application will include the date as well as the name, address, phone number, and signature of the applicant, and such other information as the Committee may require. The form includes a certification that all production area cherries graded or packed outside the production area will be inspected by the Federal or Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment.

After the Committee approves an application, the applicant within the area of production and the applicant packing facility outside the area will be required to submit a weekly *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped out of the production area for grading or packing, along with inspection certificates, and other information required by the Committee for verification purposes. Information collected on the reports will include the names, addresses, telephone numbers, and signatures of the applicants, names of the growers and handlers of such cherries, and the total quantities of each variety of cherries shipped or received. These reports will be submitted to the Committee at the close of business every Friday during those weeks when the shipper applicant has shipped or the receiver applicant has received sweet cherries for grading and packing outside the production area. The Committee estimates that each affected applicant will submit approximately 10 of these reports annually.

Final Regulatory Flexibility Analysis

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

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

Based on Committee data, there are approximately 1,500 growers of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The Committee estimates that there are about 6 prospective applicants that may take advantage of this marketing opportunity. Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on Committee data, the average production of sweet cherries in Washington State for the last three years is 64,676 tons. Based on Washington Agricultural Statistics Service data, the average grower price for sweet cherries in Washington State for the last three years is $1,943 per ton. The Committee currently estimates that there are 1,500 sweet cherry growers. Using the Committee's 1,500 sweet cherry grower estimate, the average annual grower revenue is calculated to be approximately $83,777. Using Committee data regarding each individual handler's total shipments during the 2001 marketing year and a Committee estimated average f.o.b. price of $24.00 per 20-pound container in 2001, 79 percent of the Washington sweet cherry handlers ship under $5,000,000 worth of sweet cherries and 21 percent ship over $5,000,000 worth of sweet cherries. Therefore, the majority of Washington sweet cherry growers and handlers may be classified as small entities. Also, it is estimated that 6 packing facilities or receivers would be affected by this action. Although their size is not known, it is estimated that most would be considered small entities.

Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

This rule continues to allow persons to ship Washington sweet cherries outside the area of production for grading and packing. Applicants desiring to ship or receive sweet cherries for grading or packing outside the production area will be required to submit an application to the Committee. The applicants will certify that all production area cherries graded or packed outside the production area will be inspected by the Federal or the Federal-State Inspection Service and will meet the minimum grade, size, maturity, container, and pack requirements established under § 923.322 prior to shipment. Persons who are approved by the Committee to ship or receive will report all production area sweet cherries shipped or received for grading or packing outside the production area at the close of business every Friday.

Regarding the impact of this action on affected entities, this rule will impose minimal additional costs. As previously mentioned, the Committee estimates that about six prospective applicants may desire to ship or receive sweet cherries for grading or packing outside the production area during the marketing year. Such applicants will be required to submit a *Shippers/Receivers Application for Special Purpose Shipment Certificate* and receive approval from the Committee prior to shipping or receiving any production area sweet cherries each year for grading or packing. After the Committee approves an application, both applicants will be required to submit a

weekly *Special Purpose Shipment Report* to the Committee when Washington sweet cherries are shipped or received for grading or packing along with inspection certificates or other information required by the Committee for verification purposes. The Committee estimates that each affected applicant will submit about 10 of these reports annually. The annual industry burden associated with this information collection is estimated to total approximately 5 hours.

An alternative to this action would be to not allow Washington sweet cherries to be shipped outside the production area for grading or packing. This alternative would limit the flexibility of growers and handlers to make decisions related to the grading, packing, and marketing of Washington sweet cherries. Another alternative would be to allow shipments of such sweet cherries for grading or packing outside the production area, but not require any reporting. The Committee did not support this alternative because of the lack of any safeguards to ensure compliance with the handling requirements implemented under the order. Allowing the shipment of Washington sweet cherries outside the production area for grading or packing is a relaxation of order requirements and any costs related to additional reporting will be greatly outweighed by the benefits of allowing such shipments.

This rule will impose an additional reporting and recordkeeping burden on persons who ship or receive sweet cherries for grading or packing outside the production area. This action requires two new Committee forms. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements on these two Committee forms was approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0214 on March 31, 2003.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the sweet cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 14, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on April 2, 2003 (68 FR 15923). Copies of this rule were mailed by the Committee staff to all Committee members. In addition, the rule was made available through the Internet by the Office of the Federal Register and the USDA. That rule provided for a 60-day comment period that ended June 2, 2003. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 15923, April 2, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 923 that was published at 68 FR 15923 on April 2, 2003, is adopted as a final rule without change.

Dated: June 17, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15739 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV03–959–2 FIR]

Onions Grown in South Texas; Revision of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with a minor change, an interim final rule that eliminated all container requirements from the handling regulations prescribed under the South Texas onion marketing order (order) and made several conforming and formatting changes. The order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule continues in effect the elimination of all container requirements from the handling regulations and several conforming changes. This action continues to provide the industry expanded flexibility to use any and all types and sizes of containers, or to ship onions in bulk. It also is expected to continue helping handlers compete more effectively in the marketplace, better meet buyers' needs, and help improve producer returns during the 2003 and future seasons.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the elimination of all container requirements on onion shipments from the handling regulations prescribed under the South Texas onion order and several conforming and formatting changes. Removing all container requirements provides the industry expanded flexibility to use any and all types of containers preferred by consumers, buyers, and all retailers, or to ship onions in bulk shipments, which will help handlers compete more effectively in the marketplace, better meet buyers' needs, and help improve producer returns. All shipments will continue to be required to meet grade, size, and inspection requirements. In addition, this rule also continues to: (1) Remove outdated language from § 959.104; (2) remove all references to containers and applicable language from the order's rules and regulations; (3) remove an incorrectly referenced paragraph in current § 959.322(d) *Inspection* and replace it with the correct reference; and (4) correct the name of the Texas-Federal Inspection Service office. The Committee unanimously recommended these changes at its October 8, 2002, meeting and clarified the recommendations via a mail vote on October 31, 2002. After the October 8 meeting, the Chairman appointed a subcommittee to review the Committee's recommendations. The subcommittee met on November 5, 2002, and further discussed the reasons why the changes should be made.

Section 959.52(b)(4) of the onion order provides authority to regulate size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipments, or other handling of onions. Section 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted.

Before the issuance of the interim final rule, § 959.322(c) of the order's rules and regulations outlined container requirements for onions. Section 959.322(c)(1) through (7) of the regulations authorized ten containers (25-pound, 50-pound, 2-pound, 3-pound, 5-pound, and 10-pound bags; 20-pound, 25-pound, 40-pound, and 50-pound cartons) for use by onion handlers. Section 959.322(f)(2) exempted gift packages of onions not exceeding 25 pounds per package from the container requirements of § 959.322(c) if the onions had not previously been handled. Also, § 959.32(f)(4) authorized the Committee to approve other types of containers for experimental or testing purposes.

In recent years, there has been a proliferation in package requirements from buyers intent on providing either unique packaging for their stores or special carton sizes for their racking or handling equipment. American retailers desiring to emulate European marketing concepts in display developments (and supporting handling systems) in the U.S. and Canadian marketplace have significantly influenced this process. The evolution of the club and discount stores, design alterations tailored to protecting the commodity from damage during shipments and/or store presentation, and the development of new packaging materials, for example, returnable plastic containers (RPCs) have also greatly influenced the marketplace. The supply side, for reasons of efficiency, has resisted this growth when possible. However, buyer influence is such that no shipper can or will deny buyers new cartons, knowing that other shippers will readily adopt them. The shippers are all impacted by the surge in packaging demands. Many retailers have asked handlers to pack onions in specific RPCs, master containers, and containers other than the currently approved permanent containers. Container dimensions can vary slightly depending on the manufacturers. During previous seasons, handlers applied for and obtained Committee approval to use other containers on an experimental basis. Safeguarding the use of such experimental containers was an additional burden for the Committee.

Because this trend seems certain to continue in the future, the Committee concluded that the best and most economical resolution of the issue concerning the number of containers would be to simply eliminate the container requirements, thereby permitting shippers to respond to buyer requests as they see fit.

The trend toward even more unique and specialized packaging generally is governed by the desire of the retail community to receive produce in ''display-ready'' packaging consistent with the retailer's image and marketing plan for each type and size of store. At the same time, the packaging must meet the buyer's expectations for structural integrity and consistency with that buyer's handling practices. Although the increased flexibility does complicate the marketplace, and may result in inefficiencies, it is what retailers think consumers want, and therefore, is prerequisite to selling onions. Maximum efficiency would result from the adoption of a single uniform footprint, but an effort over the past two years to win acceptance of such a footprint has been virtually abandoned because it is contrary to trends in buyer requirements. Furthermore, foodservice buyers also have specialized container requirements often different from retailer requirements. In the end, however, the confusion is held to a minimum by the simple fact that onions normally are sold by weight and grade, which is consistent regardless of packaging.

Eliminating all container requirements in the handling regulations enables the industry to ship onions in any and all containers preferred by consumers, buyers, and all retailers, which benefits producers, handlers, buyers, and consumers of Texas onions and enables the industry to compete more effectively in the marketplace. This action continues to help the industry in providing consumers with high quality onions, promoting buyer satisfaction, and improving producer returns. This action does not impact the onion import requirements.

Removing container requirements required that all references to containers and applicable language also be removed from the order's rules and regulations, including references to onions for peeling, chopping, and slicing. Reference to these types of fresh processing methods is only made in the introductory text of § 959.322 in order to avoid confusion with other types of processing, which are exempt from grade, size, and inspection requirements. In addition, several conforming and formatting changes were made to clarify or remove some

outdated language. Specifically, in § 959.104 *Fiscal period* the first sentence and first part of the second sentence were removed. In § 959.322(d)(1), the reference to (f)(3)(ii) was removed because no such paragraph existed and was replaced with the correct reference to shipments for experimental purposes. The incorrect reference was inadvertently placed in the regulation. Also, in paragraph (d)(1) the name of the inspection office was corrected to reflect the correct name of the local inspection office and the Inspection Service's name referred to in the order. In addition, paragraphs (f)(2), (f)(3), and (f)(5) were removed because they are no longer applicable now that container requirements have been eliminated.

In the interim final rule, newly redesignated paragraph (c)(1) of § 959.322 on inspection was revised to include exceptions for activities under paragraphs (d), (e)(1), and (e)(2)(i) of this section. The last reference should have been (e)(2) and it is corrected by this action.

Final Regulatory Flexibility Analysis

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

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

There are approximately 90 producers of onions in the production area and approximately 35 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000.000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2001–02 marketing year, the industry's 35 handlers shipped onions produced on 16,148 acres with the average and median volume handled being 152,446 and 136,810 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 35 handlers were estimated to be $39.9 million, with average and median revenues being $1.1 million and $1.0 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 35 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 90 producers may be classified as small entitles based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule revises the rules and regulations prescribed under the South Texas onion order. This rule continues to eliminate container requirements on onion shipments in § 959.322 of the order's handling regulations, and several conforming and formatting changes. Removing all container requirements provides the industry expanded flexibility to use any and all types of containers preferred by consumers, buyers, and all retailers, or to ship onions in bulk, which helps handlers compete more effectively in the marketplace, better meet buyers' needs, and helps improve producer returns. All shipments will continue to be required to meet grade, size, and inspection requirements. This rule change allows South Texas onion handlers to supply existing markets and allows the industry to be more competitive in the marketplace. Allowing shipments of onions in all types of containers or in bulk will increase shipments of Texas onions because there are no longer any container restrictions.

In addition, this rule continues to: (1) Remove outdated language from § 959.104; (2) remove all references to containers and applicable language from the order's rules and regulations; (3) remove an incorrectly referenced paragraph in current § 959.322(d) *Inspection* and replaces it with the correct reference; and (4) correct the name of the Texas-Federal Inspection Service office. The Committee unanimously recommended these changes at its October 8, 2002, meeting and clarified the recommendation via a mail vote on October 31, 2002. After the October 8 meeting, the Chairman appointed a subcommittee to review the Committee's recommendations. The subcommittee met on November 5, 2002, and further discussed the reasons why the changes should be made.

Section 959.52(b)(4) of the onion order provides authority to regulate size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of onions. Section 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted.

Previously, § 959.322(c) of the order's rules and regulations outlined container requirements for onions. Section 959.322(c)(1) through (7) of the regulations authorized ten containers (25-pound, 50-pound, 2-pound, 3-pound, 5-pound, and 10-pound bags; 20-pound, 25-pound, 40-pound, and 50-pound cartons) for use by onion handlers.

Section 959.322(f)(2) exempted gift packages of onions not exceeding 25 pounds per package from the container requirements of § 959.322(c) if the onions had not previously been handled. Also, § 959.322(f)(4) authorized the Committee to approve other types of containers for experimental or testing purposes.

In recent years, there has been a proliferation in package requirements from buyers intent on providing either unique packaging for their stores or special carton sizes for their racking or handling equipment. American retailers desiring to emulate European marketing concepts in display developments (and supporting handling systems) in the U.S. and Canadian marketplace have significantly influenced this process. The evolution of the club and discount stores, design alterations tailored to protecting the commodity from damage during shipment and/or store presentation, and the development of new packaging materials, for example, returnable plastic containers (RPCs) have also greatly influenced the marketplace. The supply side, for reasons of efficiency, has resisted this

growth when possible. However, buyer influence is such that no shipper can or will deny buyers new cartons, knowing that other shippers will readily adopt them. The shippers are all impacted by the surge in packaging demands. Many retailers have asked handlers to pack onions in specific RPCs, master containers, and containers other than the currently approved permanent containers. Container dimensions can vary slightly depending upon the manufacturer. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis. Safeguarding the use of such experimental containers was an additional burden for the Committee.

Because this trend seems certain to continue in the future, the Committee concluded that the best and most economical resolution of the issue concerning the number of containers would be to simply eliminate the container requirements, thereby permitting shippers to respond to buyer requests as they see fit.

The trend toward even more unique and specialized packaging generally is governed by the desire of the retail community to receive produce in ''display-ready'' packaging consistent with the retailer's image and marketing plan for each type and size or store. At the same time, the packaging must meet the buyer's expectations for structural integrity and consistency with that buyer's handling practices. Although the increased flexibility does complicate the marketplace, and quite obviously results in inefficiencies, it is what retailers think consumers want, and, therefore is prerequisite to selling onions. Maximum efficiency would result from the adoption of a single uniform footprint, but an effort over the past two years to win acceptance of such a footprint has been virtually abandoned because it is contrary to trends in buyer requirements. Furthermore, foodservice buyers also have specialized container requirements often different from retailer requirements. In the end, however, the confusion is held to a minimum by the simple fact that onions normally are sold by weight and grade, which is consistent regardless of packaging.

Eliminating all container requirements in the handling regulations enables the industry to ship onions in any and all containers preferred by consumers, buyers, and all retailers, which benefits producers, handlers, buyers, and consumers of Texas onions and enables the industry to compete more effectively in the marketplace. This action does not impact the onion import requirements. Removing container requirements requires that all references to containers and applicable language also be removed from the order's rules and regulations. References to containers for onions for peeling, chopping, and slicing were also removed. Reference to these types of fresh processing methods only was made in the introductory text of § 959.322 in order to avoid confusion with other types of processing, which are exempt from grade, size, and inspection requirements. In addition, several conforming and formatting changes were made to clarify or remove some outdated language. Specifically, in § 959.104 *Fiscal period* the first sentence and first part of the second sentence were removed. In § 959.322(d)(1), the reference to (f)(3)(ii) was removed because no such paragraph existed, and was replaced with the correct reference to shipments for experimental purposes. The incorrect reference had inadvertently been placed in the regulation. Also, in paragraph (d)(1) the name of the inspection office was corrected to reflect the correct name of the local inspection office and the Inspection Service's name referred to in the order. In addition, paragraphs (f)(2), (f)(3), and (f)(5) were removed because they are no longer applicable now that container requirements have been eliminated.

The opportunities and benefits of this rule will be equally available to all onion handlers regardless of their size of operation. The recommended changes benefit the entire South Texas onion industry.

The alternatives were to suspend the container requirements for a certain period of time or leave the regulations as they are. However, the Committee believed that the best action was to eliminate all requirements completely to provide expanded flexibility.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the October 8, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee and these meeting also are open to the public. In this case, a subcommittee met on November 5, 2002, to further discuss this action. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on March 11, 2003. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and to the entire South Texas onion industry. In addition, the rule was made available through the Internet by the *Office of the Federal Register* and USDA. This rule provided a 60-day comment period which ended May 12, 2003. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with a minor change, as published in the **Federal Register** (68 FR 11463, March 11, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR part 959, which was published at 68 FR 11463 on March 11, 2003, is adopted as a final rule with the following change:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 959.322, paragraph (c)(1), ''(e)(2)(i)'' is revised to read ''(e)(2)''.

Dated: June 17, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15738 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 02–015DF]

RIN 0583–AC97

Addition of Australia and New Zealand to the List of Foreign Countries Eligible to Import Poultry Products (Ratite Only) Into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will add Australia and New Zealand to the list of countries eligible to import poultry products (ratite only) into the United States (U.S.). Reviews by FSIS of Australia's and New Zealand's laws, regulations, and other written materials, as well as the findings of an on-site review of each country's system, show that their regulatory systems that apply to ratite slaughter and processing include requirements that are equivalent to that of the United States under the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Under this direct final rule, ratites slaughtered and processed in certified establishments in Australia and in New Zealand will be permitted to be imported into the U.S. All ratite products imported into the U.S. from Australia and New Zealand will be subject to reinspection at U.S. ports-of-entry by FSIS inspectors.

DATES: This rule will be effective August 22, 2003, unless written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking are received on or before July 23, 2003. If FSIS receives adverse comments, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #02–015DF, Room 102, Cotton Annex, 300 C Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clark Danford, Acting Director, Import-Export Programs Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

Effective April 2001, ratites were officially classified as poultry and subject to mandatory inspection under the PPIA (56 FR 22899). Prior to that time, imported ratites were regulated by the Food and Drug Administration (FDA).

FSIS will amend the Federal poultry products inspection regulations to add Australia and New Zealand to the list of countries eligible to import ratite and ratite products into the U.S. These countries have consistently maintained their eligibility to certify meat slaughter and processing operations.

Section 17 (21 U.S.C. 466(d)) of the PPIA states (1) notwithstanding any other provision of law, all poultry, or parts or products of poultry capable of use as human food offered for importation into the U.S. shall—(A) be subject to inspection, sanitary, quality, species verification, and residue standards that achieve a level of sanitary protection equivalent to that achieved under the U.S. standards; and (B) have been processed in facilities and under conditions that achieve a level of sanitary protection equivalent to that achieved under U.S. standards. (2)(A) The Secretary may treat as equivalent to a U.S. standard a standard of an exporting country described in paragraph (1) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies determined appropriate by the Secretary, to demonstrate that the standard of the exporting country achieves the level of sanitary protection achieved under the U.S. standard. For the purposes of this subsection, the term ''sanitary protection'' means protection to safeguard public health. (B) The Secretary may (i) determine, on a scientific basis, that the standard of the exporting country does not achieve the level of protection that the Secretary considers appropriate; and (ii) provide the basis for the determination in writing to the exporting country on request. (3) Any such imported poultry article that does not meet such standards shall not be permitted entry into the U.S. (4) The Secretary shall enforce this subsection through (A) random inspections for such species verification and for residues; and (B) random sampling and testing of internal organs and fat of carcasses for residues at the point of slaughter by the exporting country, in accordance with methods approved by the Secretary. Section 17 (21 U.S.C. 466(a)) of the PPIA also prohibits the importation of any slaughtered poultry, or parts or products thereof, of any kind into the U.S. unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient which renders them unhealthful, unwholesome, adulterated, or unfit for human food and unless they also comply with the rules and regulations made by the Secretary of Agriculture to assure that imported poultry or poultry products comply with the standards provided for in this Act.

The importation of ratite products must be in compliance with the Federal poultry products inspection regulations to ensure that they meet the standards provided in the PPIA. 9 CFR 381.196 establishes the procedures by which foreign countries that want to import ratite or ratite products into the U.S. may become eligible to do so.

Section 381.196 requires that authorities in a foreign countries'' poultry inspection system certify that (1) the system provides standards equivalent to those of the U.S. and (2) the legal authority for the system and its implementing regulations are equivalent to those of the U.S. Specifically, a country's regulations must impose requirements that are equivalent to those of the U.S. in the following areas: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) complete separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) requirements for sanitation at certified establishments and for sanitary handling of poultry products; (7) official controls over condemned material until destroyed or removed and, thereafter, excluded from the establishment; (8) a Hazard Analysis and Critical Control Point system as set out in 9 CFR part 417; and (9) other matters for which requirements are contained in the Act or the regulations of this part.

Section 381.196 also requires that a poultry inspection system maintained by a foreign country, with respect to establishments that prepare products in that country for export to the U.S., ensure that those establishments and their products comply with requirements that are equivalent to the provisions of the PPIA and the poultry products inspection regulations. Besides relying on its initial determination of a country's eligibility, coupled with ongoing system audits to ensure that products shipped to the U.S. are safe, wholesome, and properly labeled and packaged, FSIS reinspects imported ratite and ratite products by randomly sampling the products as they enter the U.S.

In addition to meeting the certification requirements under 9 CFR part 381, a foreign country's inspection system must be evaluated by FSIS before it will be granted eligibility to import ratite products into the U.S. This evaluation consists of two processes: a document review and an on-site review.

The document review is an evaluation of the laws, regulations, and other written materials used by the country to operate its inspection program. To help the country organize its materials, FSIS gives the country questionnaires that ask for detailed information about the country's inspection practices and procedures in five risk areas. These five risk areas, which are the focus of the evaluation, are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement.

If the document review is satisfactory, an on-site review is conducted by an experienced and trained auditor or a multi-disciplinary team that evaluates all aspects of the country's inspection program, including laboratories and individual establishments within the country.

Evaluation of the Australian and the New Zealand Inspection Systems

In response to requests from Australia and from New Zealand for approval to import ratite and ratite products into the U.S., FSIS conducted a review of the Australian and New Zealand ratite inspection systems to determine whether they are equivalent to the U.S. ratite inspection system. First, FSIS compared each country's ratite inspection laws and regulations with U.S. requirements. The study concluded that the requirements contained in both countries'' ratite inspection laws and regulations are equivalent to those mandated by the PPIA and its implementing regulations. FSIS then conducted an on-site review of the Australian and New Zealand ratite inspection system in operation. Both countries inspect ratites under the same program that FSIS has found equivalent for other species. Both countries were found to be implementing the slaughter and inspection procedures that FSIS found to be equivalent during the document analysis. Therefore, the FSIS review team concluded that the implementation of ratite processing standards and procedures in both countries is equivalent to that of the U.S.

Under this direct final rule, ratite products imported into the U.S. from Australia and from New Zealand will be subject to reinspection at the ports-of-entry for transportation damage, labeling, proper certification, general condition, and accurate count. Other types of inspection will also be conducted, including examining the product to detect organoleptic food safety or quality defects and performing microbiological or chemical analyses to detect pathogens or drug residues.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter into U.S. commerce. If they do not meet U.S. requirements, they will be stamped ''U.S. Refused Entry'' and re-exported, destroyed, or converted to animal food.

Accordingly, FSIS intends to amend section 381.196(b) of the poultry products inspection regulations to add Australia and New Zealand as countries from which ratite and ratite products are eligible for importation into the U.S. As a country eligible to import ratite and ratite products into the U.S., the governments of Australia and of New Zealand will certify to FSIS those establishments that intend to import such products into the U.S. and that operate according to U.S. requirements. FSIS will verify that establishments certified by the Australia or the New Zealand government are meeting the U.S. requirements. This verification will be done through annual on-site audits of the establishments while they are in operation.

Although a foreign country may be listed as eligible to import ratite and ratite products into the U.S., products from that country must also comply with other U.S. requirements, including the restrictions under title 9, part 94 of the Animal and Plant Health Inspection Service's regulations that relate to the importation of ratite and ratite products from foreign countries into the U.S.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are pre-empted by the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected ratite or ratite products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over ratite and ratite products that are outside official establishments for the purpose of preventing the distribution of ratite and ratite products that are misbranded or adulterated under the PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the U.S.

This direct final rule is not intended to have a retroactive effect. After this rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this direct final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Currently, there are three establishments in Australia and one in New Zealand that import ratite products into the U.S. These establishments would continue to import approximately 160,000 pounds of fresh or frozen whole, cut-up, or deboned ratite meat per year.

If the volume and types of ratite products that are imported increases, as well as competition for the available market, it is expected that benefits from this direct final rule would generally accrue to consumers in the form of lower prices. However, the volume and other changes in trade stimulated by this rule is likely to be so small as to have little effect on supply and farm-level prices for poultry or livestock. Apart from any change in prices, U.S. consumers may still benefit from an increased choice of poultry products in the marketplace.

The costs of this direct final rule will accrue primarily to producers in the form of greater competition from Australia and New Zealand. However, as mentioned in the preceding paragraph, the volume of trade stimulated by this rule would be very small, is unlikely to increase, and is likely to have no effect on supply and farm-level prices. Since Australia and New Zealand already import ratite products into the U.S. under FDA regulations, it is unlikely that U.S. firms that produce products that would compete with Australian and New Zealand's imports of ratite products would face short-run difficulties. In the long run, it is expected that even if certain adjustments need to be made because of changes in the volume or product-type imported, such firms would adjust their product mix in order to compete effectively.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this direct final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). This direct final rule will add Australia and New Zealand to the list of countries eligible to import poultry products (ratites only) into the U.S. As stated above, three establishments in Australia and one in New Zealand have applied to their respective governments for certification to import ratite products into the U.S. These establishments would continue to import approximately 160,000 pounds of fresh or frozen whole, cut-up, or deboned ratite meat per year. The change in volume of trade stimulated by this rule would be very small, if any, and not likely to have much of an effect on supply and prices. Therefore, this rule is not expected to have an impact on small domestic entities that produce these types of products. Even if product quantities and varieties increase, it is expected that the volume increase will be minimal and no significant impact will be realized.

Paperwork Requirements

The paperwork requirements associated with the development of this direct final rule are approved under OMB number 0583–0094.

Additional Public Notification

Public awareness of 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 direct final rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line 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/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that 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/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

List of Subjects 9 CFR Part 381

Imported poultry products, Ratite and ratite products.

■ For the reasons set out in the preamble, FSIS is amending 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53

■ 2. Section 381.196 is amended by adding ''Australia (ratites only)'' and ''New Zealand (ratites only)'' in alphabetical order to the list of countries in paragraph (b).

Done in Washington, DC, on: June 17, 2003.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 03–15740 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–134–AD; Amendment 39–13202; AD 2003–13–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–131 Series Airplanes; Equipped with International Aero Engines (IAE) V25()()–A5 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Model A321–131 series airplanes, equipped with International Aero Engines (IAE) V25()()–A5 series engines. This action requires revising the Limitations section of the airplane flight manual to incorporate new procedures to follow in the event of an oil filter clog message. This action is necessary to require the flightcrew to follow the procedures necessary to prevent smoke caused by an oil filter clog from entering the cabin during flight. This action is intended to address the identified unsafe condition.

DATES: Effective July 8, 2003.

Comments for inclusion in the Rules Docket must be received on or before July 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–134–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has previously received a report of a recent incident of dense smoke in the cabin on an Airbus Model A319 series airplane that resulted in an emergency landing. The smoke rapidly filled the cabin and cockpit, reducing the visibility to the point that the flightcrew had difficulty seeing the instruments. Investigation revealed that the smoke was caused by the failure of the number 3 bearing on an International Aero Engines (IAE) V25()()–A5 series engine, resulting in oil being ingested into the cabin air conditioning system through the engine high pressure compressor. The ''ENG 1 Oil Filter Clog'' message appeared on the electronic centralized aircraft monitoring (ECAM) display about 10–15 minutes prior to the smoke filling the cabin; however, there is currently no pilot action associated with this message. In-service reports have shown that the ''oil filter clog'' message is frequently a symptom of engine bearing damage that could potentially lead to smoke entering the cabin through the air conditioning pack on the affected side. This condition, if not corrected, could reduce the flightcrew's ability to see and result in the flightcrew having difficulty in controlling the airplane while applying smoke removal procedures.

Model A321–131 series airplanes are equipped with the same IAE V2500–A5 series engines as those on the affected Model A319 series airplanes. Therefore, those Model A321–131 series airplanes may be subject to the unsafe condition identified on the affected Model A319 series airplanes.

Other Relevant Rulemaking

We have previously issued AD 2003–10–14, amendment 39–13159 (68 FR 28119, May 23, 2003), applicable to all Airbus Model A319–131, –132, and –133; A320–232 and –233; and A321–231 series airplanes; equipped with IAE V25()()–A5 series engines. That AD currently requires revising the Limitations section of the airplane flight manual (AFM) to incorporate new procedures to follow in the event of an oil filter clog message. The actions required by that AD are intended to require the flightcrew to follow the procedures necessary to prevent smoke caused by an oil filter clog from entering the cabin during flight.

Actions Since Issuance of Previous Rule

Since issuance of that AD, we have determined that Model A321–131 series airplanes equipped with IAE V25()()–A5 series were inadvertently omitted from the applicability of AD 2003–10–14. Therefore, this AD is being issued to address the identified unsafe condition on those airplanes.

U.S. Type Certification of the Airplane

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to require the flightcrew to follow the procedures necessary to prevent smoke caused by an oil filter clog from entering the cabin during flight. This AD requires revising the Limitations section of the AFM to incorporate new procedures to follow in the event of an oil filter clog message.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–134–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–13–02 Airbus: Amendment 39–13202. Docket 2003–NM–134–AD.

Applicability: All Model A321–131 series airplanes; certificated in any category; equipped with International Aero Engines (IAE) V25()()–A5 series engines.

Compliance: Required as indicated, unless accomplished previously.

To require the flightcrew to follow the procedures necessary to prevent smoke caused by an oil filter clog from entering the cabin during flight, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 7 days after the effective date of this AD, revise the Limitations section of the Airbus A321 AFM to include the following statements (this may be accomplished by inserting a copy of this AD into the AFM):

''Procedure for Oil Filter Clog ECAM Caution

The ECAM does not require any pilot action in case of ENG 1(2) OIL FILTER CLOG ECAM warning. However, to minimize the risk of air conditioning system contamination by oil fumes, systematically apply the following procedure in any event of oil filter clog:

ENG 1(2) OIL FILTER CLOG

In-service reports have shown that this ECAM warning is frequently a symptom of engine bearing damage that could potentially lead to smoke entering the cabin via the pack of the affected side. This procedure aims to avoid air conditioning smoke, while continuing normal engine operation.

ENG BLEED (affected side)—OFF
(Prevents possible bleed contamination by engine oil.)

PACK (affected side)—OFF
(Switching off one pack enables the remaining pack to operate at 120 percent without any risk of remaining bleed misbehavior. Keep the pack on in case of an MEL dispatch with one pack inoperative.
The pack that has been switched off remains available with the crossbleed valve open. Therefore, switch it on in case of a subsequent independent malfunction affecting the operating pack.)

CROSSBLEED—OPEN
(Opening the crossbleed valve enables the wing anti-ice to be used when needed.)

CLOSELY MONITOR ENGINE PARAMETERS FOR SURGE/STALL, OIL PRESSURE FLUCTUATIONS, OR ABNORMAL ENGINE VIBRATIONS; AND, WHEN NECESSARY, APPLY THE ASSOCIATED PROCEDURE.

If, after the oil filter clog, the engine experiences or has already experienced a surge/stall possibly accompanied by a yaw-effect on the aircraft:

ENG (AFFECTED) THRUST LEVER—IDLE—
(Reducing the thrust of the affected engine minimizes further damage to the engine rotary machinery, but will not necessarily prevent more oil from entering the gas path. Maintain engine at idle, and consider engine shutdown if high vibration occurs or oil quantity/oil pressure drops low.)

''Oil Filter Clog'' ECAM warnings occurring on the ground during engine start are frequently due to low oil viscosity and may be self-recoverable. In the event of an ''Oil Filter Clog'' warning during engine start, please refer to FCOM 3.02.70 page 2.''

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Effective Date.

(c) This amendment becomes effective on July 8, 2003.

Issued in Renton, Washington, on June 16, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15595 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–02–AD; Amendment 39–13197; AD 2003–12–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires either revising the Airplane Flight Manual (AFM) to require a maximum operating altitude of 25,000 feet; or modifying the flight attendant's seat or reworking the oxygen bottle kit, as applicable, and revising the AFM to require a maximum operating altitude of 30,000 feet. This action is necessary to prevent the unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, which could result in loss of consciousness of the flight attendant. This action is intended to address the identified unsafe condition.

DATES: Effective July 28, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on March 5, 2003 (68 FR 10415). That action proposed to require either revising the Airplane Flight Manual (AFM) to require a maximum operating altitude of 25,000 feet; or modifying the flight attendant's seat or reworking the oxygen bottle kit, as applicable, and revising the AFM to require a maximum operating altitude of 30,000 feet.

Comments

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

Request To Revise Maximum Operating Altitude

The commenter requests that the proposed AD be revised to allow for flight above 30,000 feet if a first-row, right-hand aisle seat is reserved for the flight attendant. By way of justification, the commenter explains that this altitude is the cruise phase of the flight, when the flight attendant is usually serving passengers in the cabin. In the event of rapid depressurization of the airplane, the attendant could use one of the extra masks in the cabin. The flight attendant, although unable to reach the interphone from the first-row, right-hand aisle seat to communicate with the flight crew or passengers, could unlatch the seatbelt and move to the flight attendant station to operate the interphone.

The FAA does not concur with the request. During a rapid depressurization of the airplane, the flightcrew would conduct an emergency descent to lower altitudes. The appropriate procedures for the flight attendant during an emergency descent include returning to the flight attendant station, buckling the seatbelt, and establishing communication with the flightcrew or passengers. Therefore, during an emergency descent, seatbelt removal by a flight attendant seated in the first-row, right-hand aisle seat would be inappropriate, and the interphone would not be readily accessible. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry will be affected by this AD.

If required, the AFM revision (maximum operating altitude of 25,000 feet) would take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AFM revision is estimated to be $60 per airplane.

If required, the modification or rework would take approximately 8 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,960 per airplane. Based on these figures, the cost impact of the modification/rework is estimated to be $4,440 per airplane.

If required, the AFM revision (maximum operating altitude of 30,000 feet) would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AFM revision is estimated to be $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–12–12 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13197. Docket 2003–NM–02–AD.

Applicability: Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, which could result in loss of consciousness of the flight attendant, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD.

Airplane Flight Manual (AFM) Revision

(1) Revise the Limitations Section of EMBRAER EMB120 Brasilia Airplane Flight Manual AFM–120/794 to include the following information, and operate the airplane per those limitations (this may be accomplished by inserting a copy of this AD into the AFM):

''Maximum operating altitude is limited to 25,000 feet.''

(2) Accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

Modification

(i) For airplanes listed in paragraph 1.1.1., Part I, of the effectivity of EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002: Replace the shock absorber of the flight attendant's seat with a new part, and install an oxygen bottle kit under the seat (including installing placards); per paragraph 2.1 of the Accomplishment Instructions of that service bulletin.

Rework

(ii) For airplanes listed in paragraph 1.1.2., Part II, of the effectivity of EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002: Rework the oxygen bottle kit (including installing placards and attaching the oxygen mask hose to the oxygen bottle), per paragraph 2.2 of the Accomplishment Instructions of that service bulletin.

AFM Revision

(b) Before further flight following the accomplishment of paragraph (a)(2) of this AD: Revise the Limitations Section of EMBRAER EMB120 Brasilia Airplane Flight Manual AFM–120/794 to include the following information, and operate the airplane per those limitations (this may be accomplished by inserting a copy of this AD into the AFM):

''Maximum operating altitude is limited to 30,000 feet.''

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–11–03 R1, dated September 13, 2002.

Effective Date

(f) This amendment becomes effective on July 28, 2003.

Issued in Renton, Washington, on June 11, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15323 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 3

[Docket No. 2003N–0235]

Assignment of Agency Component for Review of Premarket Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its regulations concerning FDA's procedures for determining which component within FDA will have primary jurisdiction for the premarket review and regulation of a product composed of a combination of a drug, device, or biological product; or any drug, device, or biological product where the agency component with jurisdiction is unclear or in dispute. FDA is taking this action to implement the requirement of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) that FDA establish an office within FDA's Office of the Commissioner to ensure the prompt assignment of combination products to agency centers.

DATES: This rule is effective June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Office of Combination Products (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855, 301–827–9229, e-mail: *combination@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A combination product is a product containing a combination of a drug, a device, or a biological product. The Safe Medical Devices Act of 1990 (Public Law 101–629) added new section 503(g) (21 U.S.C. 353(g)) to the Federal Food, Drug, and Cosmetic Act (the act)), relating to combination products. This section requires that the agency assign a component of FDA to have primary jurisdiction for the premarket review and regulation of a product that constitutes a combination of a drug, device, or biological product. It further requires FDA to make this assignment based upon a determination of the primary mode of action of the combination product. In the **Federal Register** of November 21, 1991 (56 FR 58754), FDA issued a final rule establishing the procedures for implementing section 503(g) in part 3 (21 CFR part 3).

MDUFMA amended section 503(g) of the act to require that FDA establish within its Office of the Commissioner an office to ensure: (1) The prompt assignment of combination products to agency centers, (2) the timely and effective premarket review of such products, and (3) consistent and appropriate postmarket regulation of like products subject to the same statutory requirements to the extent permitted by law. New section 503(g)(4) further states that, in carrying out its duties, this office shall:

• Promptly assign an agency center with primary jurisdiction for the premarket review of the product. The office, in determining whether a product

is appropriately classified as a combination product, shall consult with the component within the Office of the Commissioner that is responsible for such determinations;

• Ensure timely and effective premarket reviews by overseeing the timeliness of and coordinating reviews involving more than one agency center;

• Ensure the consistency and appropriateness of postmarket regulation of like products subject to the same statutory requirements to the extent permitted by law;

• Address any dispute regarding the timeliness of the premarket review of a combination product, unless the dispute is clearly premature.

New section 503(g)(4)(F) of the act also directs the Secretary of Health and Human Services, through the new office, to review each agreement, guidance, or practice specific to the assignment of combination products to agency centers and to report annually to the appropriate committees of Congress on the activities and impact of the office.

On December 24, 2002, FDA established the Office of Combination Products to carry out the responsibilities under section 503(g) of the act and to perform other activities related to combination products. More information about the office is available at *http://www.fda.gov/oc/combination/*.

To enhance the efficiency of agency operations, the Office of Combination Products is assuming responsibility from the Office of the Ombudsman for designating the component of FDA with primary jurisdiction for the premarket review and regulation of any product requiring a jurisdictional designation under this part. Such decisions may involve determinations of: (1) The regulatory identity of a product as a drug, device, biologic, or combination product; (2) the agency component that will have jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute; and (3) the primary mode of action and assignment of a lead center for a combination product. The act requires the office, in determining whether a product is appropriately classified as a combination product, to consult with the component within the Office of the Commissioner that is responsible for such determinations. Since the Office of the Commissioner has now assigned to the Office of Combination Products the responsibility for such determinations, no separate consultation is necessary.

II. Summary of the Final Rule

FDA is making the following changes to part 3 to establish rules of agency organization, procedure, and practice, that are consistent with new section 503(g)(4) of the act and are otherwise clear and appropriate:

(1) FDA is amending § 3.1 to cite MDUFMA as an additional authority.

(2) FDA is amending § 3.2 to modify the definition of ''agency component'' to be consistent with definition of ''agency center'' provided in MDUFMA.

(3) FDA is amending § 3.6 to identify the Office of Combination Products as the agency's product jurisdiction officer.

(4) FDA is amending § 3.7 to provide information related to the submission of electronic copies of requests for designation concurrent with the submission of the official request.

(5) FDA is amending § 3.9 to reflect that a nonconsensual change in the designated agency component requires the concurrence of the Principal Associate Commissioner. This change reflects the current organizational structure of FDA's Office of the Commissioner.

III. Authority for Issuing Final Rule

This rule provides an administrative mechanism to determine which agency component has responsibility for the review of an application. The agency determined that this is ''a matter relating to agency management'' and a rule of ''agency organization, procedure, or practice'' and, as such, is exempt from notice and comment under the Administrative Procedure Act (5 U.S.C. 553(a)(2) and (b)(A)). FDA also finds good cause under 5 U.S.C. 553(b)(B) and § 10.40(e) (21 CFR 10.40(e)) to forego notice and comment as it would be unnecessary and contrary to the public interest to delay implementation of this rule. As provided under FDA's administrative practices and procedures regulation (§ 10.40(e)), FDA is providing an opportunity for public comment on whether the regulation should be modified or revoked.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

Because this is a rule of agency organization, procedure, practice, and management that is issued as a final rule, and not as a proposed rule, the requirements of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) do not apply. However, FDA has examined the impacts of this final rule under those provisions. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. When applicable, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule is merely procedural in nature and imposes no new burdens on small entities. Indeed, the purpose of the procedures embodied in this rule is to expedite the review of combination products, and this final rule will not have a significant economic impact on a substantial number of small entities. Finally, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is required only for nonprocedural rules that impose costs of $110 million or more on either the private sector or state, local, and tribal governments in the aggregate. This rule imposes no such costs.

VI. Federalism

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

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by

OMB under Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 3

Administrative practice and procedure, Biologics, Drugs, Medical devices.

■ Therefore, under the Federal , Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 3 is amended as follows:

PART 3—PRODUCT JURISDICTION

1. The authority citation for 21 CFR part 3 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 360gg–360ss, 371(a), 379(e), 381, 394; 42 U.S.C. 216, 262.

■ 2. Section 3.1 is amended by revising the second sentence to read as follows:

§ 3.1 Purpose.

* * * The first is to implement section 503(g) of the act, as added by section 16 of the Safe Medical Devices Act of 1990 (Public Law 101–629) and amended by section 204 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), by specifying how FDA will determine the organizational component within FDA designated to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of a drug and a device; a device and a biological; a biological and a drug; or a drug, a device and a biological.* * *

■ 3. Section 3.2 is amended by revising paragraph (b) to read as follows:

§ 3.2 Definitions.

* * * * *

(b) *Agency component* means the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, or alternative organizational component of the agency.

* * * * *

■ 4. Section 3.6 is revised to read as follows:

§ 3.6 Product jurisdiction officer.

The Office of Combination Products (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855, 301–827–9229, e-mail: *combination@fda.gov,* is the designated product jurisdiction officer.

■ 5. Section 3.7 is amended by adding a sentence to the end of paragraph (d) to read as follows:

§ 3.7 Request for designation.

* * * * *

(d) * * *Concurrent submissions of electronic copies of Requests for Designation may be addressed to *combination@fda.gov.*

■ 6. Section 3.9 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 3.9 Effect of letter of designation.

* * * * *

(b) * * * A nonconsensual change in the designated agency component requires the concurrence of the Principal Associate Commissioner.

Dated: June 13, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15698 Filed 6–20–03; 8:45 am]

BILLING CODE 4160–01–S

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: Final rule.

SUMMARY: MSHA is amending the existing regulation by allowing the optional use of alternative locking devices to secure battery plugs to receptacles. The final rule eliminates the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA initially proposed using direct final rulemaking for this action because the Agency expected that there would be no significant adverse comments on the rule. However, MSHA received four comments, one of which was considered a significant adverse comment, resulting in MSHA withdrawing the direct final rule and proceeding with rulemaking based on the concurrently published proposed rule on this subject.

EFFECTIVE DATE: This regulation is effective August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols-marvin@msha.gov* (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (fax). You may obtain copies of the final rule in alternative formats by calling this number. The alternative formats available are either a large print version of the final rule or the final rule in an electronic file on computer disk. The final rule also is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION

I. Background Information

Currently, under § 18.41 of Title 30, Code of Federal Regulations, MSHA sets forth design and construction requirements for plug and receptacle-type connectors used with permissible electric equipment approved under part 18. These technical requirements were last revised in March of 1968, which represented the latest advances in battery connector technology considered appropriate for use on mining equipment at that time.

Over the past thirty years, there have been technological improvements to the methods used for securing battery plugs to receptacles. Since the provisions of existing § 18.41(f) do not reflect the latest state-of-the-art technology, mine operators must file petitions for modification under section 101(c) of the Mine Act to take advantage of the technological advancements. Since 1980, there have been approximately 300 petitions filed and granted under section 101(c) requesting modification to 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.41(f)(Plug and receptacle-type connectors) to allow the use of alternate locking devices. The means of securing battery connectors permitted under this final rule allow for the use of padlocks and other equally effective mechanical devices that preclude the inadvertent separation of the battery plug from the receptacle. The alternate locking devices permitted under this final rule also provide for at least the same measure of protection, as set forth in the existing regulation, and do not reduce protection to miners as required by section 101(a)(9) of the Mine Act.

In some operations, mine operators encountered difficulties with padlocks in both normal and emergency situations. The use of padlocks requires the maintenance of keys by authorized personnel. Due to the nature of mining operations, padlocks may become filled with mining debris, rendering them difficult or impossible to open with a key. Padlock keys can be misplaced, broken, or bent and may become unusable. This can go unnoticed by the operator until an emergency occurs, when the key may be unavailable or unusable. The removal of a padlock to

permit the disconnection of a battery plug in an emergency situation, such as a battery fire, requires a longer period of time and greater effort than the removal of any of the other locking devices permitted in this final rule. However, where keys are accessible and padlocks are relatively free from accumulation of dust and other materials, padlocks have proven to be effective.

In 1987, to address the problems encountered with the use of padlocks, MSHA issued a policy allowing use of an alternative to padlocks. This policy permits the use of a device that is captive and requires a special tool (*e.g.* allen wrench) to disengage and allow separation of the connector. A device is captive when a mechanical connection is made permanent by a locking device that is confined in its mounting location in a manner whereby, once installed, it cannot become inadvertently removed. The mechanical connection can only be made non-permanent by a direct and intervening action using a special tool. A special tool is one that is not normally carried by miners and is used to ensure that constant pressure, beyond that which may be achieved by hand pressure, is maintained to prevent inadvertent separation of the plug from the receptacle. Withdrawal of a battery plug from the receptacle while the machine is energized (*i.e.*, under load) can create incendive arcing and sparking that could result in a personal injury, explosion, or fire. A warning tag is also required to alert the user that the connector must not be disengaged under load.

The requirement for the warning tag, along with part 48 task training requirements, provide for appropriate hazard recognition when using alternative locking devices in lieu of a padlock. Existing § 48.7 (Training of miners assigned to a task in which they have had no previous experience; minimum courses of instruction), requires that miners be instructed in safe operating procedures applicable to new or modified machines or equipment to be installed or put into operation in the mine, which require new or different operating procedures. A padlock not only serves as a mechanical means to prevent inadvertent separation of the plug from the receptacle; it also precludes the disconnection of the battery plug from the receptacle by unauthorized persons, unfamiliar with the potential hazards associated with disconnecting the plug from the receptacle under load. The warning tag serves as a deterrent, like the padlock, for separation of the plug and receptacle under load. For the purposes of this final rule, a warning tag can be either a metal plate or a label with permanent lettering on a wear-resistant material. It must be prominently displayed on or attached to an exterior surface of the battery connector housing.

Since 1980, mine operators have also been granted permission, through the petition for modification process under section 101(c) of the Mine Act, to use a spring-loaded locking device. MSHA has determined that spring-loaded locking devices provide at least the same measure of protection as padlocks and captive locking devices. These devices maintain constant pressure on the threaded ring or equivalent mechanical fastening to prevent the plug from accidentally disengaging from the receptacle. The use of this method also requires that a warning tag be attached near the locking device to remind the user not to disengage the plug from the receptacle under load. MSHA is unaware of any adverse incidents involving alternate locking devices.

By issuing this final rule, MSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. The final rule will maintain the protection afforded by the existing standard.

II. Discussion of Alternative Locking Devices on Mobile Battery-Powered Machines

A. Paragraph 18.41

Section 18.41 addresses connectors used on battery and non battery-powered machines. Section 18.41(f) specifies requirements for plug and receptacle-type connectors used on permissible mobile battery-powered machines employed in underground gassy mines. This final rule modifies paragraph (f) of 30 CFR 18.41 by adding two new provisions allowing the use of devices that provide at least the same protection as that afforded by the existing standards, and does not reduce safety. The Agency recognizes that battery-powered machine designs differ from conventional machine designs employing trailing cables. The energy to battery-powered equipment is carried on-board the machine with rechargeable battery assemblies, rather than being transmitted via a trailing cable from a section power center. Because of the inherent design limitations of battery-powered machines, there is no practical way to automatically remove all electrical power from battery-powered machines. Machines powered by trailing cables have circuit-interrupting devices that can be used to de-energize them, whereas most battery-powered machines rely on a plug and receptacle for de-energization. The proper procedure for removing power from a battery-powered machine is to first open the main machine disconnect device and then to disengage the plug from the receptacle. This effectively isolates the battery power from the machine.

Another acceptable alternative to padlocked connectors, permitted under existing § 18.41(a), is the use of connectors in which the mating or separation of the male and female electrodes occurs within an explosion-proof enclosure and an electrical interlock circuit is provided to cause automatic interruption of the circuit before the male and female electrodes are separated. These types of connectors do not require a warning tag or a locking ring held captive by an external device.

Public comments have been received under the proposed rule and resulted in a change to the rule language. The change is made in §§ 18.41(f)(2) and (f)(3). An explicit statement for use on warning tags is provided in the two paragraphs. However, equivalent statements comparable to ''DO NOT DISENGAGE UNDER LOAD,'' which indicates a hazard exists when disengaging plugs from receptacles, are allowed. Judgement of an alternate statement as to the equivalency in safety will be provided by the MSHA's Approval and Certification Center during the standard approval process of equipment.

B. Section 18.41(f)(1)

30 CFR 18.41(f)(1) retains the existing provision that a plug padlocked to the receptacle is acceptable in lieu of an interlock provided the plug is held in place by a threaded ring or equivalent mechanical fastening in addition to the padlock. This paragraph also retains the provision that a connector within a padlocked enclosure is acceptable.

A padlock used on a battery plug and receptacle-type connector serves a dual purpose. It secures the threaded ring or equivalent mechanical fastening in place. A padlock is also a means to prevent the removal of the plug from the receptacle by unauthorized personnel. In this respect, only those persons having keys are considered authorized to remove the plug from the receptacle. No comments were received on § 18.41(f)(1). Therefore the final

language remains unchanged from the proposed rule.

C. Section 18.41(f)(2)

30 CFR 18.41(f)(2) is a new provision that provides for an alternate method for securing the battery plug to the receptacle. The final rule specifies that a plug which is held in place by a threaded ring or equivalent mechanical fastening will be acceptable provided that the threaded ring is secured in place with a device that is captive. It also requires a special tool to disengage the device and allows for the separation of the connector. It further requires a warning tag that states: ''DO NOT DISENGAGE UNDER LOAD,'' or an equivalent statement.

One commenter questioned the requirement for using a ''special tool'' to separate the plug from the receptacle. The commenter questioned whether a special tool is necessary and whether an allen wrench would be considered a special tool.

Under the A&CC's 1987 policy that initially permitted the use of an alternate captive locking device in lieu of a padlock, it required that a special tool be used to ensure that the alternate device was locked in place. The requirement of a special tool also prevents the removal of the plug from the receptacle by unauthorized personnel. In order for a captive locking device to provide at least the same measure of protection as the padlock, it was determined that a special tool be required to remove the plug from the receptacle. An allen wrench has been determined by MSHA to be an acceptable special tool.

A commenter expressed concern about the requirement for a clearly visible warning tag that states ''DO NOT DISENGAGE UNDER LOAD.'' The commenter alleged that it may be difficult to maintain such tags. Another commenter indicated that the language should be modified to be ''less prescriptive and more performance oriented.''

Warning tags are often used in association with safety related equipment. They are considered an acceptable means of mitigating potential hazards. It is MSHA's experience that, if good maintenance practices are followed, warning tags can be maintained with minimal difficulty.

In response to the commenter's concern about the specific warning tag language, MSHA has added language to §§ 18.41(f)(2) and 18.41(f)(3) to permit wording that is equivalent to ''DO NOT DISENGAGE UNDER LOAD.'' One example of equivalent wording that would be considered acceptable is ''DO NOT DISCONNECT UNDER LOAD.''

A commenter stated that a warning tag should not be required on each connector on a machine that could have two connectors, but that one in the ''vicinity of the battery connectors'' should be required.

MSHA does not agree with the commenter. A warning tag is only effective if it is at the location where the potential hazard exists. If the warning tag is provided on the battery connector, it would be located in the field of vision of the miner attempting to disconnect the plug from the receptacle. This would not be the case if the warning tag was provided somewhere ''in the vicinity'' of the connector.

Another commenter stated that the final rule must ''provide and maintain the same level of protection to miners as required by section 101(a)(9) of the Federal Mine Safety and Health Act of 1977.'' No specific provisions of the final rule were addressed in this comment. MSHA evaluated both alternate locking devices allowed by this final rule and determined that, as stated previously, the alternate devices do not reduce the protection afforded by the existing standard.

D. Section 18.41(f)(3)

30 CFR 18.41(f)(3) is a new provision that provides for another alternate method for securing the battery plug to the receptacle. The rule states that a plug held in place by a spring-loaded or other locking device that maintains constant pressure against a threaded ring or equivalent mechanical fastening is acceptable provided that it secures the plug and prevents accidental separation. It further requires a warning tag that states: ''DO NOT DISENGAGE UNDER LOAD,'' or an equivalent statement.

This section allows for the use of other locking devices that may become available in the future. The Agency has included this language to allow for acceptance of equally effective devices. Devices not explicitly defined in this rulemaking must be equally effective and provide at least the same measure of protection as those incorporated under this section. Innovative battery connector designs not covered by the provisions of § 18.41(f) will be evaluated for compliance under the provisions of existing § 18.20(b).

A commenter recommended a wording change to the final rule that would allow for future advancements in connector locking device technology. MSHA already had the necessary language in the proposed rule to address the commenter's concern. Section 18.41(f)(3) allows for ''other locking devices'' that are equally effective. The A&CC investigators will determine equal effectiveness during evaluations of new designs for alternate locking devices.

Neither of the alternatives in §§ 18.41(f)(2) and (f)(3) imposes additional requirements to the 1987 MSHA policy or the petitions for modification granted since 1990.

A commenter questioned the need for warning tags stating that they have battery-powered machines under several previously granted petitions for modification that did not require such warning tags. Under petitions granted prior to 1990, the conditions on the Proposed Decision and Order (PDO) emphasized training on the hazards associated with disconnecting the plug from the receptacle under load. This final rule is based on petitions granted since 1990 which all require a warning tag specifically stating ''Do Not Disengage Under Load.''

III. Petitions for Modification

On the effective date of the direct final rule, all existing petitions for modification for alternate locking devices for plug and receptacle-type connectors on mobile battery-powered machines will be superseded by this rule.

All existing mobile battery-powered machines must be in compliance with this final rule as of the effective date of the rule. All machines incorporating alternate locking devices that were accepted under petitions for modification will be considered in compliance provided that a warning tag is attached to the connector and meets the requirements of this rule. This is a change from the proposed rule (68 FR 2941) which would have allowed all equipment modified by previously granted petitions for modification to be in compliance with this rule. This change was precipitated when a commenter provided MSHA with several previously granted petitions for modification that allowed alternate locking devices but did not require warning tags. MSHA anticipates that this change will affect approximately 5% of the total granted petitions. All of these affected petitions were granted before 1990. MSHA has determined that warning tags are an essential safety requirement that must be provided when alternate locking devices for plug and receptacle-type connectors on mobile battery-powered machines are used.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Introduction

MSHA is amending 30 CFR 18.41(f), concerning plug and receptacle-type connectors for mobile battery-powered equipment. The final rule revises and updates the existing regulation by allowing the use of alternate locking devices to secure battery plugs to receptacles. Two alternate locking devices are addressed in this final rule:

(1) Captive locking devices requiring use of a special tool. These devices have been accepted since 1987 under an MSHA policy allowing their usage.

(2) Spring-loaded or other locking devices. Spring-loaded locking devices have been accepted by MSHA under the 101(c) Petition for Modification process.

The final rule eliminates the need to file petitions for modification (PFM) to use spring-loaded locking devices to secure battery plugs to receptacles. It also codifies the 1987 MSHA policy of allowing acceptance of captive locking devices.

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has fulfilled this requirement for this final rule, and based upon its economic analysis, has determined that the final rule will not have an annual effect of $100 million or more on the economy. Therefore, it will not be an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866.

The final rule eliminates the need for mine operators of underground gassy mines, who choose to use plug and receptacle-type connectors for mobile battery-powered equipment, to file PFMs, and thereby will generate cost savings.

From 1999 to 2001, 66 petitions were filed and granted to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors). From January 2002 through November 20, 2002, 23 petitions have been filed, for a total of 89 filed petitions from 1999 to 2002. On average, 22 petitions were filed during each of the past 4 years.

Mining Sectors Affected

The final rule applies to all underground gassy mines. All underground coal mines are considered gassy mines and are affected by this final rule. This final rule also applies to gassy metal and nonmetal (M/NM) mines. Currently there are no battery-powered machines of the type covered by the final rule in any of the gassy M/NM mines. Since these devices have not been used in M/NM mines, for purposes of this economic analysis, MSHA assumes that M/NM mines will not be affected by this rule. MSHA estimates that, on average, 22 underground coal mines per year will be affected by this rule.

Benefits

MSHA has qualitatively determined that the final rule, which will permit the use of alternate locking devices on mobile battery-powered equipment instead of using padlocks, will yield safety benefits relative to the existing rule, which does not permit use of alternate locking devices on mobile battery-powered equipment. The use of alternate locking devices in lieu of padlocks on mobile battery-powered equipment will eliminate the problems associated with difficult removal of padlocks.

Compliance Costs

Cost savings from the final rule will accrue to underground coal mines that choose to use spring-loaded locking devices on mobile battery-powered equipment since they will no longer have to file a PFM.

Gross cost savings from the final rule are estimated to be $9,747 per year.

The cost savings are based upon the elimination of the filing of an average of 22 petitions per year. The companies filing the petitions may own more than one mine. However, cost savings associated with elimination of the petition process are assumed not to depend on the number of mines at which the petitioned modification will be implemented. It is projected that of the 22 companies, 19 will employ 20 to 500 workers, and 3 will employ fewer than 20 workers. For the 3 companies that employ fewer than 20 workers these cost savings will be $1,329. For the remaining 19 companies that employ 20 to 500 workers the cost savings will be $8,418.

Mines Employing Fewer Than 20 Workers

The cost savings of $1,329 for companies employing fewer than 20 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (3 petitions × 8 hours × $54.92 per hour = $1,318). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (3 petitions × 0.1 hours × $19.58 per hour = $6). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [3 petitions × ((5 pages × $0.15 per page) + $1) = $5].

Mines Employing 20 to 500 Workers

The cost savings of $8,418 for companies that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (19 petitions × 8 hours × $54.92 per hour = $8,348). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (19 petitions × 0.1 hours × $19.58 per hour = $37). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [19 petitions × ((5 pages × $0.15 per page) + $1) = $33].

Net Compliance Costs

As described below, the gross cost savings every year of $9,747 will be slightly offset by additional costs of $808 in the first year the rule takes effect. The costs are influenced by the number of mines per petition that adopt the modification. MSHA assumes that 1.4 mines per petition adopt the modification. MSHA estimates that 18 petitioners, or 25 mines (18 petitions × 1.4 mines/petition), that were approved to have alternate locking devices through the petition process but were not required to have warning tags would have to install these tags, costing $8 each, during the first year. The agency assumes that there are, on average, 1.4 mines per petition, two machines per mine, and two warning tags per machine (there are typically two connectors per machine with each requiring a warning tag). The agency estimates the total cost for warning tags would be $808 [(18 petitions × 1.4 mines/petition × 2 machines/mine × 2 warning tags/machine) or 101 tags @ $8 each]. The agency assumes that the cost for warning tags will be borne by 3 mines with fewer than 20 employees and by 22 mines with 20 to 500 employees. Thus, the cost of installing tags will be $112 for mines with fewer than 20 employees and $696 for mines with 20 to 500 employees.

Net benefits for the first year will be $8,939. Assuming that the first year cost for warning tags of $808 is annualized over the life of the alternate locking devices, the annualized costs for the warning tags will be $57 ($808 × .07, where .07 is the annualization factor for an investment with a 7 percent discount rate and an infinite life). Therefore, the yearly net benefits will be $9,690 ($9,747 − $57).

There are no substantive changes to this final rule that apply to any mine that chooses not to use alternate locking devices on mobile battery-powered equipment. Thus, these mines will not incur costs or generate cost savings as a result of the final rule.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the final rule on small businesses. Further, MSHA has made a determination with respect to whether or not the Agency can certify that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by these rulemakings. Under SBREFA amendments to the RFA, MSHA must include in the rule a factual basis for this certification. If the final rule will have a significant economic impact on a substantial number of small entities, then the Agency must develop an initial regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201). All of the mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

Traditionally, the Agency has also looked at the impacts of its rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which the mining community refers to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them will also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by the mining community, are of special concern to MSHA.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities'' while continuing MSHA's traditional look at ''small mines.'' MSHA concludes that it can certify that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. The Agency has determined that this is the case both for mines covered by this rulemaking with fewer than 20 employees and for mines covered by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

The Agency's analysis of impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than one percent of the estimated revenues, or they are negative (that is, they provide a cost savings), the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Using either MSHA's or SBA's definition of a small mine, the final rule will result only in cost savings to affected mines. Therefore, the final rule will not have a significant economic impact on a substantial number of small entities using either MSHA's or SBA's definition of a small mine.

VI. Paperwork Reduction Act of 1995

The final amendments to 30 CFR 18.41(f) will not introduce any new paperwork requirements that are subject to OMB approval under the Paperwork Reduction Act. In addition, the third-party disclosure requirements for 30 CFR 18.41(f)(2) and (3) are not considered a ''collection of information'' because the standard provides language for warning tags (*see* 5 CFR 1320.3(c)(2)). Although MSHA is providing language to be used on the warning tag, MSHA is also providing operators some flexibility by allowing alternative language that meets the intent of the provided language.

As a result of the final rule, the number of petitions for modification filed annually related to battery plugs will be reduced. Therefore, the final rule will result in reducing burden hours and costs in the ICR 1219–0065 paperwork package, which concerns the filing of petitions for modification.

The final rule will result in 178.2 burden hour savings annually and associated annual burden cost savings of $9,709 related to the elimination of 22 petitions annually for alternate locking devices to secure battery plugs to receptacles. Of this total, for the 3 mines that employ fewer than 20 workers, there will be 24.3 burden hour savings annually and associated annual burden cost savings of $1,324. For the 19 mines that employ 20 to 500 workers, there will be 153.9 burden hour savings annually and associated annual burden cost savings of $8,385.

Mines Employing Fewer Than 20 Workers

The annual reduction of 24.3 burden hours and the $1,324 cost savings that will occur for the 3 mines that employ fewer than 20 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (3 petitions × 8 hours = 24 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (3 petitions × 0.1 hours = 0.3 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 24 burden hours = $1,318.10). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 0.3 burden hours = $5.90).

Mines Employing 20 to 500 Workers

The annual reduction of 153.9 burden hours and the $8,385 cost savings that will occur for the 19 mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (19 petitions × 8 hours = 152 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (19 petitions × 0.1 hours = 1.9 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 152 burden hours = $8,347.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 1.9 burden hours = $37.20).

VII. Other Regulatory Considerations

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, the final rule will not include any Federal mandate that might result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private

sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

The final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

C. Executive Order 12988 (Civil Justice Reform)

MSHA has reviewed Executive Order 12988 and determined that the final rule will not unduly burden the Federal court system. The Agency wrote the final rule to provide a clear legal standard for affected conduct and has reviewed it carefully to eliminate drafting errors and ambiguities.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the final rule on children and has determined that it will have no adverse effects on children.

E. Executive Order 13132 (Federalism)

MSHA has reviewed the final rule in accordance with Executive Order 13132 regarding federalism and has determined that it will not have federalism implications.

F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

MSHA certifies that the final rule will not impose substantial direct compliance costs on Indian tribal governments.

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

In accordance with Executive Order 13211, MSHA has reviewed the final rule and has determined that it will have no adverse effect on the production or price of coal. Consequently, it will have no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V in this preamble, MSHA has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 18

Mine Safety and Health, Underground mining.

Dated: June 13, 2003.

John R. Caylor,

Deputy Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I, subpart B, part 18 of title 30 of the Code of Federal Regulations as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

Subpart B—[AMENDED]

■ 2. Paragraph (f) of § 18.41 is revised to read as follows:

§ 18.41 Plug and receptacle-type connectors.

* * * * *

(f) For a mobile battery-powered machine, a plug and receptacle-type connector will be acceptable in lieu of an interlock provided:

(1) The plug is padlocked to the receptacle and is held in place by a threaded ring or equivalent mechanical fastening in addition to a padlock. A connector within a padlocked enclosure will be acceptable; or,

(2) The plug is held in place by a threaded ring or equivalent mechanical fastening, in addition to the use of a device that is captive and requires a special tool to disengage and allow for the separation of the connector. All connectors using this means of compliance shall have a clearly visible warning tag that states: ''DO NOT DISENGAGE UNDER LOAD,'' or an equivalent statement; or,

(3) The plug is held in place by a spring-loaded or other locking device, that maintains constant pressure against a threaded ring or equivalent mechanical fastening, to secure the plug from accidental separation. All connectors using this means of compliance shall have a clearly visible warning tag that states: ''DO NOT DISENGAGE UNDER LOAD,'' or an equivalent statement.

[FR Doc. 03–15700 Filed 6–20–03; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 71 and 75

RIN 1219–AA98 (Phase 9)

Standards for Sanitary Toilets in Coal Mines

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

ACTION: Final rule.

SUMMARY: This final rule removes the application requirement and associated paperwork burden for approval of sanitary toilets in underground and surface coal mines. The final rule provides notice to miners, miners' representatives, mine operators, MSHA compliance specialists, and manufacturers of which sanitary toilets are approved without requiring applications for approval. The rule has no substantive effect on the sanitation standards. The types of approved toilets are drawn from the American National Standards Institute (ANSI) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements* upon which MSHA and the National Institute for Occupational Safety and Health (NIOSH) previously based approval of applications.

DATES: This final rule is effective July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202–693–9440; FAX: 202–693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope of Rulemaking

The Office of Management and Budget's (OMB's) current approval for §§ 71.500 and 75.1712–6 under control number 1219–0101 expires on November 30, 2003. OMB approval was contingent upon MSHA initiating rulemaking ''to update and simplify this standard with the goal of eliminating unnecessary requirements and reducing the unnecessary burdens.'' In response to OMB concerns, MSHA published a direct final rule (68 FR 19347) and a companion proposed rule (68 FR 19477) on April 21, 2003 to eliminate the

paperwork burden. The rule was restricted to the approval application requirement and did not address other aspects of MSHA's standards for sanitary facilities at coal mines. Sanitary toilet facilities for surface work areas of underground mines remain subject to the provisions of 30 CFR 75.1712–3, which is unchanged.

II. Response to Significant Adverse Comments

As a result of comments received, MSHA has withdrawn the direct final rule (68 FR 19347) by a document publishing in the **Federal Register** on June 20, 2003. MSHA received significant adverse comments. As stated in the direct final rule:

> A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, MSHA will consider whether it warrants a substantive response in a notice and comment process.

Most comments addressed sanitation issues that are outside the scope of this limited rule; however, MSHA has fully considered and responded below to two issues that warrant a substantive response.

A. Use of Combustion or Incinerating Toilets Underground

Section 75.1712–6(c) of the direct final rule specifically prohibited use of combustion or incinerating toilets underground. Certain comments challenged this prohibition. These comments contend that electronic incinerating toilets can be safely installed underground in areas where MSHA allows non-permissible electrical equipment.

MSHA has fully considered this comment. Incineration, by definition, is disposal by burning. MSHA has never approved an application for this method of waste disposal in an underground coal mine. Although the ignition source is electric, and the toilets could be located in areas where non-permissible electric equipment may be allowed underground, incineration involves combustion of an organic compound and would introduce an ignition source.

The comments suggest that MSHA address the hazards of incinerator toilets underground in the following ways. The toilets should be located in ''well rock-dusted'' areas. Fire extinguishers should be provided. The toilets should be located in areas other than the return air course. The toilets should be inspected during pre-shift and on-shift exams. And finally, electrical breakers and ground fault monitoring systems should be required.

MSHA has fully considered and rejected these suggestions. Under the approval application process replaced by this rule, MSHA never imposed requirements concerning the location and examination of toilets, or made approval contingent upon use of supplemental equipment. Consequently, the final rule retains the prohibition against combustion and incinerating toilets in underground coal mines.

MSHA recognizes that further developments in waste-disposal technology could preclude the need for these supplemental requirements. Technological developments will be guided by the need to avoid the introduction of ignition sources underground. Technological advances in non-sewered waste disposal for underground coal mines should not be restricted by the broad categories of approved toilets in the final rule. Future technology can be addressed in subsequent rulemaking.

B. Elimination of Approval Process

Comments opposed the elimination of the MSHA and MSHA and NIOSH approval processes for underground and surface coal mines, respectively. One of these comments stated that sanitary toilets approved by MSHA are ''stamped'' or ''marked'' as approved upon completion of the application process. Although certain mine operators and manufacturers may have chosen to affix such labels, MSHA has never imposed such a requirement for sanitary toilets nor provided such labels.

The approval criteria used by MSHA (underground) and MSHA and NIOSH (surface) remains the same under the final rule. Under the final rule, the mining community will have notice of the types of toilets which are permitted. This information will provide better protection by notifying miners, miners' representatives, MSHA compliance specialists, mine operators, and manufacturers of which types of toilets are approved and by referring directly to the ANSI standard from which the criteria were drawn. The final rule does not change any other sanitation standards. For these reasons, we have rejected these comments.

C. Other Comments.

Other comments addressed sanitation issues unrelated to the toilet application approval process. The comments include discussions of the biological hazards of human feces, the Hazard Communication standard and Material Safety Data Sheets, labeling requirements, issuance of an Emergency Temporary Standard concerning sanitary toilets, and amendment of other sanitation standards not the subject of this rule.

None of these comments addressed the underlying premise or approach of the rule, or explained why eliminating the application requirement would be ineffective or unacceptable without a change. Consequently, these are not significant adverse comments and no changes to the final rule were considered based upon these comments.

III. Background.

A. Regulatory History.

The United States Department of the Interior, Mining Enforcement and Safety Administration (MESA), MSHA's predecessor, originally promulgated sanitation standards requiring approval of sanitary toilets under the Federal Coal Mine Health and Safety Act of 1969. MESA promulgated 30 CFR 75.1712–6 on November 20, 1970 (35 FR 17890) and 30 CFR 71.500 on March 28, 1972 (37 FR 6368). MSHA retained these regulations under the authority of the Federal Mine Safety and Health Act of 1977, which became effective on March 9, 1978. No substantive changes have been made to either provision since they were promulgated.

Under those standards, MSHA approved sanitary toilets for use in underground coal mines, and MSHA and the National Institute for Occupational Safety and Health (NIOSH) jointly approved sanitary toilets for use in surface coal mines. MSHA and NIOSH based their approval on criteria drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements.*

This final rule removes the application requirement while retaining the same criteria for the sanitary toilets permitted at coal mines. By stating which sanitary toilets meet the standard, the rule eliminates the need for manufacturers or mine operators to file an individual application for approval. Removing the application requirements has no substantive effect on the sanitation standards.

B. MSHA and MSHA/NIOSH Approved Toilets Criteria.

MSHA and NIOSH approval criteria are drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—*

Nonsewered Waste-Disposal Systems—Minimum Requirements, ANSI Z4.3–1987 (Reaffirmed 1995). MSHA and NIOSH base the definitions for the various types of toilets and components of the toilet facility on Section 2; the general requirements for auxiliary features on Sections 3.7, 3.8, and 3.9; and the specific design criteria on Section 7.

Exceptions. Although a privy is listed in ANSI Z4.3–1987 (Reaffirmed 1995), privies are not approved for use at any coal mine because sewage could seep through the earth walls and contaminate ground water, earth walls could fail under the harsh conditions at a coal mine, and rain and run-off could flood the privy causing it to overflow and contaminate the mine. Combustion or incinerating toilets are prohibited underground because they can create a fire hazard by introducing an ignition source. Although a toilet paper holder is required for surface mines, MSHA does not require a toilet paper holder on unenclosed sanitary toilets underground because it is impractical.

C. Types of Approved Sanitary Toilets

The following table contains excerpts from ANSI Z4.3–1987 (Reaffirmed 1995) for the types of sanitary toilets approved for use in coal mines. Sanitary toilets meeting these criteria are in compliance with the standard.[1]

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Vault Toilet	
2.2.2 * * * A vault toilet facility is one wherein the waste is deposited without flushing in a permanently installed, watertight, below-ground container.	7.1.1. The vault-toilet tank shall be durable and corrosion-resistant and shall provide a minimum capacity of 378 L (100 gal) per seat. 7.1.2. Where a caustic chemical issued, the charge per seat shall be a minimum of 11.3 kg (25 lbs.) of caustic dissolved in 37.5 L (10 gal) of water. 7.1.3. The chemical shall be drained and the receptacle recharged every 6 months when in continuous use, or at least at the beginning of each season of operation when in intermittent use, or when three-fourths full, whichever occurs first. 7.1.4. Tanks shall be vented to the outside with a minimum nominal venting area of 45 cm^2 (7 in^2). 7.1.5. The tank shall be equipped with a manhole external to the structure for cleaning and for removal of caustic chemicals. The manhole shall be covered so as to prevent escape of gases and odors.
Sealed-Bag Toilet	
2.2.3 * * * A sealed-bag toilet facility is one wherein the waste of each user is deposited, without flushing, into a bag, generally plastic, which is then sealed for later disposal. The structure housing a sealed-bag-toilet facility may be permanent or portable.	7.2.1. All materials and fittings shall be corrosion resistant. 7.2.2. The bag shall be made of material of sufficient strength so as not to leak and, once sealed, so as to retain the waste until such time as the bag is removed from the toilet for disposal.
Combustion or Incinerating Toilet	
2.3 * * * A combustion- or incinerating-toilet facility is one wherein the waste is deposited, with or without flushing, into a combustion chamber, where it is incinerated. The structure housing a combustion- or incinerating-toilet facility may be permanent or portable.	7.3.1. All external surfaces, including bowl and hopper, shall be easy to clean. 7.3.2. The residue of combustion or incineration shall be sterile and inert. 7.3.3. The flue effluents shall be free of viable bacteria. 7.3.4. The combustion system and all fuel and electrical parts shall be safe and in compliance with applicable gas and electrical codes of local authorities. Where such codes do not exist, the installation shall comply with American National Standard National Electrical Code, ANSI/NFPA 70–1987, or with American National Standard for Gas-Fired Toilets, ANSI Z21.61–1983, and American National Standard National Fuel Gas Code, ANSI Z223.1–1984 and ANSI Z223.1a–1987.
Chemical Toilet and Biological Toilet	
2.2.1 * * * A chemical-toilet facility is a nonflush-toilet facility wherein the waste is deposited directly into a container containing a solution of water and chemical. It may be housed in a permanent or portable structure. 2.4 * * * A biological-toilet facility is one wherein the waste is deposited, with or without flushing, into a waste container integral to the toilet facility, where it is treated by means of biological agents or aeration.	7.4.1. Waste containers shall be fabricated from nonabsorbent, watertight materials. 7.4.2. Portable chemical and biological toilets and urinals that are free standing and not installed in a toilet room do not require a ventilation system. 7.4.3. Chemicals or biological agents, if used in the waste container, shall be in accordance with applicable federal, state, and local provisions.

[1] MSHA prohibits the use of these toilets in underground coal mines, see § 75.1712–6(c).

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Nonwater-Flush Toilet	
2.1.2 * * * A nonwater flush-toilet facility is one wherein the waste is flushed from the bowl and the bowl cleansed by a fluid other than water, with the fluid deposited in a container or receptacle, or treated and recirculated as in 2.1.1; such facilities include, but are not limited to, oil-flush-toilet facilities.	7.5.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.5.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.5.3. Flushing shall be accomplished by controls operable without special knowledge. Upon flushing, fluid shall enter the bowl and pass through with a vigorous flow sufficient to carry the waste from the bowl into the waste container. 7.5.4. Chemicals, if used in the waste container, shall be in accordance with applicable local, state, and federal provisions.
Water-Flush Toilet	
2.1.1 * * * A water-flush-toilet facility is one wherein the waste is carried from the bowl and the bowl cleansed by water, and the combined water and waste is deposited into a container or receptacle, or recirculated by a closed system for flushing purposes; such facilities include, but are not limited to, vacuum-toilet facilities.	7.6.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.6.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.6.3. Flushing shall be accomplished by controls operable without special knowledge. 7.6.4. Chemicals, if used, shall be in accordance with applicable local, state, and federal provisions.

Source: American National Standard Institute (ANSI), *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements,* (ANSI Z4.3–1987) (Reaffirmed 1995).

IV. Section-by-Section Discussion

The following discussion explains the final rule's provisions.

A. 30 CFR 71.500 for Surface Coal Mines

Section 71.500 requires all surface coal mine operators to provide at least one approved sanitary toilet at a location convenient to each surface work site and one additional approved sanitary toilet for each 10 miners working at a location. Only those types of toilets listed in this section are approved. Sanitary toilets must have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995). Use of privies is prohibited.

B. 30 CFR 75.1712–6 for Underground Coal Mines

Section 75.1712–6 requires all underground coal mine operators to provide and maintain one approved sanitary toilet in a dry location under protected roof within 500 feet of each working place where miners regularly work. Only those types of toilets listed in this section are approved. Sanitary toilets, except for unenclosed toilet facilities provided in accordance with § 75.1712–6(b), must have a toilet paper holder with an adequate supply of toilet paper, and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995). Privies and combustion or incinerating toilets are prohibited underground.

V. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

In accordance with Executive Order (E.O.) 12866, MSHA has analyzed the estimated costs and benefits associated with this final rule, and has included its Regulatory Economic Analysis (REA) in this preamble. This final rule includes no additional costs for the mining industry and eliminates the costs associated with filing an application for approval. This final rule is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), MSHA certifies that this final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, the Agency must include the factual basis for this certification in the final rule. Accordingly, the Agency is publishing the factual basis for its regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and is providing a copy to the Small Business Administration (SBA), Office of Advocacy. MSHA also will mail a copy of the final rule, including the preamble and certification statement, to coal mine operators and miners' representatives and post it on the Agency's Internet Home Page at *http://www.msha.gov.*

Factual basis for certification

MSHA is issuing a final rule amending 30 CFR parts 71 and 75, concerning applications for approval of sanitary toilets. The Agency is amending its regulations to state which sanitary toilets meet the standard in order to eliminate the need for manufacturers or mine operators to file an application for approval and to avoid the associated cost and paperwork burden.

Manufacturers are the primary applicants for MSHA or MSHA/NIOSH approval of sanitary toilets. In the last four years, seven manufacturers of portable toilets filed applications to request approval of sanitary toilets. During this same period, only one mine operator filed an application to request approval of sanitary toilets. MSHA expects that the number and distribution of applications over the past four years is representative of future applications in the absence of this final rule. MSHA estimates that, on average, in the absence of the final rule, portable toilet manufacturers will file 1.75 applications each year, and mine operators will file 0.25 applications each year.

Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. Based on MSHA's definition, the mine operator is

considered large in that it employs 20 or more workers. The Small Business Administration (SBA) definition for a small business in the mining industry is one with 500 or fewer employees. The mine operator that filed the application is considered a small business by SBA's definition in that it employs fewer than 500 workers. Based on SBA's definition, manufacturers of portable toilets (plastics), NAICS Code 326191 (SIC Code 3088), are defined as small if they have fewer than 500 employees. All of the portable toilet manufacturers are small businesses, according to SBA, because each employs fewer than 500 workers.[2]

Compliance Costs

Cost savings from this final rule accrue to sanitary toilet manufacturers and mine operators because they will no longer have to file an application for approval of sanitary toilets. Cost savings from this rule are estimated at $407 annually. The cost savings are based upon the elimination of the filing of an average of 1.75 applications per year by manufacturers and 0.25 applications per year by mine operators. For the manufacturers, cost savings will be $296 annually. For mine operators, cost savings will be $111 annually.

The annual cost savings of $296 for manufacturers is derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, earning $20.82 per hour,[3] takes 8 hours to prepare an application (1.75 applications × 8 hours × $20.82 per hour = $291.48). In addition, a clerical worker, earning $12.66 per hour,[4] takes 0.1 hour to copy and mail an application (1.75 applications × 0.1 hour × $12.66 per hour = $2.22). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are $0.15 per page, and postage is $1 [1.75 applications × ((2 pages × $0.15 per page) + $1) = $ 2.28].

The annual cost savings of $111 for the mine operator is derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare an application (0.25 application × 8 hours × $54.92 per hour = $109.84). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hour to copy and mail an application (0.25 application × $0.1 hour × $19.58 per hour = $ 0.49). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are $0.15 per page, and postage is $1 [0.25 application × ((2 pages × $0.15 per page) + $1) = $0.33].

This final rule eliminates the application process and provides simple compliance information directly to the public, thus eliminating the annual cost burden.

VI. Paperwork Reduction Act

This final rule contains no additional information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Consequently, the information collection currently approved by OMB under control number 1219–0101 will no longer be necessary and will be withdrawn.

This final rule will result in 16 annual burden hour savings and associated annual burden cost savings of $404 related to elimination of 2 applications annually for sanitary toilets. Of this total, for the 1.75 portable toilet manufacturers, there will be 14 burden hours savings annually and associated annual burden costs savings of $294. For the 0.25 mine operators, there will be 2 burden hours savings annually and associated annual burden cost savings of $110.

The annual reduction of 14 burden hours and the $294 annual burden costs savings for the 1.75 portable sanitary toilet manufacturers are derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, takes 8 hours to prepare an application (1.75 applications × 8 hours = 14 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (1.75 applications × 0.1 hour = 0.18 hours). The hourly wage rate for a first-line supervisor at a portable toilet manufacturing facility is $20.82 ($20.82 × 14 burden hours = $291.48). The hourly wage rate for a clerical worker (billing and posting clerks) is $12.66 ($12.66 × 0.18 burden hours = $2.28).

The annual reduction of 2 burden hours and the $110 annual burden costs savings for the 0.25 mines are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare an application (0.25 applications × 8 hours = 2 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (0.25 applications × 0.1 hour = 0.03 hour). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 2 hours = $109.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 0.03 hours = $0.58).

This final rule removes this burden by eliminating the application process and providing information directly to the public.

VII. Other Regulatory Considerations

A. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of its actions. This final rule has no environmental impact because it has no substantive effect on the existing standards.

B. Unfunded Mandates Reform Act of 1995

We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this final rule does not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this final rule does not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with ''takings'' implications.

D. Executive Order 12988: Civil Justice Reform

In accordance with Executive Order 12988, we have determined that this final rule will not unduly burden the Federal court system. We wrote the final rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this final rule and have determined that it has no adverse effects on children.

[2] Small Business Administration, Small Business Size Standards Matched to North American Industry Classification System (NAICS), Effective July 1, 2002. (*http://www.sba.gov/size/sizetable.html*).

[3] U.S. Department of Labor, Bureau of Labor Statistics, Career Guide to Industries—Chemicals Manufacturing, Except Drugs. (*http://www.bls.gov/oco/cgs/cgs008.htm*).

[4] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics—2001 National Occupational Employment and Wage Estimates. (*http://www.bls.gov/oes/2001/oes433021.htm*).

F. Executive Order 13132: Federalism

In accordance with Executive Order 13132, we have reviewed this final rule and have determined that it does not have ''federalism'' implications.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we certify that this final rule does not impose substantial compliance costs on Indian tribal governments.

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

In accordance with Executive Order 13211, we have reviewed this final rule and have determined that it has no effect on the production or price of coal. Consequently, it has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 71

Coal mines, Mine safety and health, Surface mining.

30 CFR Part 75

Coal mines, Mine safety and health, Underground mining.

Dated: June 18, 2003.

John R. Caylor,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 71 and 75, of title 30 of the Code of Federal Regulations as follows:

PART 71—[AMENDED]

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

Authority: 30 U.S.C. 811, 951, 957.

■ 2. Section 71.500 is revised to read as follows:

§ 71.500 Sanitary toilet facilities at surface work sites; installation requirements.

(a) Each operator of a surface coal mine shall provide and install at least one sanitary toilet in a location convenient to each surface work site. A single sanitary toilet may serve two or more surface work sites in the same surface mine where the sanitary toilet is convenient to each such work site.

(b) Where 10 or more miners use such toilet facilities, sufficient toilets shall be furnished to provide approximately one sanitary toilet for each 10 miners.

(c) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue.

(d) Only flush or nonflush chemical or biological toilets, combustion or incinerating toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies are prohibited.

(**Note to paragraph (d):** Sanitary toilet facilities for surface work areas of underground mines are subject to the provisions of § 75.1712–3 of this chapter.)

PART 75—[AMENDED]

■ 3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Section 75.1712–6 is revised to read as follows:

§ 75.1712–6 Underground sanitary facilities; installation and maintenance.

(a) Except as provided in § 75.1712–7, each operator of an underground coal mine shall provide and maintain one sanitary toilet in a dry location under protected roof, within 500 feet of each working place in the mine where miners are regularly employed during the mining cycle. A single sanitary toilet may serve two or more working places in the same mine, if it is located within 500 feet of each such working place.

(b) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue, except that a toilet paper holder is not required for an unenclosed toilet facility.

(c) Only flush or nonflush chemical or biological toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies and combustion or incinerating toilets are prohibited underground.

[FR Doc. 03–15813 Filed 6–20–03; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[OPPT–2003–0002; FRL–7314–5]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment updates the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for information collection requirements contained in EPA's regulations that are promulgated in title 40 of the Code of Federal Regulations (CFR). This technical amendment adds new approvals published in the **Federal Register** since July 1, 2000, and removes expired and terminated approvals.

DATES: This rule is effective June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Angela F. Hofmann, Director, Regulatory Coordination Staff, Office of Prevention, Pesticides and Toxic Substances (7101M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0258; e-mail address: *hofmann.angela@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 concerned about OMB approval for information collections required by EPA regulations. 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–2003–0002. 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 EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA 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/*. A frequently updated electronic version of 40 CFR part 9 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr9_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

A. Why is this Technical Amendment Being Issued?

This document updates the OMB control numbers listed in 40 CFR part 9 for various actions published in the **Federal Register** since July 1, 2000, and issued under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136), and the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 408). EPA will continue to present OMB control numbers in a consolidated table format in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements that require OMB approval under the PRA (44 U.S.C. 3501 *et seq.*), and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

B. Why is this Technical Amendment Issued as a Final Rule?

The information collection activities included in this document were previously subject to public notice and comment prior to OMB approval, as part of the OMB approval or rulemaking process. Therefore, EPA finds that publication of a proposed rule is unnecessary and would waste public tax dollars. This technical amendment is effective upon publication under the ''good cause'' clause found in section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) which allows a regulatory action to become final without prior notice and comment.

C. What Specific Changes are Being Made?

The following changes are being made to the table in § 9.1:

1. *Table amended to reflect new requirements*. In the **Federal Register** of July 19, 2001 (66 FR 37772) (FRL–6057–7), EPA issued final regulations under FIFRA for Plant-Incorporated Protectants (Formerly Plant-Pesticides), with provisions codified in 40 CFR parts 152 and 174. The information collection requirements contained in this rule consisted of up-front substantiation for claims of CBI for plant-incorporated protectant activities (*e.g.*, EUP submissions, registration applications, tolerance requests, and adverse-effects reporting), and for adverse-effects reporting for the otherwise exempt plant-incorporated protectants. OMB approved the Information Collection Request (ICR) for this rule on July 31, 2001, under OMB control number 2070–0142 (EPA ICR No. 1693.02). EPA announced this approval in the **Federal Register** on September 28, 2001 (66 FR 49664) (FRL–7069–8). Copies of these documents are available in the docket described in Unit I.B.1.

2. *Table amended to reflect ICR consolidation*. EPA consolidated the information collection activities related to the PCB regulations in 40 CFR part 761 under a single ICR. All of these information collection activities were already approved by OMB under the following OMB control numbers: 2070-0003 (EPA ICR No. 1000); 2070-0008 (EPA ICR No. 1001); 2070-0011 (EPA ICR No. 1012); 2070-0021 (EPA ICR No. 857); 2070-0112 (EPA ICR No. 1446); and 2070-0159 (EPA ICR No. 1729), and the table in part 9 identified these OMB control numbers. OMB approved the consolidated ICR on August 29, 2001, under OMB control number 2070–0112 (EPA ICR No. 1446.07). EPA announced this approval in the **Federal Register** on December 14, 2001 (66 FR 64817) (FRL–7118–4), see also the **Federal Register** of February 12, 2002 (67 FR 6519) (FRL–7142–4). Copies of these documents are available in the docket described in Unit I.B.1.

3. *Table amended to reflect changes in the regulations*. Since July 1, 2001, EPA has taken several actions related to significant new use rules (SNURs) promulgated under TSCA section 5(a)(2). The paperwork burden associated with a SNUR has been approved under OMB control numbers 2070–0012 (EPA ICR No. 0574.11), when related to new chemicals, and 2070–0038 (EPA ICR No. 1188.07), when related to existing chemicals. These ICRs were first approved in the late 1980s and have been renewed every 3 years, and the latest approval for these ICRs were announced in the **Federal Register** on September 28, 2001 (66 FR 49664) for 2070–0012, and in the **Federal Register** on February 3, 2003 (68 FR 5288) (FRL–7446–7) for 2070–0038. Copies of these documents are available in the docket described in Unit I.B.1.

EPA is removing several entries because the SNURs have been revoked. Specifically, in the **Federal Register** on December 11, 2001 (66 FR 63941) (FRL–6807–3), EPA removed §§ 721.3460 and 721.6820, and in the **Federal Register** on September 27, 2002 (67 FR 60991) (FRL–7186–9), EPA removed §§ 721.3628, 721.5300, and 721.8170. Since these provisions no longer exist, the corresponding listing in the table should be removed as well.

EPA is adding several entries to reflect the promulgation of the SNURs. Specifically, in the **Federal Register** on March 11, 2002 (67 FR 11007) (FRL–6823–6), EPA established a new § 721.9582. In the **Federal Register** on April 11, 2002 (67 FR 17643) (FRL–6805–1), EPA established new §§ 721.1230, 721.1240, 721.3780, and 721.8175. In the **Federal Register** on March 28, 2003 (68 FR 15061) (FRL–6758–7), EPA established the following new §§ 721.321; 721.338; 721.463; 721.465; 721.522; 721.525; 721.532; 721.533; 721.638; 721.648; 721.843; 721.910; 721.990; 721.1767; 721.1852; 721.1878; 721.1880; 721.2093; 721.2155; 721.2465; 721.2577; 721.2582; 721.2584; 721.2673; 721.3805; 721.3807; 721.3812; 721.3818; 721.3848; 721.4136; 721.4486; 721.4575; 721.5260; 721.5262; 721.5283;

721.5286; 721.5452; 721.5454; 721.5590; 721.5925; 721.6005; 721.6178; 721.6181; 721.6183; 721.6205; 721.8085; 721.8658; 721.8920; 721.9502; 721.9504; 721.9538; 721.9597; and 721.9952. The table is amended to list these new sections, along with their corresponding OMB control number as identified in the final rule.

III. Statutory and Executive Order Reviews

This final rule implements technical amendments to 40 CFR part 9 to reflect changes to OMB approvals under the PRA. It does not otherwise impose or amend any requirements. As such, this action is not a ''significant regulatory action'' under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), and is therefore not subject to review by OMB.

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This rule does not contain any new information collection requirements that require review or approval by OMB pursuant to the PRA. The information collection activities associated with the OMB control numbers contained in this document have already been approved by OMB.

Since the Agency has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the APA or any other statute (*see* Unit II.B.), this action is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Similarly, 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, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

This action does not involve any technical standards that require the Agency's 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).

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

This action will not result in environmental justice related issues and does not therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

IV. Congressional Review Act

The Congressional Review Act (CRA), 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. Section 808 of CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 23, 2003. 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 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 13, 2003.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, the table is amended by adding a new heading and its entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Procedures and Requirements for Plant-Incorporated Protectants	
174.9	2070–0142
174.71	2070–0142
* * * * *	

* * * * *

■ 3. In § 9.1, the table is amended under the heading ''Significant New Uses of Chemical Substances'' by removing the entries 721.3460, 721.3628, 721.5300, 721.6820, and 721.8170.

■ 4. In § 9.1, the table is amended under the heading ''Significant New Uses of Chemical Substances'' by adding the following entries in numerical order:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.321	2070–0012
* * * * *	
721.338	2070–0012
* * * * *	
721.463	2070–0012
721.465	2070–0012

40 CFR citation	OMB control No.
* * * * *	
721.522	2070–0012
* * * * *	
721.525	2070–0012
* * * * *	
721.532	2070–0012
721.533	2070–0012
* * * * *	
721.638	2070–0012
* * * * *	
721.648	2070–0012
* * * * *	
721.843	2070–0012
* * * * *	
721.910	2070–0012
* * * * *	
721.990	2070–0012
* * * * *	
721.1230	2070–0012
721.1240	2070–0012
* * * * *	
721.1767	2070–0012
* * * * *	
721.1852	2070–0012
* * * * *	
721.1878	2070–0012
721.1880	2070–0012
* * * * *	
721.2093	2070–0012
* * * * *	
721.2155	2070–0012
* * * * *	
721.2465	2070–0012
* * * * *	
721.2577	2070–0012
* * * * *	
721.2582	2070–0012
721.2584	2070–0012
* * * * *	
721.2673	2070–0012
* * * * *	
721.3780	2070–0012
* * * * *	
721.3805	2070–0012
721.3807	2070–0012
* * * * *	
721.3812	2070–0012
* * * * *	
721.3818	2070–0012
* * * * *	
721.3848	2070–0012
* * * * *	
721.4136	2070–0012
* * * * *	
721.4486	2070–0012
* * * * *	
721.4575	2070–0012
* * * * *	
721.5260	2070–0012
721.5262	2070–0012
* * * * *	
721.5283	2070–0012
* * * * *	
721.5286	2070–0012
* * * * *	
721.5452	2070–0012
721.5454	2070–0012
* * * * *	
721.5590	2070–0012
* * * * *	
721.5925	2070–0012
* * * * *	
721.6005	2070–0012
* * * * *	
721.6178	2070–0012
* * * * *	
721.6181	2070–0012
721.6183	2070–0012
* * * * *	
721.6205	2070–0012
* * * * *	
721.8085	2070–0012
* * * * *	
721.8175	2070–0012
* * * * *	
721.8658	2070–0012
* * * * *	
721.8920	2070–0012
* * * * *	
721.9502	2070–0012
* * * * *	
721.9504	2070–0012
* * * * *	
721.9538	2070–0012
* * * * *	
721.9582	2070–0038
* * * * *	
721.9597	2070–0012
* * * * *	
721.9952	2070–0012
* * * * *	

* * * * *

■ 5. In § 9.1, the table is amended by revising the entries under the heading ''Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions	
761.20	2070–0112
761.30	2070–0112
761.35	2070–0112
761.40	2070–0112
761.60	2070–0112
761.61	2070–0112
761.62	2070–0112
761.65	2070–0112
761.70	2070–0112
761.71	2070–0112
761.72	2070–0112
761.75(b) and (c)	2070–0112
761.77	2070–0112
761.79(f) and (h)	2070–0112
761.80(e), (g), (i) and (n)	2070–0112
761.125	2070–0112
761.180	2070–0112
761.185	2070–0112
761.187	2070–0112
761.193	2070–0112
761.202(a)	2070–0112
761.205	2070–0112
761.207	2070–0112
761.208	2070–0112
761.209	2070–0112
761.210	2070–0112
761.211	2070–0112
761.215	2070–0112
761.218	2070–0112
761.253	2070–0112
761.274	2070–0112
761.295	2070–0112
761.314	2070–0112
761.357	2070–0112
761.359	2070–0112
761.395	2070–0112
761.398	2070–0112
* * * * *	

* * * * *

[FR Doc. 03–15669 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA093–CORR; FRL–7516–9]

Correction of Designation of Areas for Air Quality Planning Purposes; California—PM–10 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects language in title 40 of the Code of Federal Regulations that was promulgated in final rules published in the **Federal Register** on August 6, 2002 and May 7, 2003.

EFFECTIVE DATE: This rule is effective on June 23, 2003.

SUPPLEMENTARY INFORMATION: On August 6, 2002 (67 FR 50805) and May 7, 2003 (68 FR 24368), EPA published final rulemaking actions approving redesignation requests of the California State Implementation Plan (SIP). Both of these actions contained amendments to the PM–10 table found in 40 CFR part 81, § 81.305.

The August 6, 2002 action omitted the designation and classification dates and types for a portion of San Bernardino County. The May 7, 2003 action failed to note the designation of the Indian Wells Valley planning area as attainment with an effective date.

With this action, we are also correcting the list of counties in the San Joaquin Valley Planning Area (SJVPA). The table will now contain all counties within the SJVPA in alphabetical order. The entry will now read: Fresno, Kern,

Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **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 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.305, the ''California PM–10 table'' is amended as follows:

■ a. By revising the entry for ''San Bernardino County''; and

■ b. By revising the entry for ''Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties.''

§ 81.305 California.

* * * * *

CALIFORNIA–PM–10

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
San Bernardino County:				
San Bernardino (part): Excluding that portion located in the Trona planning area and excluding that portion located in the South Coast Air Basin.	1/20/1994	Nonattainment	1/20/1994	Moderate.
Trona planning area: That portion of San Bernardino County contained within Hydrologic Unit #18090285.	9/5/2002	Nonattainment	9/5/2002	Moderate.
* * *	*	*	*	*
Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties:				
Indian Wells Valley planning area: That portion of Kern County contained within Hydrologic Unit #18090205.	6/6/2003	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 03–15761 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 1

USCG 2003–15137

RIN 1625–AA71

Right To Appeal; Director, Great Lakes Pilotage

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule.

SUMMARY: The Coast Guard is amending its procedures for the appeal of decisions or actions taken by the Director, Great Lakes Pilotage (G–MW–1). It has determined that the Assistant Commandant for Marine Safety, Security and Environmental Protection (G–M) should exercise this authority in place of the Director of Waterways Management (G–MW). This way, G–MW will be able to supervise more closely the work of G–MW–1 without also sitting in judgment on that work.

DATES: This rule is effective August 22, 2003, unless an adverse comment, or notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before July 23, 2003. If an adverse comment, or notice of intent to submit an adverse comment reaches the Facility within the time allowed, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15137] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this rulemaking. Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Tom Lawler, Coast Guard, telephone 202–267–1241. If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG 2003–15137], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We are publishing a direct final rule under 33 CFR 1.05–55, because we do not expect an adverse comment. Unless we receive an adverse comment or notice of intent to submit one within the comment period specified under **DATES,** this rule will become effective as stated in **DATES.** In that case, about 15 days before the effective date, we will publish a document in the **Federal Register** stating that we received no adverse comment and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit one, we will publish a document in the **Federal Register** announcing the withdrawal of this rule. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment counts as ''adverse'' if it explains why this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

A review of our rules indicates that our policy and practice of permitting a party to appeal any decision or action of the Director, Great Lakes Pilotage (G–MW–1), in accordance with the procedures at 46 CFR Part 1.03, should be changed from the Director, Waterways Management (G–MW) to the Assistant Commandant for Marine Safety, Security and Environmental Protection (G–M). This way, G–MW will be able to more closely supervise the work of G–MW–1 without also sitting in judgment on that work.

Discussion of Rule

To codify this rule entails (1) amending 46 CFR 1.03–15 to take account of 46 U.S.C. Chapter 93 and 46 CFR Chapter III and identifying the particular Coast Guard office for appeals; and (2) amending 46 CFR 1.03–50 to describe the appellate process for decisions or actions of the Director, Great Lakes Pilotage (G–MW–1).

This change shifts the authority to review any decision or action of the Director, Great Lakes Pilotage (G–MW–1), from the Director of Waterways Management (G–MW) to the Assistant Commandant for Marine Safety, Security and Environmental Protection (G–M).

Regulatory Evaluation

This direct final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) [44 FR 11040 (February 26, l979)]. Because this rule is administrative in nature, we expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We will evaluate, under the criteria in ''Regulatory Information'', any comments submitted in response to this finding.

Collection of Information

This direct final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

We have analyzed this direct final rule under Executive Order 13132 and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates

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

Taking of Private Property

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

Reform of Civil Justice

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this direct final rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. It is ''procedural'' within the meaning of that paragraph. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 1 as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

Subpart 1.03—Rights of Appeal

■ 1. Add the authority citation to subpart 1.03 to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Public Law 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 1070; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 2. Revise paragraph (h)(5) of § 1.03–15 to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(5) Commandant (G–M) for appeals involving decisions or actions of the Director, Great Lakes Pilotage.

* * * * *

■ 3. Revise §1.03–50 to read as follows:

§ 1.03–50 Appeals from decisions or actions of the Director, Great Lakes Pilotage.

Any person directly affected by a decision or action of the Director, Great Lakes Pilotage, may make a formal appeal of that decision or action to Commandant (G–M), in accordance with the procedures contained in § 1.03–15 of this subpart.

Dated: May 21, 2003.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–15641 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 99–231; FCC 03–124]

Spread Spectrum Devices

AGENCY: Federal Communications Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: This document denies the Petition for Reconsideration filed by Warren C. Havens and Telesaurus Holdings GB, LLC, d/b/a LMS Wireless (''Havens'') of the Commission's *Second Report and Order* in this proceeding. We affirm our decision to permit new digital transmission technologies to operate in the 902–928 MHz (915 MHz) band under the same rules that govern the operation of direct sequence spread spectrum systems, and reject Havens' request that we delay the implementation of these rules.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* ET Docket No. 99–231, FCC 03–124, adopted May 27, 2003 and released May 30, 2003. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com.*

Summary of the Memorandum Opinion and Order

1. In the *Second Report and Order* in ET Docket No. 99–231, the Commission revised § 15.247 of its rules to allow new digital transmission technologies to operate under the same rules as direct sequence spread spectrum systems in the 915 MHz, 2.4 GHz, and 5.7 GHz bands. The Commission stated that these changes will facilitate the continued development and deployment of new wireless devices for businesses and consumers. The modified rules will allow more diverse products to occupy those bands, thereby increasing consumer choice. At the same time, the rules will provide flexibility for quickly introducing new non-interfering products without the need for rule makings to address each developing technology. The new rules became effective on July 25, 2002.

2. On July 25, 2002, Havens filed a petition for reconsideration asking the Commission to defer the rule changes noted above in the 915 MHz band, pending resolution of two rulemaking petitions: One filed by Progeny LMS LLC (''the Progeny petition''), and one that Havens intended to file at a later date. The Progeny petition seeks rule changes for the Location and Monitoring Service (''LMS'') in the 915 MHz band. Specifically, Progeny seeks elimination of restrictions baring a single licensee from holding all LMS licenses in a given area, elimination of the restriction on real-time interconnection, elimination of the restriction on the types of services LMS licensees may offer, and the substitution of technical limits, as

necessary, for the current service limitations. Progeny also requests modification of the safe harbor provision of § 90.361 of the rules that creates a presumption of non-interference from part 15 and Amateur operations in the 902–928 MHz band. Havens asserts that the changes to the part 15 rules adopted in the *Second Report and Order* that allow increased flexibility for unlicensed devices may lead to increased part 15 use, which would jeopardize effective use of LMS in this spectrum.

3. We note that Havens has not shown sufficient cause for delaying the implementation date of the rules adopted in the *Second Report and Order*. The changes to the part 15 rules that allow increased flexibility for manufacturers to improve product performance did not change the technical requirements, *i.e,.* maximum peak power and power spectral density, that we find adequate to protect other spectrum users from interference. An LMS receiver will experience no more interference from a part 15 device operating under the rules adopted in the *Second Report and Order* than under the prior rules. Havens has made no showing that contradicts this conclusion, and a mere statement of belief that increased use may lead to increased interference is not sufficient justification for reconsideration. In the event that the Commission proposes to revise its rules in response to the Progeny petition, interested parties can address part 15 and LMS issues in the context of that rulemaking proceeding.

4. Finally, we decline to delay implementation of rule changes on the mere speculation that a Petition for Rulemaking may be filed that may affect use of the band. We note that the rule changes adopted in the *Second Report and Order* became effective on July 25, 2002. Havens did not raise any objections to the proposals during the pendency of this proceeding and has not filed a Petition for Rulemaking concerning the 915 MHz band. We find that Havens has not presented sufficient justifications to warrant reconsideration of the rules adopted in the *Second Report and Order* in this proceeding.

Ordering Clauses

5. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g), 303(r), and 405, it is ordered that the Petition for Reconsideration filed by Warren C. Havens and Telesaurus GB, LLC is denied.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–15703 Filed 6–20–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 061803B]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 19, 2003, through 1200 hrs, A.l.t., June 29, 2003.

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

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

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003) for the second season, the period April 1, 2003, through 1200 hrs, A.l.t., June 29, 2003, is 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.''

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: June 18, 2003.

Richard W. Surdi,

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

[FR Doc. 03–15797 Filed 6–18–03; 4:35 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 061203D]

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area Opening for the Groundfish Trawl Fisheries of the Gulf of Alaska

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

ACTION: Opening.

SUMMARY: The Administrator, Alaska Region, NMFS (Regional Administrator) is opening the Chiniak Gully Research Area in the Gulf of Alaska (GOA) to directed fishing for groundfish using trawl gear from August 1, 2003, through September 20, 2003. NMFS' Alaska Fisheries Science Center (AFSC) will not conduct research in this area in 2003. Therefore, the closure of the Chiniak Gully Research Area is not needed. This action is intended to relieve an unnecessary restriction on groundfish trawl fisheries and allow the optimum utilization of fishery resources, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2003, through 2400 hrs, A.l.t., September 20, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island, may be obtained from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or email at *melanie.brown@noaa.gov*.

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

Background

In April 2001, the Council endorsed a research project proposed by the AFSC in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on pollock school dynamics and the likelihood of localized depletions of Steller sea lion pollock prey. The research project requires the closure of the Chiniak Gully Research Area to trawl fishing from August 1 to no later than September 20 in the years 2001 through 2004. The Chiniak Gully Research Area is described at 50 CFR 679.22(b)(3)(i). A detailed description of the research project is provided in the EA/RIR/FRFA. For copies of this document, please contact NMFS (see **ADDRESSES**). The trawl closure necessary for this research project was implemented by emergency interim rules in 2001 (66 FR 37167, July 17, 2001) and in 2002 (67 FR 956, January 8, 2002), and by final rule in 2003 (68 FR 204, January 2, 2003).

Pursuant to 50 CFR 679.22(b)(3)(ii)(B), the Regional Administrator may rescind the trawl closure of the Chiniak Gully Research Area by publishing notification in the **Federal Register** prior to September 20. Because the AFSC will not be conducting research in the Chiniak Gully Research Area in 2003, the Regional Administrator proposed to rescind the closure specified in 50 CFR 679.22(b)(3)(ii)(A), in a **Federal Register** notice published May 8, 2003 (68 FR 24668). The 2003 closure would unnecessarily restrict the trawl groundfish fisheries because no research will be conducted this year. Rescinding the 2003 trawl closure will allow vessels participating in groundfish trawl fisheries to harvest their total allowable catch amounts without the operational constraints imposed by the closure.

Two comments were received regarding the proposed rescission of the area closure. Both comments were in favor of rescinding the closure.

Classification

This action responds to the best available information recently obtained from the AFSC. Without this inseason adjustment, NMFS could not allow directed fishing for groundfish using trawl gear in the Chiniak Gully Research Area from August 1 through September 20, unnecessarily restricting the groundfish trawl fisheries.

This action is pursuant to 50 CFR 679.22 and is exempt from review under Executive Order 12866.

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

Dated: June 16, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–15804 Filed 6–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011219306–2283–02; I.D. 110501A]

RIN 0648–AM44

Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Observer Coverage Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a January 7, 2003, final rule that implemented changes to regulations governing the North Pacific Groundfish Observer Program (Observer Program) under 50 CFR part 679. The action is necessary to correct an error in cross reference that occurred in the final rule.

DATES: Effective June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: A final rule implementing changes to regulations governing the Observer Program was published in the **Federal Register** January 7, 2003 (68 FR 715). The final rule contained a cross reference error caused by renumbering of paragraphs. This action corrects this error.

Need for Corrections

The renumbering of paragraphs in the final rule erroneously affected a cross reference. Paragraph 679.50(a) is corrected by removing the reference to ''(d)(4)'' and adding in its place ''(d)(5).''

Classification

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator of Fisheries (AA), NOAA, finds good cause to waive

prior notice and comment procedures otherwise required by the section. NOAA finds that prior notice and comment are unnecessary as this rule has a non-substantive effect on the public. This rule corrects an error in a recent amendment to regulations. This error was technical in nature because it was an incorrect citation to another section of the amended and re-numbered regulation. The public is unaffected by the correction. NOAA finds that because of the technical, non-substantive nature of the correction, there is no particular public interest in this rule for which there is need for prior notice and comment. For these reasons, the AA also finds good cause to waive the 30–day delayed effectiveness requirement of 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 679 is corrected by making the following correcting amendment:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L, 106–554.

§ 679.50 [Corrected]

■ 2. In § 679.50, paragraph 679.50(a) is corrected by removing reference to ''(d)(4)'' and adding in its place ''(d)(5).''

[FR Doc. 03–15802 Filed 6–20–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 120
Monday, June 23, 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

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV03–920–1 PR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revisions to pack requirements currently prescribed for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would: Remove the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; continue to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and exempt the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement. These changes were recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

DATES: Comments must be received by July 8, 2003.

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

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This proposed rule invites comments on revisions to pack requirements currently prescribed for California kiwifruit under the order. This rule would: (1) Remove the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continue to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempt the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement. The Committee recommended these changes at its March 12, 2003, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

Volume Filled Containers Designated by Count

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52(a)(1) and (3) of the order authorizes the establishment of pack requirements for California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines specific pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size

designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the U.S. Standards for Grades of Kiwifruit (Grade Standards). For example, if the fruit has a size designation of ''30'' marked on the container, then three times the size designation or 90 pieces of kiwifruit must be packed into the container and the container must be marked with ''90 count.''

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. (Volume filled containers are those in which kiwifruit are loosely packed without cell compartments, cardboard fillers, or molded trays). Volume filled containers were designated by size and also either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container by count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of pieces of kiwifruit.

During the 1993–94 season handlers realized that it was more labor intensive and more expensive to pack volume filled containers designated by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers designated by net weight and size.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some handlers in the industry, including those that are packing a new variety, ''Hort16A'', would like the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 pieces of kiwifruit in each container, the handler would not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of kiwifruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing this requirement as it is obsolete and no longer meets the industry's needs. This relaxation in pack requirements is expected to enable handlers to compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of Standard Packaging Requirement for Volume Filled Containers Designated by Weight

Section 920.52(a)(3) of the order authorizes the establishment of weight requirements for containers of California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302 (a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight had to hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140).

To date during the 2002–03 season, handlers shipped 87 percent of the crop in volume filled containers (73 percent in 22-pounds (10-kilograms) net weight volume filled containers, 13 percent in 19.8-pounds (9-kilograms) net weight containers, and less than 1 percent in volume filled containers of other weights).

At its March 12, 2003, meeting, the Committee discussed three options for volume filled containers: (1) Establishing a standard packaging requirement of 19.8-pounds (9-kilograms) net weight, (2) reestablishing a standard packaging requirement of 22-pounds (10-kilograms) net weight and (3) continuing the suspension of the standardized packaging requirement for the 2003–04 season, thus allowing flexibility to pack any net weight volume filled container. In its deliberations, the Committee discussed grower returns and the ability to meet buyer's preferences for alternate containers. Committee members mentioned that 10 percent more containers could be packed if the standard were set at 19.8-pounds (9-kilograms) net weight. Others mentioned that the increased number of containers would not offset the increased handler costs of packing more, smaller containers and would result in decreased grower returns. Many retailers do not differentiate between 19.8-pounds (9-kilograms) net weight volume filled containers and 22-pounds (10-kilograms) net weight volume filled containers and pay the same price for each. Thus, packaging 19.8-pounds (9-kilograms) net weight containers may not be beneficial for growers and handlers.

The Committee also discussed reestablishing the 22-pounds (10-

kilograms) net weight container standard packaging requirement. Some Committee members believe that increased flexibility benefits growers and handlers, as handlers are able to meet buyer's preferences for alternate containers. Before making the change permanent, the Committee would like to gather more data to further evaluate the benefits of suspending standard pack requirements for another season, the 2003–04 season.

The majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or 19.8-pound (9-kilogram) net weight containers should be the standard. The majority of the Committee believes that handlers and growers would benefit by being able to meet buyer's preferences for alternate containers. Small and large growers and handlers are expected to continue benefiting from this change. This suspension would be in effect until July 31, 2004.

Standard Pack ''Tightly Packed'' Requirement

Section 920.52(a)(2) of the order authorizes the establishment of grade standards.

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be ''not badly misshapen'' and an additional 7 percent tolerance is provided for ''badly misshapen'' fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's ''tightly packed'' provisions were established under the order to ensure that the ''Hayward'' variety (the predominant kiwifruit variety produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

Recently, a new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A'' has been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The ''Hort16A'' is referred to as a ''gold'' variety because the internal flesh is a yellow to gold color when fully mature. The ''Hort16A'' kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a ''beak.'' Therefore, the ''Hort16A'' must be handled differently than the ''Hayward'' variety. Care must be taken during the packing process to protect the beak. To minimize damage, the ''Hort16A'' is packed into a special shallow molded tray with a notch for the beak. The ''Hort16A'' kiwifruit, when packed in this shallow tray, may not meet the ''tightly packed'' requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all ''gold'' kiwifruit varieties from the order's ''tightly packed'' requirement. However, the ''Hort16A'' with its unique ''beak'' is currently the only known commercially produced ''gold'' kiwifruit. Because it is not known whether other ''gold'' kiwifruit varieties would experience the same difficulty in meeting the ''tightly packed'' standard pack requirement, this proposal would limit the exemption to the ''Hort16A'' variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality ''Hort16A'' kiwifruit.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 46 handlers of California kiwifruit subject to regulation under the marketing order and approximately 300 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. None of the 46 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, six growers subject to regulation have annual sales exceeding $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This proposed rule invites comments on revisions to pack requirements prescribed under the California kiwifruit order. This rule would: (1) Remove the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continue to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempt the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement.

The Committee recommended these changes at its March 12, 2003, meeting. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns. Authority for these actions is provided in § 920.52 of the order.

Volume Filled Containers Designated by Count

Section 920.302(a)(4) of the order's administrative rules and regulations outlines specific pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) of the order's administrative rules and regulations provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the Grade Standards listed in 7 CFR 51.2328(c)(2). For example, if the fruit has a size designation of ''30'' marked on the container, then three times the size designation or 90 pieces of kiwifruit must be packed into the container and the container must be marked with ''90 count.''

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. Volume filled containers were designated by size

and also by either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container as the count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of pieces of kiwifruit.

During the 1993–94 season handlers realized it was more labor intensive and more expensive to pack volume filled containers by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers packed by net weight and size designation.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some kiwifruit handlers in the industry, including those that are packing a new variety, ''Hort16A'', would like the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 pieces of fruit in each container, the handler would not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of fruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing the requirement as it is obsolete and no longer meets the industry's needs. The Committee discussed alternatives to this change, including not removing this requirement from the order's administrative rules and regulations, but concluded that small and large growers and handlers would benefit from this change. This change would not affect volume filled containers packed by net weight and is expected to help handlers compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302(a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 9.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee, unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140). To date, relaxation of these packaging requirements during the 2002–03 season enabled handlers to ship 73 percent of the crop in 22-pound (10-kilogram) net weight volume filled containers, 13 percent of the crop in 19.8-pound (9-kilogram) net weight containers and less than 1 percent in volume filled containers of other weights.

The Committee concluded that while suspending the standard packaging requirements for the 2002–03 season had enabled handlers to compete more effectively in the marketplace, it would like to gather more data to further evaluate the benefits of nonstandard pack requirements for another season, the 2003–04.

Therefore, the majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change, and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or the 19.8-pound (9-kilogram) net weight container should be the standard. Small and large growers and handlers are expected to benefit from the continued suspension of the standard packaging requirements. The majority of the Committee believes that handlers and growers would benefit by being able to meet buyer's preferences for alternate containers. This suspension would be in effect until July 31, 2004.

The Committee discussed alternatives to this change including reinstating the 22-pound (10-kilogram) net weight standard packaging requirement for the 2003–04 season. Committee members also suggested two other alternatives. One alternative was to establish a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9 kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. The other alternative suggested would establish a standard packing requirement that would require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15-pounds or more than 35-

pounds net weight of kiwifruit. The Committee did not adopt these suggestions, as it believes that continuing the suspension of the standard packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers of kiwifruit designated by weight would allow handlers the flexibility to meet buyer container preferences and to increase sales. Further, the majority of the Committee believes that establishing standard packaging requirements for volume filled containers of kiwifruit packed by net weight may negatively impact grower returns.

Standard Pack ''Tightly Packed'' Requirement

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be ''not badly misshapen'' and an additional 7 percent tolerance is provided for badly misshapen fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's ''tightly packed'' provisions were established in the order to ensure that the ''Hayward'' variety (the predominant kiwifruit produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

As previously mentioned, a new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A'' has recently been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The ''Hort16A'' is referred to as a ''gold'' variety because the internal flesh is a yellow to gold color when fully mature. The ''Hort16A'' kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a ''beak.'' Therefore, the ''Hort16A'' must be handled differently than the ''Hayward'' variety. Care must be taken during the packing process to protect the beak. To minimize damage, the ''Hort16A'' is packed into a special shallow molded tray with a notch for the beak. The ''Hort16A'' kiwifruit, when packed in this shallow tray, may not meet the ''tightly packed'' requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all ''gold'' kiwifruit varieties from the order's ''tightly packed'' requirement. However, the ''Hort16A'' with its unique ''beak'' is currently the only known commercially produced ''gold'' kiwifruit. Because it is not known whether other ''gold'' kiwifruit varieties would experience the same difficulty in meeting the ''tightly packed'' standard pack requirement, this proposal would limit the exemption to the ''Hort16A'' ''gold'' variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality ''Hort16A'' kiwifruit.

The Committee discussed alternatives to this change, including exempting all kiwifruit packs from the ''tightly packed'' requirement, but did not adopt this suggestion because eliminating the requirement for the ''Hayward'' variety is unnecessary and is still a pack standard desired by the industry for the vast majority of kiwifruit currently packed in California. It is anticipated that within the next 5 to 10 years more than 1,000 acres of ''Hort16A'' will be planted in California with production exceeding one million tray equivalents (one tray equivalent equals approximately 7 pounds). Small and large growers and handlers are expected to benefit from this change. These changes are expected to help handlers compete more effectively in the marketplace and to improve grower returns.

These proposed rule changes would relax pack requirements under the kiwifruit order. Accordingly, these actions would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, as previously stated, California kiwifruit must meet the ''tight-fill'' requirements, as specified in the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Agreement Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 12, 2003, meeting, was a public meeting and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen-days is deemed appropriate because the fiscal period for kiwifruit begins on August 1, 2003, and these changes, if adopted, should be made as soon as possible. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.302 [Amended]

2. Section 920.302 is amended as follows:

A. Paragraph (a)(4)(iv) is removed;

B. Paragraph (a)(4)(v) is redesignated as paragraph (a)(4)(iv);

C. The existing suspension of newly designated paragraph (a)(4)(iv) is extended until July 31, 2004;

D. Paragraph (b) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

* * * * *

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335

through 51.2340) except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that the ''Hort16A'' variety of kiwifruit is exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

Dated: June 18, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15826 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. FV–03–703]

Honey Research, Promotion, and Consumer Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of honey and importers of honey or honey products to determine whether they favor continuance of the Honey Research, Promotion, and Consumer Information Order (Order).

DATES: The referendum will be conducted from July 25, 2003, through August 22, 2003. To vote in this referendum, producers and importers must have been producing honey or importing honey or honey products during the period from January 1, 2001, through December 31, 2002.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, RP, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended (Act) (7 U.S.C. 4601–4613), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers of honey and importers of honey or honey products. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2001, through December 31, 2002. Persons who are producers of honey or importers of honey or honey products at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from July 25, 2003, through August 22, 2003.

Section 13 of the Act provides that the Department of Agriculture (Department) shall conduct a referendum every five years or when 10 percent or more of the eligible voters petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the Order. Previous continuance referenda were conducted in 1991, 1996, and 2002. On February 10, 2003, a petition was filed containing the requisite number of eligible voter signatures to call for another continuance referendum.

Sections 12(b)(1)(A) and (B) of the Act provide that the Department shall continue the Order if continuance of the Order is approved by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or import not less than 50 percent of the quantity of the honey or honey products produced or imported during the representative period by those voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 3,290 producers and importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Kathie M. Birdsell and Margaret B. Irby, RP, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures (7 CFR 1240.200 through 1240.207), which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known producers and importers prior to the first day of the voting period. Persons who are producers or importers at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer or importer who does not receive a ballot should contact the referendum agents no later than one week before the end of the voting period. Ballots must be received by the referendum agents on or before August 22, 2003, in order to be counted.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

Dated: June 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–15825 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft (Malaysia) Sdn. Bhd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Eagle Aircraft (Malaysia) Sdn. Bhd. (Eagle) Model 150B airplanes. This proposed AD would require you to modify the canard rear spar and the rear spar attachment bracket. This proposed AD is the result of mandatory continuing

airworthiness information (MCAI) issued by the airworthiness authority for Australia. The type design responsibility has been transferred from Australia to Malaysia since the release of the MCAI. The actions specified by this proposed AD are intended to prevent detachment of the rear spar bracket from the canard rear spar, which could result in failure of the canard rear spar. Such failure could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before July 25, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–23–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. 2000–CE–23–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 Eagle Aircraft (Malaysia) Sdn. Bhd., Composites Technology City, Batu Barendam Airport, 75350 Batu Barendam, Melaka, Malaysia. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, CA 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

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 proposed 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 rule. You may view all comments we receive before and after the closing date of the 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. 2000–CE–23–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, notified FAA that an unsafe condition may exist on certain Eagle Model 150B airplanes. The CASA reports that the rear spar attachment bracket does not meet required strength specifications for installation on composite airplanes. These strength specifications are necessary to ensure that the rear spar does not detach from the canard rear spar.

The manufacturer has redesigned these parts in order meet required strength specifications.

What Are The Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the canard rear spar. Failure of the canard rear spar could result in failure of the canard and loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Eagle has issued Service Bulletin No. 1074, Revision 1, dated October 19, 1999.

What Are The Provisions of This Service Information?

The service bulletin includes procedures for:

—Trimming the rear spar bracket;
—Smoothing the transition surface for preparation of layups;
—Applying additional plies;
—Replacing the console support bracket and Vinikor cap; and
—Bonding on additional brackets.

What Action Did CASA Take?

The CASA classified this service bulletin as mandatory and issued Australian AD No. X–TS/3, dated December 24, 2000, in order to assure the continued airworthiness of these airplanes in the Australia.

Was This in Accordance With the Bilateral Airworthiness Agreement?

The affected airplanes were manufactured in Australia and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, CASA had 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 CASA; 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 Eagle Model 150B airplanes 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 incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 7 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	$135 per airplane	$240 + $135 = $375 per airplane	$375 × 7 = $2,625.

The proposed modification to the rear spar and the rear spar attachment bracket would require 25 hours for cure and post cure time.

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:

Eagle Aircraft (Malaysia) SDN. BHD.: Docket No. 2000–CE–23–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model 150B airplanes, serial numbers 001 through 003 and 005 through 030, 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 detachment of the rear spar bracket from the canard rear spar, which could result in failure of the canard rear spar. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Modify the canard rear spar by adding additional laminated plies; modifying the rear spar bracket; replacing the existing console support bracket with a new part (part number (P/N) 3100D41–001); modifying the Vinikor cap; and installing an additional support bracket (P/N 581B131–03) and rear spar bracket cap (P/N EO(VAR) 15566–01 or 581B131–02, as applicable).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	Accomplish the modification in accordance with Eagle Service Bulletin 1074, Revision 1, dated October 19, 1999, except as noted in paragraph (d)(2) of this AD

Actions	Compliance	Procedures
(2) The following instructions in the service bulletin are incorrect and you must use the information provided in this AD.. (i) The instructions for installing console support bracket (P/N 3100D41–01) as specified in paragraph 9.6.9 of Eagle Service Bulletin 1074, Revision 1, dated October 19, 1999, are incorrect. The correct instructions are to install a new console support bracket (P/N 3100D41–01) instead of re-installing the removed bracket. The information contained in this AD takes precedence over the manufacturer's service bulletin; and (ii) The rear spar bracket support P/N specified in paragraph 9.7.2 of Eagle Service Bulletin 1074, Revision 1, dated October 19, 1999, is incorrect. The correct P/N is 581B131–03. The information contained in this AD takes precedence over the manufacturer's service bulletin.	As of the effective date of this AD.	

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Los Angeles Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, CA 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Eagle Aircraft (Malaysia) Sdn. Bhd., Composites Technology City, Batu Barendam Airport, 75350 Batu Barendam, Melaka, Malaysia. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Australian AD No. X-TS/3, dated December 24, 2000.

Issued in Kansas City, Missouri, on June 16, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15726 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–422–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that would have required replacing the existing pressure relief valve on the potable water tank with a new, improved pressure relief valve, which is made of stainless steel and is non-adjustable. For certain airplanes, that earlier proposed AD also would have required modification of certain piping to re-locate the pressure relief valve. For certain other airplanes, this new action would revise the earlier proposed AD by correcting procedures for performing the proposed replacement of the pressure relief valve. The actions specified by this new proposed AD are intended to prevent rupture of the potable water tank during flight of the airplane, which could result in structural damage to the airplane and inability to sustain flight loads. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–422–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–422–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–422–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–422–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 18, 2002 (67 FR 11950). That NPRM would have required replacing the existing pressure relief valve on the potable water tank with a new, improved pressure relief valve, which is made of stainless steel and is non-adjustable. For certain airplanes, that NPRM also would have required modifying certain piping to replace a check valve with a tee, removing the existing pressure relief valve, and installing a plug where the existing pressure relief valve was located. That NPRM was prompted by reports indicating that there have been several occurrences of potable water tanks rupturing while the airplane was in flight. That condition, if not corrected, could result in structural damage to the airplane and inability to sustain flight loads. The purpose of the proposed modification is to relocate the pressure relief valve so it is subject to the same air pressure as the potable water tank, and therefore will protect the tank from overpressurization. Accomplishment of the complete modification per Boeing Service Bulletin 737–38–1029 would reinstall the existing pressure relief valve in the tee installed per that service bulletin. However, this supplemental NPRM would require installation of a new, improved relief valve in the tee installed per Boeing Service Bulletin 737–38–1029 instead of reinstalling the existing pressure relief valve.

Issuance of a New Service Bulletin Revision

Since the issuance of the earlier NPRM, the FAA has reviewed and approved Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002. Revision 1 of that service bulletin, dated September 27, 2001, was referenced in the earlier NPRM as the appropriate service information for removing the existing pressure relief valve from the potable water tank, and replacing the valve with a new pressure relief valve. Revision 2 of that service bulletin was issued to more closely align certain airplane effectivity groups with the correct figures in the Accomplishment Instructions. Revision 2 of that service bulletin describes the procedures in a new Figure 9 for airplanes specified as ''Group 9,'' and also describes procedures in Figure 5 for airplanes specified as ''Group 10.'' Revision 2 of that service bulletin states that no more work is necessary if the actions described in the initial issuance or Revision 1 of that service bulletin were accomplished. Therefore, we have specified that accomplishment of the actions in this supplemental NPRM be done per Revision 2 of Boeing Service Bulletin 737–38A1047.

Comments Received on the Earlier NPRM

Due consideration has been given to the comments received in response to the earlier NPRM.

Request To Prohibit Reinstallation of Certain Parts

One commenter notes that Boeing Service Bulletin 737–38–1047, Revision 1, dated September 27, 2001, is specified as the appropriate service information in the earlier NPRM for removing pressure relief valves having part number (P/N) 520A–6DB–50 or P/N D524TP6D60 and replacing the valves with new pressure relief valves. The commenter suggests that the FAA clarify that, after the effective date of the AD, installation of pressure relief valves having P/N 520A–6DB–50 or P/N D524TP6D60 is prohibited. The commenter states that such clarification would prevent any unintended ''demodification'' of the airplane.

The FAA agrees with the commenter and has added a new paragraph (g) of this supplemental NPRM to specifically prohibit installation of those certain pressure relief valves.

Request To Clarify Leak Test Procedure

One commenter notes that the earlier NPRM would require certain airplanes to be modified per Boeing Service Bulletin 737–38–1029, Revision 1, dated August 19, 1993, followed by replacement of the pressure relief valve per Boeing Service Bulletin 737–38A1047, Revision 1, dated September 27, 2001. However, the commenter points out that each of the service bulletins describes a different leak check procedure. The commenter requests that the earlier NPRM specify that either leak check procedure is acceptable or state that neither leak check procedure is mandated.

The FAA acknowledges that the two service bulletins describe two different leak test (check) procedures. We have determined that the leak test described in Boeing Service Bulletin 737–38A1047 is the appropriate procedure. Therefore, we have specified in paragraph (a)(1)(ii) of this supplemental NPRM that the leak test procedure specified in Boeing Service Bulletin 737–38–1029 is not required to be performed.

Request To Clarify Note 2 of the NPRM

One commenter, the manufacturer, states that Note 2 of the earlier NPRM could be interpreted to be an acceptable alternative to the entire content of paragraph (a)(1) of the NPRM, including the instructions in paragraph (a)(1) of the earlier NPRM to perform the requirements of paragraph (a)(2) of the NPRM. (Note 2 of the earlier NPRM specifies that modification of the potable water pressurization system done in accordance with Boeing Service Bulletin 737–38–1029, dated June 6,

1991, is acceptable for compliance with the requirements of paragraph (a)(1) of the earlier NPRM.) The commenter notes that if the modification described in the June 6, 1991, revision of the service bulletin was installed, the existing pressure relief valve would still be installed in the system. Although Note 2 of the earlier NPRM states that performance of Boeing Service Bulletin 737–38–1029 is acceptable for compliance with paragraph (a)(1), it does not specifically require that the new, improved pressure relief valve be installed. The commenter suggests that Note 2 of the NPRM be clarified.

The FAA concurs that clarification is needed to ensure that the existing pressure relief valves are replaced with new, improved valves for those airplanes identified in the effectivity section of Boeing Service Bulletin 737–38–1029. (For reasons other than those discussed in this response (see explanation under the heading below labeled ''Editorial Changes''), we have incorporated the intent of the previously designated Notes 2, 3, and 4 of the NPRM into paragraphs (a), (d), and (f), respectively, of this supplemental NPRM.)

This supplemental NPRM revises paragraph (a)(1) of the earlier NPRM to specify that paragraph (a)(1) must be accomplished in accordance with Boeing Service Bulletin 737–38–1029, dated June 6, 1991, or Revision 1, dated August 19, 1993. Including Boeing Service Bulletin 737–38–1029, dated June 6, 1991, in paragraph (a)(1) of this supplemental NPRM makes it unnecessary to provide the ''credit'' wording specified in Note 2 of the earlier NPRM. The supplemental NPRM further revises paragraph (a)(2) of the earlier NPRM (replacing the valve with a new pressure relief valve having part number P/N RV05–362) to specify that paragraph (a)(2) must be accomplished in accordance with Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002.

Request To Limit the Applicability

One commenter requests that the applicability section of the NPRM be revised to include the words, ''except those airplanes that have the potable water systems removed or deactivated.'' The commenter states that it operates two cargo airplanes that have had the potable water systems deactivated. The commenter explains that the servicing port has a cap installed and the potable water tank fill and transfer lines have been disconnected and plugged. Also, the water tank is vented to prevent it from pressurizing during flight.

The FAA does not agree that the applicability should be revised. The FAA has determined that this supplemental NPRM is applicable to certain Model 737–100, –200, –200C, –300, –400, and ''500 series airplanes. We consider that, while there is currently no potable water system on the commenter's fleet, a potable water system could be installed at a later date. Therefore, no change to the supplemental NPRM is necessary in this regard. For those airplanes that currently may not have a potable water system installed, the operators may request approval of an alternative method of compliance as provided in paragraph (h) of this AD.

Editorial Changes

Because the language in Notes 2, 3, and 4 of the earlier NPRM is regulatory in nature, the intent of those notes has been incorporated into paragraphs (a), (d), and (f) of this supplemental NPRM.

Other Changes

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives systems. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, paragraphs (c) and (d) and Note 1 of the original NPRM have been removed from this supplemental NPRM.

Conclusion

Since these changes expand the scope of the earlier proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 2,049 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,144 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that, of the 1,144 airplanes of U.S. registry, 2 would be affected by the proposed modification of piping to re-locate the pressure relief valve, that it would take approximately 6 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed modification of piping on U.S. operators is estimated to be $720, or $360 per airplane.

The FAA estimates that all of the 1,144 airplanes of U.S. registry would be affected by the proposed replacement of the pressure relief valve, that it would take approximately 2 work hours per airplane to accomplish the replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of the replacement of the pressure relief valve on U.S. operators is estimated to be $480,480, or $420 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–422–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; line numbers 1 through 2696 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the potable water tank during flight of the airplane, which could result in structural damage to the airplane and inability to sustain flight loads, accomplish the following:

Modification and Replacement

(a) For those airplanes listed in the effectivity section of Boeing Service Bulletin 737–38–1029, Revision 1, dated August 19, 1993, on which the modification of the potable water pressurization system specified in the service bulletin has not been accomplished: Within 18 months after the effective date of this AD, except as specified in paragraph (d) of this AD, perform the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Except as specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, modify the potable water pressurization system; in accordance with Boeing Service Bulletin 737–38–1029, dated June 6, 1991, or Revision 1, dated August 19, 1993.

(i) Do not reinstall the existing pressure relief valve having part number (P/N) 520A–6DB–50.

(ii) Do not perform the leak test procedures specified in the service bulletin.

(2) Install a new pressure relief valve having part number P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002.

(b) For those airplanes listed in the effectivity section of Boeing Service Bulletin 737–38–1029, dated June 6, 1991, or Revision 1, dated August 19, 1993, on which the modification of the potable water pressurization system specified in that service bulletin has been accomplished: Within 18 months after the effective date of this AD, remove the existing pressure relief valve from the potable water tank, and replace the valve with a new pressure relief valve having part number P/N RV05–362; in accordance with Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002.

(c) For all other airplanes having line numbers 1 through 2523 inclusive: Within 18 months after the effective date of this AD unless previously accomplished, remove the existing pressure relief valve from the potable water tank, and replace the valve with a new pressure relief valve having part number P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002.

Acceptable Compliance With Certain Paragraphs

(d) With the exception of airplanes specified as ''Group 9'' or ''Group 10'' in Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002, having line numbers 1 through 2523 inclusive: Installation of a new pressure relief valve having P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1047, dated November 9, 2000, or Revision 1, dated September 27, 2001, is acceptable for compliance with paragraph (a)(2), (b), or (c) of this AD.

Replacement of Pressure Relief Valve

(e) For airplanes having line numbers 2524 through 2696 inclusive, with the exception of those airplanes specified in paragraph (f) of this AD: Within 18 months after the effective date of this AD, remove the existing pressure relief valve from the potable water tank and replace the valve with a new pressure relief valve having P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1038, Revision 2, dated September 25, 1997.

Acceptable Compliance With Paragraph (e) of this AD

(f) For those airplanes having line numbers 2524 through 2696 inclusive and having air compressors installed in the potable water tank pressurization system: Within 18 months after the effective date of this AD, remove the existing pressure relief valve from the potable water tank and replace the valve with a new pressure relief valve having P/N RV05–362, in accordance with Boeing Service Bulletin 737–38A1038, dated December 1, 1994; or Revision 1, dated February 2, 1995.

Part Installation

(g) As of the effective date of this AD, no person may install a pressure relief valve having P/N 520A–6DB–50, 520A6DB60, or P/N D524TP6D60 on any airplane.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 17, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15727 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–072)]

14 CFR Part 1204

RIN 2700–AC57

Temporary Duty Travel—Issuance of Motor Vehicle for Home-to-Work Transportation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NASA is proposing this rule to facilitate the efficient use of Government resources during temporary duty travel. Specifically, this rule would permit a NASA employee who is authorized to use a Government motor vehicle for temporary duty travel to be issued such a vehicle at the close of business of the preceding day so that the vehicle could be taken to the employee's residence for use on the following day. Likewise, if the NASA employee returns from official travel after the close of working hours, the vehicle could be returned on the next regular working day. This authority may be exercised only if there would be significant savings in time.

EFFECTIVE DATE: All comments should be submitted by August 22, 2003.

ADDRESS: All comments should be addressed to William Gookin, Code JG, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: William Gookin, 202–358–2306, FAX: 202–358–3235; e-mail: *william.e.gookin@nasa.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is designed to remedy a situation that often arises at certain NASA Installations. Employees who are authorized to use motor vehicles for temporary duty travel must pick up their vehicles at the Installation at the start of the travel period, even in cases where the employees' residence is closer to the temporary duty destination than to the Installation. Such unnecessary travel can sometimes result in a significant waste of official time and resources. This proposed rule would allow such employees to be issued vehicles at the close of the preceding working day, so that they could commence travel from their residences immediately on the next day. Such authority may only be exercised, however, if the authorizing official determines that there will be a significant savings in time. Likewise, if

such employees are scheduled to return after working hours, they could take the vehicles to their residences and return them on the next regular working day. Although, the use of such vehicles for travel during the day preceding and subsequent to temporary duty travel is not official travel, NASA considers it to be ''in conjunction with official travel,'' 70 Comptroller General 196, and therefore, not prohibited by 31 U.S.C. 1344. This rule is proposed pursuant to Section 503 of the Ethics Reform Act of 1989 (Pub. L. 101–194) 31 U.S.C. 1344 note which authorizes agency heads to ''prescribe by rule appropriate conditions for the incidental use, for other than official business,'' of Government vehicles. This rule also implements 40 U.S.C. 486(c), that authorizes agency heads to issue directives carrying out the regulations of the General Services Administration (GSA), in this case the GSA rules for the use of Government vehicles at 41 CFR part 301–10, subpart C, ''Government Vehicles.'' *See* similar Department of Energy regulations at 41 CFR 109–6.400.

Regulatory Evaluation: This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

Small Entities: As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities,'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. NASA certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on small business entities.

Collection of Information: This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 14 CFR Part 1204

Government employees, Government property, and Government property management.

For the reasons discussed above, NASA proposes to amend 14 CFR part 1204 as follows:

PART 1204—[AMENDED]

Add subpart 16 to read as follows:

Subpart 16—Temporary Duty Travel—Issuance of Motor Vehicle for Home-to-Work Transportation Authority

Sec.

1204.1600 Issuance of motor vehicle for home-to-work.

Authority: 31 U.S.C. 1344 *note,* 40 U.S.C. 486(c).

§ 1204.1600 Issuance of motor vehicle for home-to-work.

When a NASA employee on temporary duty travel is authorized to travel by Government motor vehicle, and the official authorizing the travel determines that there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day and taken to the employee's residence prior to the commencement of official travel. Similarly, when a NASA employee is scheduled to return from temporary duty travel after the close of working hours, the motor vehicle may be taken to the employee's residence and returned the next regular working day.

Dated: June 5, 2003.

Sean O'Keefe,

Administrator.

[FR Doc. 03–15693 Filed 6–20–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[ATF Notice No. 2; AG Order No. 2675–2003; Ref: Notice No. 968; Docket No. ATF2000R–9P]

RIN 1140–AA01

Commerce in Explosives

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 968, a notice of proposed rulemaking, published in the **Federal Register** on January 29, 2003. ATF has received three requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Comments must be received on or before July 7, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco, Firearms, and Explosives; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: ATF No. 968.* Written comments must be signed, and may be of any length.

E-mail comments may be submitted to: *nprm@atf.gov.* E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this document number, as noted above, and be legible when printed on 8½″ x 11″ paper. ATF will treat e-mail as originals and ATF will not acknowledge receipt of e-mail. *See* the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Firearms, Explosives and Arson; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2003, ATF published in the **Federal Register** a notice of proposed rulemaking (NPRM) soliciting comments from the public and industry on a proposal to amend the regulations in part 555, Commerce in Explosives (Notice No. 968, 68 FR 4406). ATF issued the NPRM, in part, pursuant to the Regulatory Flexibility Act (RFA), which requires an agency to review, within 10 years of publication, rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. Based on comments ATF received in response to the RFA analysis, the notice proposed amendments to the explosives regulations relating to fireworks. In addition, the notice proposed to incorporate into the regulations the provisions of an ATF ruling concerning alternate construction standards for storage facilities for explosive materials. The notice also proposed amendments to the regulations that were initiated by ATF, as well as amendments that were proposed by members of the explosives industry.

The comment period for Notice No. 968 closed on April 29, 2003. Prior to the close of the comment period, ATF received three requests to extend the comment period. One request came

from the Institute of Makers of Explosives (IME), a trade association of the commercial explosives industry representing all U.S. manufacturers of high explosives and other companies that distribute explosives or provide other related services. Among other reasons provided, IME stated that the scope of the NPRM and the importance of the proposed rule to the commercial explosives industry require it to conduct a comprehensive review and evaluation of the proposed regulations. IME determined that it cannot conclude such a review in the time currently allotted for comment submission and requested a 90-day extension of the comment period.

The International Society of Explosives Engineers (ISEE) provided similar reasons for requesting an extension of the comment period. ISEE stated that it is a technical society and the largest association of commercial explosives users in the United States, representing more than 4500 members engaged in the manufacture, transportation, storage, handling, use, and disposal of commercial explosives and related activities. ISEE requested an extension of the comment period of at least 90 days. A third commenter, citing the magnitude of the proposed amendments in Notice No. 968, also requested an extension of the comment period.

In consideration of the above, the Department of Justice believes that a reopening of the comment period is warranted. However, the comment period is being reopened until July 7, 2003. The Department believes that this is a sufficient amount of time for all interested parties to respond.

Public Participation

You may also submit written comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

—Be legible;
—Reference this document number;
—Be 8½″ x 11″ in size;
—Contain a legible written signature; and
—Be not more than five pages long.

ATF will not acknowledge receipt of facsimile transmissions. ATF will treat facsimile transmissions as originals.

Disclosure

Copies of this notice, Notice No. 968, and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Drafting Information

The author of this document is James P. Ficaretta; Firearms, Explosives and Arson; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

This notice is issued under the authority in 18 U.S.C. 847.

Dated: June 17, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–15777 Filed 6–20–03; 8:45 am]

BILLING CODE 4410–FY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI 82–01–7291; FRL–7517–4]

Clean Air Act Proposed Approval of Operating Permit Program Revisions; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Rule (R) 336.1216 of Michigan's title V air operating permit program. Michigan has not yet promulgated the rule revision which the State has submitted in draft for EPA action; however, if Michigan finalizes the revision as drafted, the permit shield provisions will no longer apply to certain administrative permit amendments. This rule revision would resolve the deficiency identified in EPA's Notice of Deficiency (NOD), published in the **Federal Register** on December 11, 2001.

The EPA is proposing to approve Michigan's operating permit program rule revision at the same time that Michigan is processing the rule revision. The EPA will finalize its approval of Michigan's program revision if Michigan promulgates and submits a final rule identical in substance to the draft rule it is processing.

DATES: Written comments on this proposed rule must be received on or before July 23, 2003.

ADDRESSES: Send comments to: Robert Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following location: EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact the person listed below to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, Permits and Grants Section, Air Programs Branch, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–2703, *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following:

I. What is the history of Michigan's title V operating permit program?
II. What is the program revision that EPA is proposing to approve?
III. What is involved in this proposed action?
IV. Statutory and Executive Order reviews

I. What Is the History of Michigan's Title V Operating Permit Program?

As required under Subchapter V of the Clean Air Act (Act), EPA has promulgated regulations that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, or withdraw approval of state operating permit programs (*see* 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states and local permitting authorities developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Michigan Department of Environmental Quality submitted the State's title V operating permit program for EPA approval on May 16, 1995, with supplements submitted on July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996. The EPA granted interim approval of the Michigan title V program on January 10, 1997 (62 FR 1387), and the program became effective on February 10, 1997. Subsequently, based on the interim approval corrections that the State submitted on June 1, 2001 and September 20, 2001, EPA granted full approval of the Michigan title V program, effective November 30, 2001. The EPA published the full program approval in the **Federal Register** on December 4, 2001 (66 FR 62949).

Pursuant to its authority at 40 CFR 70.10(b), EPA published an NOD for Michigan's title V operating permit program on December 11, 2001 (66 FR 64038). The NOD was based upon EPA's finding that Michigan's regulation granting a permit shield for certain administrative permit amendments did not meet federal requirements for program approval. On May 7, 2003 and May 21, 2003, Michigan submitted to EPA a revision to its title V program correcting this program deficiency. As discussed in detail below, EPA is proposing to approve Michigan's title V program revision. Final approval of this program revision will resolve the NOD.

II. What Is the Program Revision That EPA Is Proposing To Approve?

Michigan is in the final stages of revising its title V permit modification rule, R 336.1216, to remove the permit shield provision for certain types of administrative permit amendments. Although Michigan's rule revision is not yet final, the State's May 7, 2003 submittal included the draft rule that is awaiting review by Michigan's Joint Legislative Committee on Administrative Rules. The public comment period on the draft rule ended on November 6, 2002, and Michigan did not receive any adverse comment on the administrative amendment rule revision. Michigan expects that the rule will be finalized in the summer of 2003, at which time the State will submit the final rule to EPA.

Michigan's draft administrative permit amendment rule is consistent with 40 CFR 70.7(d)(4), which does not allow a permit shield for the types of changes described below. The permit shield provisions at 40 CFR 70.6(f) offer enforcement protection in certain prescribed situations. Michigan's draft revised R 336.1216(1)(b)(iv) states: ''The permit shield provided under R 336.1213(6) does not extend to administrative amendments made pursuant to subdivision (a)(i) to (iv) of this subrule.'' R 336.1216(1)(a)(i) through (iv) allow administrative amendments for the following types of changes: a change that corrects typographical errors; a change in the name, address or phone number of the responsible official or other contact person; a change that provides for more frequent monitoring and reporting; and a change in the ownership or operational control of a source where no other changes to the permit are necessary. These types of administrative permit amendments are the same as those specified in the federal rules at 40 CFR 70.7(d)(1)(i)–(iv).

In addition, draft R 336.1216 includes other minor changes to the State permit modification rule, including changes to the citation method for Michigan laws, and a clarification to R 336.1216(1)(b)(iii) regarding the implementation of administrative permit amendment changes made pursuant to R 336.1216(1)(a)(i) through (iv). This clarification is consistent with 40 CFR 70.7(d)(3)(iii) and 70.7(e)(2)(v).

III. What Is Involved in This Proposed Action?

The EPA is proposing to approve revisions to R 336.1216 of Michigan's title V operating permit program at the same time that Michigan is processing the State's rule revision. Michigan's draft regulation R 336.1216(1)(b)(iv) is now consistent with 40 CFR 70.7(d)(4). The EPA will finalize its approval of Michigan's program revision if Michigan promulgates and submits a final rule that is identical in substance to the draft rule it is processing. Upon final EPA approval, Michigan's program revision will resolve the program deficiency identified in EPA's NOD, published on December 11, 2001 (66 FR 64038).

Section 502(i)(2) of the Act and 40 CFR 70.10(b)(3) provide that, if a state has not corrected a deficiency within 18 months after the effective date of an NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. The sanctions set forth in section 179(b) include a prohibition on highway funding and an increase in the emission offset requirements under part D of title I of the Act. Michigan's 18 month sanctions clock expired on May 30, 2003. However, EPA interprets section 179(a) to mean that section 179(b) sanctions shall not apply until EPA selects the order in which sanctions shall apply through notice-and-comment rulemaking. This interpretation follows the interpretation of section 179(a) set forth in the title I sanctions rule, which selects the order of sanctions following certain State Implementation Plan findings under section 179(a). See EPA's proposed title I sanctions rule, 58 FR 51270, 51272 (October 1, 1993); see also EPA's final title I sanctions rule, 59 FR 39832, 39857 (August 4, 1994). The EPA has not yet promulgated the title V order of sanctions rulemaking, and thus no sanctions go into effect at this time.[1]

Consistent with EPA's final full approval of Michigan's title V program (66 FR 62951), this proposed approval does not extend to sources in Indian Country, as defined in 18 United States Code 1151.

[1] As noted in the NOD, EPA is in the process of developing the title V order of sanctions rule.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review'' (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.

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

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

Because this action 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

This proposed 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

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, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13045 Protection of Children from Environmental Health and Safety Risks

This proposed approval 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 a significant regulatory action under executive order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

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

Congressional Review Act

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

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

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

Dated: June 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–15762 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 98–42; FCC 03–123]

RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; termination.

SUMMARY: This document terminates this proceeding. We find that with the passage of time, the record in this proceeding has become outdated. There does not appear to be a need for further Commission action at this time, we are terminating this proceeding without prejudice to its substantive merits.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* ET Docket No. 98–42, FCC 03–123, adopted May 27, 2003 and released May 30, 2003. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com.*

Summary of the Order

1. On April 1, 1998, the Commission adopted a *Notice of Proposed Rule Making* (''NPRM'') in this proceeding, 63 FR 20362, April 24, 1998. The *NPRM* proposed changes to part 18 of the Commission's rules to update the regulations for radio frequency (RF) lighting devices operating in the 2.2–2.8 MHz and 2400–2500 MHz (''2450 MHz'') bands. On June 9, 1999, the Commission adopted a *First Report and Order,* 64 FR 37417, July 12, 1999, that relaxed the emission limits for RF lighting devices operating in the 2.51–3.0 MHz band, but deferred action on changes to the rules for RF lighting devices operating in the 2450 MHz band to a future date.

2. We find that with the passage of time, the *NPRM* and record in this proceeding have become outdated. The proposal for changes to the rules for 2450 MHz RF lighting devices was made in 1998. The only party that expressed interest in producing such RF lighting devices has informed the Commission that it will no longer pursue development of RF lighting devices in the 2450 MHz band. There does not appear to be a need for further Commission action at this time, we are terminating this proceeding without prejudice to its substantive merits. If any party wishes to pursue the issues in this proceeding in the future, nothing precludes us from evaluating them in the context of a new proceeding.

Ordering Clauses

3. Pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C.

154(i) and 154(j), ET Docket No. 98–42 *is terminated,* effective upon issuance of this order.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–15702 Filed 6–20–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 120

Monday, June 23, 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

Natural Resources Conservation Service

Yellow River Watershed Structures No. 15 and No. 17: Gwinnett County, Georgia

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yellow River Watershed Structures No. 15 and No. 17, Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Jimmy Bramblett, Water Resources Programs Leader, Natural Resources Conservation Service, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546–2073, e-mail *jimmy.bramblett@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Leonard Jordan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvements include upgrading two existing floodwater retarding structures.

The notice of a Filing of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jimmy Bramblett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Leonard Jordan,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials.)

Finding of No Significant Impact for Yellow River Watershed Structures No. 15 and No. 17, Gwinnett County, Georgia, June 2003

Introduction

The Yellow River Watershed is a federally assisted action authorized for planning under Public Law 106–472, the Small Watershed Rehabilitation Act, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Yellow River Watershed Structure No. 15 (Y–15) and No. 17 (Y–17), to meet current dam safety criteria in Georgia. The plan calls for construction of a roller-compacted concrete emergency spillway over the top of an existing earthen embankment on each structure. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures for each structure are to:

1. Construct a roller-compacted concrete emergency spillway over the top of an existing earthen embankment. This constructed emergency spillway is designed to bring the existing dam into compliance with current dam safety criteria in Georgia. The current emergency spillway will be removed from service by constructing a berm from material excavated on the existing embankment. The roller-compacted concrete spillway on Y–17 will be covered with grass to accommodate concerns of local residents and project sponsors related to Collins Hill Park, a local county owned and maintained recreational facility.
2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Installing a roller-compacted emergency spillway will bring Yellow River Watershed Structure No. 15 and No. 17 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 68 homes, 4 recreational facilities, and 6 roads (5 bridges) downstream. Addition effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 53 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be complemented with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Seven alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring Organizations include the Gwinnett County Government, Gwinnett, County Soil and Water Conservation District, and the Upper Ocmulgee River Resource Conservation and Development Council. At

the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Yellow River Watershed. Gwinnett County agreed to serve as ''lead sponsor'' being responsible for leading the planning process with assistance form NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process. Meetings with the project sponsors were held throughout the planning process, and project sponsors provided representation at planning team, technical advisory, and public meetings.

An Interdisciplinary Planning Team provided for the ''technical'' administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS-National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were evaluated at Planning Team meetings held on various dates throughout the planning process. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

A Technical Advisory Group was developed to aid the Planning Team with the planning process.

The following agencies were involved in developing this plan and provided representation on the Technical Advisory Group:

- Gwinnett County Government;
- Gwinnett County Soil and Water Conservation Districts;
- Georgia Department of Natural Resources, Environmental Protection Division [EPD], Safe Dams Program;
- Georgia Department of Natural Resources, Wildlife Resources Division [WRD], Game and Fisheries Section;
- Georgia Soil and Water Conservation Commission;
- United States Environmental Protection Agency (EPA), Region IV;
- USDA, Natural Resources Conservation Service (NRCS);
- USDI, Fish and Wildlife Service (F&WS);
- US Army Corps of Engineers (COE).

A meeting and field tour with the Technical Advisory Group was held on February 27, 2002, to assess proposed measures and their potential impact on resources of concern. A review of National Environmental Policy Act (NEPA) concerns was initiated at this meeting. Effects of proposed measures on NEPA concerns reviewed were documented. Additional field tours were held with the COE on March 11, 2002, to determine the most efficient 404 permitting process.

Suzanne Kenyon, Cultural Resources Specialist with the NRCS-National Water Management Center, visited the project site in the fall of 2001. She provided a methodology for considering culturally significant resources, which was followed in this planning process. An inventory of the watershed, and associated downstream impacted area was completed with no culturally important or archaeological sites noted. The area of potential effect was provided to the Georgia State Historic Preservation Office with passive concurrence provided.

Public Participation: Public meetings were held on November 12, 2002, and November 14, 2002, to explain the NRCS Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the Y–15 and Y–17 project area. Potential alternative solutions to bring Y–15 and Y–17 into compliance with current dam safety criteria were also presented. Through a voting process, meeting participants provided input on issues and concerns to be considered in the planning process, and identified the most socially acceptable alternative solution.

A second round of public meetings was held on March 27, 2003, and April 3, 2003, to summarize planning accomplishments, convey results of the reservoir sedimentation survey, and present various structural alternatives. The roller compacted concrete alternative was identified as the most complete, acceptable, efficient, and effective plan for the watershed.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, base on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Yellow River Watershed Structure No. 15 and No. 17 is not required.

Dated: June 13, 2003.

Leonard Jordan,

State Conservationist.

[FR Doc. 03–15758 Filed 6–20–03; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2002 the Department published the initiation of the four new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China covering the period September 1, 2001, through August 31, 2002. These new shipper reviews covered four exporters: Zhoushan Huading Seafood Co., Ltd.; Hubei Qianjiang Houhu Frozen & Processing Factory; Qingdao Jin Yong Xiang Aquatic Foods Co., Ltd.; and Siyang Foreign Trading Corporation (Siyang). *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping New Shipper Reviews* (67 FR 67822) (*New Shipper Initiation*). For the reasons discussed below, we are rescinding the review of Siyang.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein at (202) 482–3964 and (202) 482–1391, respectively; AD/CVD Enforcement, Office 7, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2002 the Department received a timely request for a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC from Siyang, an exporter of subject merchandise to the United States. In this request, Siyang identified Anhui Golden Bird Agricultural Products Development Co., Ltd. (Golden Bird) as the producer who supplied the subject merchandise to Siyang. Pursuant to section 351.214(b)(2)(ii)(B) of the Department's regulations, Siyang included, in addition to its own certifications, a certification from the general manager of Golden Bird stating that Golden Bird was the producer and certifying that Golden Bird did not export subject merchandise during the period of investigation (POI). Furthermore, pursuant to sections 351.214(b)(2)(iii)(A) and (B) of the Department's regulations, Golden Bird also certified that it had never been affiliated with any other producer or exporter of subject merchandise to the United States during the POI, and that its activities are not controlled by the PRC central government. On November 1, 2002, the Department initiated this new shipper review covering the period September 1, 2001 through August 31, 2002. *See New Shipper Initiation.*

Siyang provided responses to the Department's original and supplemental questionnaires on January 6, and April

3, 2003, respectively. In a letter dated March 27, 2003, Siyang informed the Department that the correct company name of its producer of subject merchandise is Anhui Golden Bird Agricultural & Side-Line Products Development Co., Ltd., and noted that the words ''& Side-Line'' were inadvertently missing from the name of the producer that was used in previous submissions. In the Department's memorandum to the file entitled *Siyang Foreign Trade Corporation's New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Intent to Rescind New Shipper Review (Intent to Rescind Memo),* dated May 19, 2003, we stated our intention to rescind Siyang's new shipper review because the initiation of this new shipper review was not based on complete and accurate information, thereby impairing the Department's ability to properly analyze and investigate certain information contained in Siyang's request for new shipper review. *See Intent to Rescind Memo* at 2.

On May 22, 2003, the Domestic Interested Parties [1] submitted a letter to the Department requesting that Siyang's new shipper review be rescinded as soon as possible in order to prevent further shipments of subject merchandise to the United States from entering under bond using the Siyang/Golden Bird exporter/producer combination antidumping duty rate. This letter also requested the Department to notify the U.S. Bureau of Customs and Border Protection (Customs) forthwith of this action in order to prevent circumvention of the order by allowing shipments to enter under bond for a lengthy period of time.

Rescission of Review

Siyang did not provide the Department with the correct certifications required under section 351.214(b)(2) of the Department's regulations for a new shipper review. Specifically, section 351.214(b)(2)(ii)(B) of the Department's regulations states that, if the company requesting the review is the exporter but not the producer of the subject merchandise, then the request from this company must contain a certification stating that the producer did not export subject merchandise to the United States during the POI. In addition, section 351.214(b)(2)(iii)(A) of the Department's regulations requires that the request for the new shipper review contain a certification that the producer has never been affiliated with any exporter or producer that exported subject merchandise to the United States during the POI. Moreover, section 351.214(b)(2)(iii)(B) of the Department's regulations further specifies that in an antidumping proceeding involving imports from a nonmarket economy country, the request for a new shipper review must also contain a certification that the export activities of the exporter or producer are not controlled by the central government.

As noted above, Siyang failed to identify the correct name of the producer of the subject merchandise for purposes of its required certifications. Furthermore, an official of Golden Bird submitted certifications that did not accurately identify the company's name. Therefore, we find it appropriate to rescind Siyang's new shipper review based on its failure to provide the proper certifications pursuant to 19 CFR 351.214(b)(2).

Notification

The Department will notify Customs that bonding is no longer permitted to fulfill security requirements for shipments using the Siyang/Golden Bird exporter/producer combination antidumping duty rate for freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 223.01 percent *ad valorem* should be collected for any entries exported by Siyang.

This notice also serves as the only 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(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: June 16, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–15796 Filed 6–20–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] The term ''Domestic Interested Parties'' refers collectively to the following: the Crawfish Processors Alliance and its members as listed in the December 4, 2002 Application for Administrative Protective Order; the Louisiana Department of Agriculture and Forestry; and, Bob Odom, Commissioner.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552–801]

Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

THE APPLICABLE STATUTE:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act''') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR 351 (2001).

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION

We determine that certain frozen fish fillets from the Socialist Republic of Vietnam are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 31, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value,*

Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam (''*Preliminary Determination*''), 68 FR 4986 (January 31, 2003). Since the *Preliminary Determination*, the following events have occurred:

On January 29, 2003, An Giang Fisheries Import and Export Joint Stock Company (''Agifish''), Vinh Hoan Company Limited (''Vinh Hoan''), Nam Viet Company Limited (''Nam Viet'') and Can Tho Agricultural and Animal Products Import Export Company (''CATACO''), hereinafter collectively referred to as ''Mandatory Respondents,'' timely filed allegations that the Department made ministerial errors in the *Preliminary Determination*.

On January 29, 2003, for purposes of a preliminary critical circumstances determination, the Department requested monthly shipment data from An Giang Agriculture and Food Import Export Company (''Afiex''), Can Tho Animal Fishery Products Processing Export Enterprise (''Cafatex''), Da Nang Seaproducts Import-Export Corporation (''Da Nang''), Mekongfish Company (''Mekonimex''), QVD Food Company Limited (''QVD''), Viet Hai Seafood Company Limited (''Viet Hai''), and Vinh Long Import-Export Company (''Vinh Long''), hereinafter referred to collectively as the ''Voluntary Section A Respondents''.

On January 30, 2003, the Voluntary Section A Respondents, the Mandatory Respondents, and the Vietnam Association of Seafood Exporters and Producers (''VASEP''), hereinafter referred to collectively as the ''Respondents,'' requested a one-week extension for the critical circumstances monthly shipment data. The Department granted this request on February 3, 2003. The Voluntary Section A Respondents requested a further two-day extension on February 7, 2003, which was granted by the Department on February 10, 2003. Also, on February 3, 2003, the Department granted to the Voluntary Section A Respondents and the Mandatory Respondents a one-week extension for submission of the Sales Reconciliation information.

On February 3, 2003, Catfish Farmers of America (''CFA'') and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as ''Petitioners,'' timely filed allegations that the Department made ministerial errors in the preliminary determination.

On February 6, 2003, the Ministry of Trade of the Socialist Republic of Vietnam (''MOT'') requested a two-week extension of the deadline to submit a request for an agreement suspending the present antidumping duty investigation. On February 10, 2003, the Department granted that request, making the deadline February 25, 2003.

On February 7, 2003, Petitioners submitted comments outlining the information relevant to the Department for an additional supplemental questionnaire.

On February 10, 2003, CATACO, Agifish, and Vinh Hoan submitted sales reconciliation information. Nam Viet requested a three-day extension to submit its sales reconciliation, which was granted by the Department on February 11, 2003. Also on February 10, 2003, the Voluntary Section A Respondents submitted monthly shipment data pursuant to the Department's January 29, 2003 request.

On February 11, 2003, the Department issued a request for information and supplemental questionnaire in three sections, with a deadline of February 25, 2003. Section I contained a request for comments or information from all interested parties regarding the Department's methodology for calculating normal value in the *Preliminary Determination*; specifically, whether the Department should continue to value live fish using a surrogate value or use the Respondents' reported upstream factors for producing live fish. The second section contained a supplemental Section D questionnaire to further clarify the four Mandatory Respondent companies' factor of production information. Finally, Section III contained supplemental questions arising from other portions of the four Mandatory Respondents' questionnaire responses.

In a letter dated February 12, 2003, the MOT protested the surrogate values and methodologies the Department used in the *Preliminary Determination* and requested that the Department reconsider certain issues. Also on February 12, 2003, the Voluntary Section A Respondents submitted their sales reconciliation data.

On February 13, 2003, Nam Viet requested a one-day extension to file its sales reconciliation information, which was granted by the Department on February 14, 2003. On February 14, 2003 Nam Viet submitted its sales reconciliation.

On February 19, 2003, the Department requested a more detailed sales reconciliation from the Mandatory and Voluntary Section A Respondents, including monthly sales data to allow the Department to reconcile the companies' reported U.S. sales figures to their annual financial statements and sales ledgers.

On February 21, 2003, the Mandatory and Voluntary Section A Respondents requested one-week extensions of the deadlines to file the more detailed Sales Reconciliation information and the February 11, 2003 request for comments and supplemental questionnaire. On February 21, 2003, Petitioners requested a one-month extension of the deadline to file comments related to Section I of the February 11, 2003 request for information.

On February 24, 2003, the Department granted the Petitioners and the Respondents a one-week extension of the deadline to file information related to the February 11, 2003 request for information and supplemental questionnaire, until March 4, 2003. Finally, the Department granted a one-week extension to the Respondents to file the more detailed sales reconciliation information, until March 5, 2003.

On February 25, 2003, the Department granted to the Government of Vietnam (''GOV'') a second extension of the deadline to file a proposed agreement to suspend the present antidumping duty investigation, for ten days until March 7, 2003.

On February 28, 2003, the Respondents submitted a letter requesting a public hearing pursuant to section 351.310 of the Department's regulations.

On March 3, 2003, Sunnyvale Seafood Corporation, an importer, requested a scope clarification to determine whether Basa ''cutlets'' are included in the scope of this investigation.

On March 3, 2003, the Department granted the Petitioners' request of an extension of the deadline to submit comments on the Department's use of factor input valuations in the *Preliminary Determination* until March 21, 2003 and the Department granted the Petitioners' request for an extension to submit comments addressing the normal value methodology (referenced in Section I of the February 11, 2003 request for information) until March 7, 2003. Also, on March 3, 2003, the Department granted the Respondents' request for an extension of the deadline to submit all responses pertaining to the February 11, 2003 request for information until March 4, 2003, and the more detailed sales reconciliation until March 5, 2003.

On March 3, 2003, the Petitioners submitted a letter requesting a hearing

pursuant to section 351.310 of the Department's regulations. The Petitioners requested to address the Department's LTFV margin calculations, choice of surrogate country, surrogate value data, and other issues pursuant to the *Preliminary Determination*.

On March 4, 2003, the Mandatory Respondents submitted their supplemental questionnaire responses related to Section II and Section III of the February 11, 2003 request for information.

On March 5, 2003, the Respondents submitted the more detailed sales reconciliation information for the four mandatory and seven voluntary respondents, as requested by the Department on February 19, 2003.

On March 5, 2003, we published the amended preliminary determination in the Federal Resister. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (''*Amended Preliminary Determination*''), 68 FR 10440 (March 5, 2003).

On March 7, 2003, the Department issued the verification outlines to the Mandatory Respondents.

On March 7, 2003, the GOV submitted a proposal for an agreement to suspend the current antidumping duty investigation in accordance with section 734(l) of the Act and section 351.208 of the Department's regulations.

On March 7, 2003, the Respondents submitted a response to Section I of the Department's February 11, 2003 request for information, regarding the appropriate methodology for calculating the normal value in the final determination, in which the Respondents argue that the Department should value the subject merchandise using the upstream factors, as reported by Respondents.

On March 7, 2003, the Petitioners also submitted their response to the Department's request for comments regarding the normal value methodology. The Petitioners argued the Department should continue to apply a surrogate value to the live fish input, as in the *Preliminary Determination*.

On March 7, 2003, the Respondents submitted factors of production databases for the Mandatory Respondent companies, reflecting both the gross and net-weight factors of production, as requested by the Department.

On March 10, 2003, the Petitioners submitted a letter certifying that they omitted certain pages from their March 7, 2003 methodology comments. In a separate filing on March 10, 2003, the Petitioners filed the replacement pages for those comments.

On March 10, 2003, Nam Viet submitted additional factor consumption information. Nam Viet previously had overlooked its consumption of coal, and reported the total consumption of coal for the twelve-month period reported in the March 4, 2003 supplemental questionnaire response.

On March 10, 2003, Agifish submitted additional factor consumption information.

On March 12, 2003, the Petitioners submitted a request for a one-week extension of the deadline to submit publicly available factor value information. On March 13, 2003, the Department granted the request.

On March 13, 2003, the Petitioners submitted verification comments for the Mandatory Respondents.

On March 14, 2003, Sunnyvale Seafood Corporation, an importer, requested a scope clarification to determine whether certain Basa ''nuggets'' are included in the scope of this investigation.

The Department conducted verification of the responses submitted to the record by the Mandatory Respondents from March 17 through March 28, 2003.

On March 19, 2003, in a memo to the file, the Department placed on the record information gathered in the course of this investigation, including information from Respondents' web sites, statistical and trade information, and other information relevant to this investigation. Also on March 19, 2003, in a separate memo to the file, the Department extended the due date for case briefs and rebuttal briefs to April 16, 2003, and April 23, 2003, respectively.

On March 27, 2003, the Respondents certified that they served the Petitioners copies of the verification exhibits for CATACO. On April 7, 2003, the Respondents served the verification exhibits for Agifish and Vinh Hoan, and on April 8, 2003, they served the verification exhibits for Nam Viet.

On March 28, 2003, the Petitioners and the Respondents submitted to the record additional comments on the valuation of factors of production for the final determination.

On April 10 and April 11, 2003, the Department released the verification reports for CATACO and Vinh Hoan, and Nam Viet and Agifish, respectively.

On April 11, 2003, the Petitioners requested extensions of the deadlines to submit case and rebuttal briefs. On April 14, 2003, the Department granted these extensions until April 30, 2003 and May 7, 2003, respectively.

On April 14, 2003, the Department requested that the Respondents submit missing information from Vinh Hoan's verification Exhibits. On April 15, 2003, the Department requested that the Respondents submit Nam Viet's missing verification exhibit 50.

On April 24, 2003, the Petitioners requested a one-week extension for the purposes of submitting their final case and rebuttal briefs.

On May 1, 2003, the Department placed information gathered during the course of this investigation on the record.

On May 5, 2003, the Petitioners, the Respondents, and the GOV filed their respective case briefs. On May 6, 2003, the Petitioners filed certain replacement pages for Petitioners' May 5, 2003 case brief. The Respondents and Petitioners submitted their respective rebuttal case briefs on May 12, 2003.

On May 12, 2003, the Department placed on the record letters from importers Picadilly Cafeterias, Inc. and Ryan Family Steakhouses, Inc. commenting on the present antidumping duty investigation.

On May 23, 2003, the Department held a public hearing in accordance with section 351.310(d)(l) of the Department's regulations. Representatives for the Respondents, the Petitioners, the GOV, and Piazza Seafood World, an importer, were present.

On May 28, 2003, we published the preliminary critical circumstances determination for the Section A Voluntary Respondents. *See Notice of Affirmative Preliminary Critical Circumstances Determination for Voluntary Section A Respondents: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (''*Section A Voluntaries Critical Circumstances*''), 68 FR 31681 (May 28, 2003). In addition, on June 12, 2003, the Department published a correction to the Voluntary Section A Respondents' Critical Circumstances. *See Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam; Correction* 68 FR 35197 (June 12, 2003).

Suspension Agreement

As discussed above under ''Case History,'' on March 7, 2003, the GOV submitted a proposed suspension agreement in accordance with the Department's regulations at 19 CFR 351.208. The Department and the GOV engaged in lengthy, intensive discussions regarding a possible suspension agreement, and both sides

made multiple settlement offers. However, we were unable to reach an agreement that fulfilled the Department's statutory requirements.

Scope of the Investigation

The Department has clarified the scope for purposes of the final determination to read as follows:

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (''POI'') is October 1, 2001 through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 28, 2001). *See* Section 351.204(b)(1) of the Department's regulations.

Analysis of Comments Received

All issues raised in the case brief by parties to this investigation are addressed in detail in the *Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Sectretary for Import Administration, Group III, Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, (June 16, 2003), (''*Final Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Final Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B-099. In addition, a complete version of the *Final Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the *Final Decision Memorandum* are identical in content.

Nonmarket Economy Country Status

On November 8, 2002, the Department determined under section 771(18)(A) of the Act, after analyzing comments from interested parties, that based on the preponderance of evidence on the record related to economic reforms in Vietnam to date, analyzed as required under section 771(18)(B) of the Act, that Vietnam should be treated as a non-market economy country under the U.S. antidumping law, effective July 1, 2001. *See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration from Shauna Lee-Alaia, George Smolik, Athanasios Mihalakas and Lawrence Norton, Office of Policy through Albert Hsu, Senior Economist, Office of Policy, Import Administration, Jeffrey May, Director, Office of Policy, Import Administration, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Determination of Market Economy Status* (''*Market Status Memo*''), dated November 8, 2002.

A designation as a non-market economy remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

Separate Rates

In our *Preliminary Determination*, we found that the Mandatory Respondents and all Voluntary Section A Respondents, including Vinh Long, met the criteria for the application of separate, company-specific antidumping duty rates. For purposes of the final determination, we continue to grant separate, company-specific rates to the eleven exporters which sold certain frozen fish fillets to the United States during the POI. For a complete discussion of the Department's determination that the Respondents, including Vinh Long, are entitled to a separate rate, please see the *Final Decision Memorandum* at Comments 5 and 6.

Critical Circumstances

Based on new information on the record of this investigation and information provided in our preliminary affirmative critical circumstances determinations, we have determined for purposes of the final determination, that critical circumstances exist for Nam Viet, Afiex, Cafatex, QVD, Da Nang, and the Vietnam-wide entity. For further details, see the *Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam* 68 FR 31681 (May 28, 2003), the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, (January 31, 2003), and the *Final Decision Memorandum* at Comment 7.

Additionally, because we have determined that Vinh Long had sales of subject merchandise during the POI and merits a separate rate, we must therefore, conduct a critical circumstances analysis for Vinh Long. We have found that critical circumstances exist for Vinh Long. For a more detailed discussion, please see the *Final Decision Memorandum* at Comment 6.

Vietnam-Wide Rate

All exporters and the GOV were given an opportunity to provide information showing they qualify for separate rates. Consequently, we are applying a single antidumping rate the Vietnam-wide rate to all producers/exporters that failed to respond to the Department's Q&V questionnaire and demonstrate entitlement to a separate rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The Vietnam-wide rate applies to all entries of the merchandise under investigation except for entries from Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai and Vinh Long.

For the reasons set forth in the *Preliminary Determination* and reaffirmed in the *Final Decision Memorandum* at Comment 8, we continue to find that the use of adverse facts available for the Vietnam-wide rate is appropriate. As adverse facts available, the Vietnam-wide rate is not intended to be a reflection of the antidumping duty margins applied as separate rates to the respondent companies. Consistent with our *Preliminary Determination* and with previous cases in which the respondent is considered uncooperative, as adverse facts available, we have applied a rate of 63.88 percent, the highest rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department). *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847 (March 5, 1998). The information used to calculate this Vietnam-wide rate was corroborated independently with some small changes in accordance with Section 776(c) of the Act. *See Memorandum to Edward C. Yang, Director, Office IX from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager, Preliminary Determination in the Investigation of Certain Frozen Fish Fillets from Vietnam, Corroboration Memorandum* (''*Corroboration Memo*''), dated January 24, 2003.

Surrogate Country

For purposes of the final determination, we continue to find that Bangladesh is the appropriate primary surrogate country. For further discussion and analysis regarding the surrogate country selection, *see* the Department's *Preliminary Determination*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the Respondents. For company-specific changes from the *Amended Preliminary Determination as a result of verification, see Memorandum to the File, from Alex Villanueva, Case Analyst, Final Analysis Memorandum for Agifish* April 11, 2003 (''*Final Analysis Memo for Agifish*''), *Memorandum to the File, from Joe Welton, Case Analyst, Final Analysis Memorandum for Nam Viet* April 11, 2003 (''*Final Analysis Memo for Nam Viet*''), *Memorandum to the File, from Lisa Shishido, Case Analyst, Final Analysis Memorandum for Vinh Hoan* April 10, 2003 (''*Final Analysis Memo for Vinh Hoan*''), *Memorandum to the File, from Paul Walker, Case Analyst, Final Analysis Memorandum for CATACO* April 10, 2003 (''*Final Analysis Memo for CATACO*'').

Facts Available

For purposes of this final determination, we have determined that the use of facts available is appropriate for certain elements of the Respondents' dumping margin calculations. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. For a further discussion of the facts available applied to the Respondents, please see the *Final Decision Memorandum* at Comments 2 and 12.

Changes Since the Preliminary Determination

Based on our findings at verification, additional information placed on the record of this investigation, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. For discussions of the company-specific changes made since the preliminary determination to the final margin programs, see Final Analysis Memo for Agifish, Final Analysis Memo for Nam Viet, Final Analysis Memo for Vinh Hoan, and Final Analysis Memo for CATACO.

Margins for Cooperative Exporters Not Selected

For those exporters who responded to Section A of the Department's antidumping questionnaire and had sales of the merchandise under investigation, but were not selected as Mandatory Respondents in this investigation, the Department has calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 64 FR 24101 (May 11, 2001). For further discussion, see the *Preliminary Determination*.

Surrogate Values

The Department made changes to the surrogate values used to calculate the normal value from the *Preliminary Determination*. For a complete discussion of the surrogate values, *see Memorandum to the File from Lisa Shishido, Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Office Director, regarding Factor Valuations for the Final Determination* (''*Final Factor Value Memo*''), dated June 16, 2003.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (''Customs'') to continue to suspend liquidation of all entries of subject merchandise from Vietnam, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* for Agifish, CATACO, Vinh Hoan, Mekonimex, and Viet Hai. With respect to Nam Viet, QVD, Da Nang, Afiex, Cafatex, Vinh Long and all other Vietnam exporters, the Department will direct Customs to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. Customs shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

Final Determination

We determine that the following weighted-average dumping margins exist for the period October 1, 2001 through March 30, 2002:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/Manufacturer/Exporter	Weighted-Average Margin (Percent)
Agifish	44.76
Vinh Hoan	36.84
Nam Viet	52.90
CATACO	45.55
Afiex	44.66
Cafatex	44.66
Da Nang	44.66
Mekonimex	44.66
QVD	44.66
Viet Hai	44.66
Vinh Long	44.66
Vietnam Wide Rate	63.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with sections 735 (d) and 777(i)(1) of the Act.

Dated: June 16, 2003.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix: Issues in the Final Decision Memorandum

Comment 1: Total Adverse Facts Available
Comment 2: Partial Adverse Facts Available
Comment 3: Valuation of Factors of Production
Comment 4: Catfish Article
Comment 5: Separate Rates for Respondents
Comment 6: Vinh Long[1]'s Separate Rate
Comment 7: Critical Circumstances for Mandatory Respondents[2]
Comment 8: Critical Circumstances for the Voluntary Section A Respondents[3]
Comment 9: Vietnam-Wide Rate
Comment 10: Company Names for Customs[4] Instructions
Comment 11: Scope Clarification
Comment 12: By-Product Offsets
Comment 13: Proper Reporting Periods
Comment 14: Selection of Surrogate Values
Comment 15: Valuation of River Water
Comment 16: Containerization and Warehousing
Comment 17: Correction of Inadvertent Errors
Comment 18: Species-Specific Information

[FR Doc. 03–15794 Filed 6–20–03; 8:45 am]

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[1] Vinh Long Import-Export Company

[2] The Mandatory Respondents in this case are Agifish, CATACO, Nam Viet and Vinh Hoan.

[3] The Voluntary Section A Respondents in this case receiving a separate rate are Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai, and Vinh Long (see Comment 6).

[4] U.S. Bureau of Customs and Border Protection.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of antidumping duty administrative reviews.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning at (202) 482–3936 or (202) 482–5253, respectively; AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On March 18, 2003, the Court of Appeals for the Federal Circuit (CAFC) denied a petition for panel rehearing subsequent to its decision affirming the United States Court of International Trade (CIT), which had sustained the remand determination of the Department of Commerce (the Department) in the administrative review of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC), covering the period February 1, 1998, through January 31, 1999. *See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp.* v. *United States,* No. 02–1095 (Fed. Cir. 2003). As there is now a final court decision, we are amending the amended final results of the review in this matter. We will instruct the Bureau of Customs and Border Protection (BCBP) to liquidate entries subject to these amended final results.

Background

On July 13, 2000, the Department published the final results of its eighth antidumping duty administrative review of HFHTs from the PRC. *See Heavy Forged Hand Tools from the People's Republic of China: Notice of Final Results and Partial Rescission of*

Antidumping Duty Administrative Reviews, 65 FR 43290 (July 13, 2000) (*98–99 Final Results*). On August 18, 2000, the Department published amended final results of its antidumping duty review of HFHTs from the PRC. *See Heavy Forged Hand Tools from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews,* 65 FR 50499 (August 18, 2000) (*Amended 98–99 Final Results*).

Following the publication of the *Amended 98–99 Final Results,* Shandong Huarong General Group Corp. (Huarong), Liaoning Machinery Import & Export Company (LMC), and Tianjin Machinery Import & Export Corp. (TMC) challenged certain aspects of our final results and amended final results before the CIT. This litigation resulted in a remand order by the CIT to revise the margin calculation program by redetermining the surrogate value for pallets and recalculating the margin accordingly. *See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp.* v. *United States,* 159 F. Supp. 2d 714 (Ct. Int'l Trade, 2001). On September 20, 2001, the Department issued its *Final Results Of Redetermination Pursuant to Court Remand, Shandong Huarong General Corp.* v. *The United States* (Remand Redetermination), addressing the ruling of the CIT. The Remand Redetermination can be found at *http://www.ia.ita.doc.gov/remands/01-88.htm.*

On October 30, 2001, the CIT sustained the redetermination made by the Department pursuant to the remand. *See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp.* v. *United States,* 177 F. Supp. 2d 1304 (Ct. Int'l Trade, 2001). The decision of the CIT was subsequently affirmed by the CAFC. *See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp.* v. *United States,* No. 02–1095 (Fed. Cir. 2003). A panel rehearing was denied on March 18, 2003.

Amendment to Final Results

The time period for appealing the CAFC's final decision has expired and no party has appealed this decision. As there is now a final and conclusive court decision with respect to litigation for Huarong, LMC, and TMC, we are amending the final results of review to reflect the findings of the remand results, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act). The amended weighted-average margins are:

Manufacturer/exporter	Margin (percent)
Shandong Huarong General Group Corporation:	
Axes/Adzes	55.74
Bars/Wedges	27.28
Liaoning Machinery Import & Export Corporation: Bars/Wedges	27.18
Tianjin Machinery Import & Export Corporation:	
Axes/Adzes	55.74
Bars/Wedges	139.31
Hammers/Sledges	0.41
Picks/Mattocks	0.10

Assessment Rates

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above de minimis, we will instruct the BCBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these amended final results of review. We will direct the BCBP to assess the resulting assessment rates for the subject merchandise on each of the importer's entries during the review period.

Notification

This notice also serves as a final 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 doubled 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 19 CFR 351.305. Timely written notification of 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.

These final results of administrative review are issued and published 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: June 16, 2003.

Joseph A. Spetrini,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-580–851]

Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to certain producers and exporters of dynamic random access memory semiconductors from the Republic of Korea. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan, Jesse Cortes, or Daniel J. Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone(202) 482–2613, (202) 482–3986, and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioner in this investigation is Micron Technology, Inc. (''the petitioner'').

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2001 through June 30, 2002.

Case History

The following events have occurred since the publication of the preliminarydetermination in the **Federal Register** on April 7, 2003. *See*

Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea (68 FR 16766) (''*Preliminary Determination*'').

On April 7, 2003, the petitioner submitted comments alleging that Samsung Electronics Co., Ltd., (''SEC'') was uncreditworthy during the period 1997 through 1999. SEC filed rebuttal information relating to this allegation on April 10 and 17, 2003. The Department of Commerce (''the Department'') initiated an investigation of SEC's creditworthiness for 1998 only in an April 17, 2003 memorandum to Louis Apple entitled ''Samsung Electronics Co., Ltd. Uncreditworthiness Allegation,'' which is on file in the Department's Central Records Unit in Room B-099 of the main Department building (''CRU''). SEC and the petitioner filed further comments on this creditworthiness investigation subsequent to its initiation.

On April 8, 2003, Hynix Semiconductor, Inc. (''Hynix'') submitted ministerial error allegations relating to the *Preliminary Determination*. The petitioner filed a response to these allegations on April 14, 2003. We addressed these ministerial error allegations in an April 16, 2003 memorandum to Louis Apple entitled ''Ministerial Error Allegations for Preliminary Determination,'' which is on file in the Department's CRU.

We issued supplemental questionnaires to SEC, Hynix, and the Government of the Republic of Korea (''GOK'') on April 8, and May 5, 6, and 20, 2003. We received responses to these supplemental questionnaires on April 14 and 16, and May 13, 15, and 22, 2003. The respondents, the petitioner, and interested parties also submitted factual information, comments, and arguments at numerous instances prior to the final determination based on various deadlines for submissions of factual and information and/or arguments established by the Department subsequent to the *Preliminary Determination*.

From April 21 to May 3, 2003, we conducted verification of the questionnaire responses submitted by the GOK, Hynix, and SEC.

On May 28, 2003, the Department issued a memorandum entitled ''Preliminary Determination on New Subsidy Allegations and New Subsidies Discovered in the Course of Investigation'' (''*Supplemental Preliminary Determination Memo*'') that addressed two new allegations raised by the petitioner just prior to the *Preliminary Determination*, as well as one new program discovered during verification.

We received case briefs from the GOK, SEC, Hynix, Infineon Technologies North America Corporation and Infineon Technologies Richmond, LP (a domestic producer and an interested party in this proceeding), and the petitioner on May 22, 2003. The parties submitted rebuttal briefs on May 30, 2003. On June 2, 2003, the petitioner and the GOK/SEC submitted supplemental case briefs on the issues addressed in the Department's *Supplemental Preliminary Determination Memo*. These same parties submitted rebuttal briefs on these topics on June 4, 2003. We held a hearing in this investigation on June 6, 2003.

Scope of Investigation

The products covered by this investigation are dynamic random access memory semiconductors (''DRAMS'') from the Republic of Korea (''ROK''), whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAMS module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the U.S. Bureau of Customs and Border Protection (''Customs'') that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under ubheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Injury Test

Because the ROK is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from the ROK materially injure, or threaten material injury to, a U.S. industry. On December 13, 2002, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from the ROK of the subject merchandise. *See Drams and Dram Modules from Korea*, 67 FR 79148 (December 27, 2002).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, dated June 16, 2003 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this

notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Korea.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

As a result of our *Preliminary Determination*, we instructed Customs to suspend liquidation of all entries of DRAMS from the ROK which were entered or withdrawn from warehouse, for consumption on or after April 7, 2003, the date of the publication of the *Preliminary Determination* in the **Federal Register** (with the exception of entries from SEC as we preliminarily determined SEC's rate to be *de minimis*).

In accordance with section 705(c)(1)(C) of the Act, we are directing Customs to continue to suspend liquidation of all imports of the subject merchandise from the ROK that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, with the exception of entries for SEC, for whom we have determined the net subsidy rate to be *de minimis*. These suspension of liquidation instructions will remain in effect until further notice.

We determine the total estimated net subsidy rate for each company to be the following:

Producer/Exporter	Net Subsidy Rate
Samsung Electronics Co., Ltd.	0.04 percent (*de minimis*)
Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.)	44.71 percent
All Others	44.71 percent

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the ''all others'' rate as Hynix' rate because the rate for SEC, the only other investigated company, is *de minimis*.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination and we will instruct Customs to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (''APO''), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: June 16, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Direction of Credit
Comment 2: Specificity Relating to Direction of Credit
Comment 3: Application of Commercial Benchmarks to Determine the Amount of Benefits to Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd. (''HEI'')) (''Hynix'')
Comment 4: Direction of Credit Through the Government of the Republic of Korea's (''GOK'') Control of the Bond Market
Comment 5: Hynix Creditworthiness
Comment 6: Korea Development Bank (''KDB'') Fast Track Program
Comment 7: Hynix October 2001 Debt-to-Equity Conversion
Comment 8: Hynix October 2001 Debt Forgiveness
Comment 9: Hynix Five-Year Interest-Free Loan Stemming from October 2001 Restructuring
Comment 10: Hynix October 2001 Retroactive Reduction of Accrued Interest as Part of Debt-Equity Swap
Comment 11: Hynix Benefit from Convertible Bonds (''CB'') Arising Between Issuance and Conversion Stemming from October 2001 Restructuring
Comment 12: Treating Loans to Hynix in Excess of Banking Act Exposure Limitations and Documents Against Acceptance (''D/A'') Financing as Grants
Comment 13: D/A Interest Rates
Comment 14: Hynix Sales
Comment 15: Hynix Short-Term Financing
Comment 16: Ministerial Errors In Certain Hynix Preliminary Determination Calculations
Comment 17: Use of LG Semiconductor, Inc. (''LG Semicon'') Bonds as Hynix Benchmarks
Comment 18: Calculation of Uncreditworthy Benchmarks
Comment 19: Other General Benchmark Issues
Comment 20: Samsung Electronics Co., Ltd. (''SEC'') Creditworthiness
Comment 21: Facts Available for SEC's Unreported Short- and Long-Term Financing
Comment 22: Treatment of Certain SEC Interest Payments
Comment 23: SEC Sales
Comment 24: Energy Savings Fund (''ESF'') Program
Comment 25: De Facto Specificity of Certain Tax Programs Under the Tax Reduction and Exemption Control Act (''TERCL'') and/or the Restriction of Special Taxation Act (''RSTA'')
Comment 26: RSTA Article 26 and Import Substitution
Comment 27: 21st Century Frontier Research and Development (''R&D'') Program
Comment 28: Other R&D Programs
Comment 29: Export Insurance Program
Comment 30: Electricity Discounts Under the Requested Load Adjustment (''RLA'') Program

Comment 31: Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates, and on Domestic Sales of Finished Products Manufactured from Imported Raw Materials
Comment 32: Import Duty Reduction for Cutting Edge Products
Comment 33: Permission for Hynix and SEC to Build in Restricted Area
Comment 34: Exemption of Value-Added Tax (''VAT'') on Imports Used for Bonded FactoriesUnder Construction

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Modification of agency practice regarding privatizations.

SUMMARY: On January 8, 2003, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted the report of the WTO Appellate Body in *United States-Countervailing Measures Concerning Certain Products from the European Communities,* WT/DS212/AB/R (December 9, 2002) (*Certain Products*), that recommends that the United States bring its administrative practice regarding privatization, both as such and as applied in twelve challenged administrative determinations, into conformity with its obligations under the WTO Subsidies and Countervailing Measures Agreement (Subsidies Agreement). Section 123 of the Uruguay Round Agreements Act (URAA) governs changes in the Department of Commerce's (Department's) practice when a dispute settlement panel or the Appellate Body of the World Trade Organization finds such practice to be inconsistent with any of the Uruguay Round agreements. Consistent with section 123(1)(g)(C), we published a proposed modification of the Department's privatization methodology, together with an explanation thereof, and provided opportunity for public comment. *Notice of Proposed Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act and Request for Public Comment,* 68 FR 13897 (March 21, 2003). We received numerous affirmative and rebuttal comments submitted pursuant to this notice, as discussed below.

FOR FURTHER INFORMATION CONTACT: Greg Campbell, Office of Policy, Import Administration, U.S. Department of Commerce, Room 3712, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2239.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). Citation to ''section 123'' refers to section 123 of the URAA.

Background

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit in *Delverde Srl* v. *United States,* 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g granted in part* (June 20, 2000) (Delverde III), rejected the Department's application of its change-in-ownership methodology, as explained in the *General Issues Appendix,* to the facts before it in that case.[1] The Federal Circuit held that the Act, as amended, did not allow the Department to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically ''passed through'' to Delverde following the sale. Rather, where a subsidized company has sold assets to another company, the Court held that the Act requires the Department to examine the particular facts and circumstances of the sale and determine whether the purchasing company directly or indirectly received both a financial contribution and benefit from the government. Delverde III, 202 F.3d at 1364–1368.

Pursuant to the Federal Circuit's finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the Federal Circuit's decision in *Delverde III,* and also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review,* 66 FR 2885 (January 12, 2001). The first step under this methodology was to determine whether the legal person to which the subsidies were given was, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determined that the two persons were distinct, we then analyzed whether a subsidy was provided to the purchasing entity as a result of the change-in-ownership transaction. If we found, however, that the original subsidy recipient and the current producer/exporter were the same person, then that person continued to benefit from the original subsidies, and its exports were subject to countervailing duties to offset those subsidies.

This ''same-person'' privatization methodology is currently the subject of appeals to the Federal Circuit in three cases: *Acciai Speciali Terni S.p.A.* v. *United States,* Ct. No. 01–00051; *Allegheny Ludlum Corp.* v. *United States,* Ct. Nos. 03–1189 and 03–1248; and *GTS Industries, S.A.* v. *United States,* Ct. Nos. 03–1175 and 03–1191.

On August 8, 2001, the European Communities requested that the DSB establish a dispute settlement panel to examine the practice of the United States of imposing countervailing duties on certain products exported from the European Communities by privatized companies. A panel was established, the case was briefed and argued, and the Panel circulated its final report on July 31, 2002. *United States-Countervailing Measures Concerning Certain Products from the European Communities,* WT/DS212/R (July 31, 2002) (Panel Report). The United States appealed certain findings and conclusions in the Panel Report, and the Appellate Body circulated its report on December 9, 2002. *United States-Countervailing Measures Concerning Certain Products from the European Communities,* WT/DS212/AB/R (December 9, 2002) (AB Report). The AB Report, and the Panel Report as modified by the AB Report, were adopted by the DSB on January 8, 2003. On January 27, 2003, the United States informed the DSB that it would implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations.

Section 123 of the URAA is the applicable provision governing the actions of the Department when a WTO dispute settlement panel or the Appellate Body finds that a regulation or practice of the Department is inconsistent with any of the Uruguay Round agreements. Specifically, section 123(g)(1) provides that, ''[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements, that regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until * * * (C) the head of the relevant department or agency has provided an opportunity for public

[1] Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993).

comment by publishing in the **Federal Register** the proposed modification and the explanation for the modification; * * *.'' Accordingly, consistent with section 123(1)(g)(C), we published a proposed modification of the Department's privatization methodology, together with an explanation thereof, and provided opportunity for public comment. *Notice of Proposed Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act and Request for Public Comment,* 68 FR 13897 (March 21, 2003) (*Proposed Modification*). We received numerous affirmative and rebuttal comments submitted pursuant to this notice, as discussed below.

Legal Context

To provide a context for the discussion of changes to our new privatization methodology, we first review the statutory provisions governing the Department's analysis of changes in ownership in the countervailing duty context, as explained in the Statement of Administrative Action (SAA) and interpreted by the Court. The statute provides, at section 771(5)(F), that ''[a] change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.'' The SAA explains that ''the term 'arm's-length transaction' means a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.'' SAA, at 258. The SAA further explains that

> [s]ection 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. * * * The issue of the privatization of a state-owned firm can be extremely complex and multifaceted. While it is the Administration's intent that Commerce retain the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies, Commerce must exercise this discretion carefully through its consideration of the facts of each case and its determination of the appropriate methodology to be applied.

Id.

The Federal Circuit reviewed the statute's change-in-ownership provisions in *Delverde III.* In that decision, in striking down the Department's previous ''gamma'' privatization methodology on the basis that, *inter alia,* it was a *per se* rule, the Federal Circuit opined

> Had Commerce fully examined the facts, it might have found that [the respondent] paid full value for the assets and thus received no benefit from the prior owner's subsidies, or Commerce might have found that [the respondent] did not pay full value and thus did indirectly receive a 'financial contribution' and a 'benefit' from the government by purchasing its assets from a subsidized company 'for less than adequate remuneration.' * * * Commerce might have reached the conclusion that [the respondent] indirectly received a subsidy by other means.

Delverde III, 202 F.3d at 1368.

In light of the SAA and the Federal Circuit's findings, we believe the statute grants the Department flexibility and discretion in the countervailing duty context for analyzing changes in ownership, including privatizations.

WTO Findings and Recommendations

We now turn to the findings of the Panel and Appellate Body. At the outset, the Panel clarified that its findings apply only to changes in ownership that involve privatizations in which the government retains no controlling interest in the privatized producer and transfers all or substantially all the property. *Panel Report* at para. 7.62; noted in *AB Report* at paras. 85 and 117, footnote 177. The Panel then stated that, ''[w]hile Members may maintain a rebuttable presumption that the benefit from prior financial contributions (or subsidization) continues to accrue to the privatized producer, privatization at arm's length and for fair market value is sufficient to rebut such a presumption. *Panel Report* at para. 7.82, upheld at *AB Report* at para 126. This finding led the Panel to hold, *inter alia,* that the Department's same-person methodology is contrary to the requirements of the Subsidies Agreement.

While the Appellate Body agreed with the Panel that the same-person methodology is contrary to the requirements of the Subsidies Agreement, it clarified that

> [p]rivatization at arm's length and for fair market value may result in extinguishing the benefit. Indeed, we find that there is a rebuttable presumption that a benefit ceases to exist after such a privatization. Nevertheless, it does not necessarily do so. There is no inflexible rule requiring that investigating authorities, in future cases, automatically determine that a 'benefit' derived from pre-privatization financial contributions expires following privatization at arm's length and for fair market value. (Emphasis in original)

AB Report at para. 127.

The Appellate Body identified examples of circumstances where the conditions necessary for ''market prices'' to fairly and accurately reflect subsidy benefits are not present, or are ''severely affected'' by the government's economic and other policies

> Markets are mechanisms for exchange. Under certain conditions (*e.g.*, unfettered interplay of supply and demand, broad-based access to information on equal terms, decentralization of economic power, an effective legal system guaranteeing the existence of private property and the enforcement of contracts), prices will reflect the relative scarcity of goods and services in the market. Hence, the actual exchange value of the continuing benefit of past non-recurring financial contributions bestowed on the state-owned enterprise will be fairly reflected in the market price. However, such market conditions are not necessarily always present and they are often dependent on government action.
>
> Of course, every process of privatizing public-owned productive assets takes place within the concrete circumstances prevailing in the market in which the sale occurs. Consequently, the outcome of such a privatization process, namely the price that the market establishes for the state-owned enterprise, will reflect those circumstances. However, governments may choose to impose economic or other policies that, albeit respectful of the market's inherent functioning, are intended to induce certain results from the market. In such circumstances, the market's valuation of the state-owned property may ultimately be severely affected by those government policies, as well as by the conditions in which buyers will subsequently be allowed to enjoy property.
>
> The Panel's absolute rule of ''no benefit'' may be defensible in the context of transactions between two private parties taking place in reasonably competitive markets; however, it overlooks the ability of governments to obtain certain results from markets by shaping the circumstances and conditions in which markets operate. Privatizations involve complex and long-term investments in which the seller—namely the government—is not necessarily always a passive price taker and, consequently, the ''fair market price'' of a state-owned enterprise is not necessarily always unrelated to government action. In privatizations, governments have the ability, by designing economic and other policies, to influence the circumstances and the conditions of the sale so as to obtain a certain market valuation of the enterprise.

AB Report at paras. 122–124.

Accordingly, the Appellate Body reversed the Panel's conclusion that once an importing Member has determined that a privatization has taken place at arm's length and for fair

market value, it must reach a conclusion that no benefit resulting from the prior financial contribution continues to accrue to the privatized producer. *AB Report* at para. 161(b). However, the Appellate Body nevertheless found the Department's same-person privatization methodology to be inconsistent with the WTO obligations of the United States because, under that methodology, where the entity that produced the subject merchandise was the very same entity that received the subsidy, the Department is precluded from finding that an arm's-length, fair market value privatization transaction extinguished the pre-privatization subsidy benefit. Accordingly, the Appellate Body recommended that the DSB request the United States to bring its measures and administrative practice (*i.e.*, the same-person methodology) into conformity with its obligations under the Subsidies Agreement. *AB Report* at para. 162.

Final Modification

The Department's final modification of its practice regarding privatizations of state-owned enterprises in the countervailing duty context is basically the same as the proposed modification, but with some revisions that are discussed below in the Department's response to the comments. This new practice is fully consistent with the statute, which gives the Department broad discretion in analyzing changes in ownership.

The methodology is based on certain rebuttable presumptions, reflecting the conclusions of the Panel and Appellate Body. The ''baseline presumption'' is that non-recurring subsidies can benefit the recipient over a period of time (*i.e.*, allocation period) normally corresponding to the average useful life of the recipient's assets. However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value.

In considering whether the evidence presented demonstrates that the transaction was conducted at arm's length, we will be guided by the SAA's definition of an arm's-length transaction, noted above, as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.

In analyzing whether the transaction was for fair market value, the basic question is whether the full amount that the company or its assets (including the value of any subsidy benefits) were actually worth under the prevailing market conditions was paid, and paid through monetary or equivalent compensation.[2] In making this determination, the Department will normally examine whether the government, in its capacity as seller, acted in a manner consistent with the normal sales practices of private, commercial sellers in that country. A primary consideration in this regard normally will be whether the government failed to maximize its return on what it sold, indicating that the purchaser paid less for the company or assets than it otherwise would have had the government acted in a manner consistent with the normal sales practices of private, commercial sellers in that country.[3] Accordingly, in determining whether the evidence presented, including, *inter alia,* information on any comparable benchmark prices as well as information on the process through which the sale was made, demonstrates that the transaction price was fair market value, the following non-exhaustive list of factors might be considered.

(1) Objective analysis: Did the government perform or obtain an objective analysis in determining the appropriate sales price? Did it implement the recommendations of such objective analysis for maximizing its return on the sale, including in regard to the sales price recommended in the analysis?

(2) Artificial barriers to entry: For example, did the government impose restrictions on foreign purchasers or purchasers from other industries, or overly burdensome or unreasonable bidder qualification requirements, or any other restrictions that artificially suppressed the demand for, or the purchase price of, the company?

(3) Highest bid: For example, was the highest bid accepted and was the price paid in cash or close equivalent? Why or why not?

(4) Committed investment: For example, were there price discounts or other inducements in exchange for promises of additional future investment that private, commercial sellers would not normally seek (*e.g.*, retaining redundant workers or unwanted capacity)? Did the committed investment requirements serve as a barrier to entry, or in any way distort the value that bidders were willing to pay for what was being sold?

If we determine that the evidence presented does not demonstrate that the privatization was at arm's length for fair market value, the baseline presumption will not be rebutted and we will find that the unamortized amount of any pre-sale subsidy benefit continues to be countervailable. Otherwise, if it is demonstrated that the privatization was at arm's length for fair market value, any pre-sale subsidies will be presumed to be extinguished in their entirety and, therefore, non-countervailable.

A party can, however, obviate this presumption of extinguishment by demonstrating that, at the time of the privatization, the broader market conditions[4] necessary for the transaction price to reflect fairly and accurately the subsidy benefit were not present, or were severely distorted by government action (or, where appropriate, inaction).[5] In other words, even if we find that the sales price was at ''market value,'' parties can demonstrate that the broader market conditions were severely distorted by the government and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action.

Some factors, *inter alia,* that might be considered in determining whether these broader market distortions exist include:

1. Basic Conditions: For example, are the basic requirements for a properly functioning market sufficiently present in the economy in general as well as in the particular industry or sector, including free interplay of supply and demand, broad-based and equal access to information, sufficient safeguards against collusive behavior, effective operation of the rule of law, and adequate enforcement of contracts and property rights?

2. Legal and Fiscal Incentives: Has the government used the prerogatives of government in a special or targeted way that makes possible, or otherwise significantly distorts the terms of, a sale in a way that a private seller could not, *e.g.*, through special tax or duty rates that make the sale more attractive to potential purchasers generally or to particular (*e.g.*, domestic) purchasers, through regulatory exemptions particular to the privatization (or privatizations generally) affecting worker retention or environmental remediation, or through subsidization or support of other companies to an extent that severely distorts the normal market signals regarding company and asset values in the industry in question?

[2] With regard to an analysis of the transaction price, we note that there is no statutory definition of fair market value, nor does the SAA give any guidance in this area.

[3] Under normal market conditions, the purchaser would have otherwise had to pay fair market value for the company or assets.

[4] The term ''market conditions'' is used here in a broad sense, not only incorporating economic and financial considerations, but also the legal and regulatory regime in which the market operates.

[5] We would generally be concerned here only with the actions of government in its role ''as government,'' and not the actions of the government in its role as the seller. In other words, we would examine here only those actions which private sellers could not take even if they wished to do so.

Where a party demonstrates that these broader market conditions were severely distorted by government action and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action, the baseline presumption will not be rebutted and the unamortized amount of any pre-sale subsidy benefit will continue to be countervailable. Where a party does not make such a demonstration with regard to an arm's-length sale for fair market value, we will find all pre-sale subsidies to be extinguished by the sale and, therefore, to be non-countervailable.

Analysis of Public Comments

Numerous comments and rebuttal comments were submitted in response to the proposed modification. We have carefully considered each of the comments submitted. While we have not adopted or made revisions reflecting all of the comments, the comments were nevertheless useful in helping to clarify the concepts underlying our privatization analysis and in refining the proposed modification. As such, we are grateful to those who took the time to comment on this aspect of the Department's countervailing duty methodology. Specific comments are summarized below, along with the Department's position on each. For more detail on the comments submitted, *see* the Department's Web site at *http://ia.ita.doc.gov,* where all public comments received have been posted in their entirety.

1. Legality of New Methodology

Some commenters argue that the Department's methodology is inconsistent with the statute, the SAA, and *Delverde III* because it would find the extinguishment of subsidies solely by virtue of an arm's-length sale for fair market value. Specifically, the commenters suggest that the methodology represents a *per se* rule that is in conflict with Section 771(5)(F) of the URAA, which states that ''a change in ownership * * * does not by itself require [extinguishment of previously countervailable subsidy benefits] * * * even if the change in ownership is accomplished through an arm's length transaction.''

Other commenters counter that this argument was based on a misunderstanding of the statutory provision and of the methodology. Specifically, they state that the statute in no way questions the fundamental criterion of fair market value; the point of Section 771(5)(F) is that a sale by a governmental seller, even if at arm's length, is not necessarily a sale for fair market value. Accordingly, examination of a privatization must consider evidence that the governmental seller did not seek, and in turn the purchaser did not pay, fair market value.

Department's Position: We disagree that the Department's final modification is contrary to the statute. The statutory provision regarding changes in ownership makes clear that the Department is not *required* to find extinguishment of previously bestowed subsidies on the sole basis that a change in ownership occurred, or that it occurred in an arm's-length transaction. According to the SAA, this provision is meant to clarify that ''the sale of a firm at arm's-length does not *automatically, and in all cases,* extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets *to an unrelated party.*'' (Emphasis added.) *SAA, at 258.* Under our new methodology, we will not treat an arm's-length privatization as an exclusively dispositive indicator of subsidy extinguishment, but will require other evidence indicating that the post-sale company no longer benefits from such subsidies. Specifically, in addition to analyzing whether the sale was between unrelated parties, we will examine any evidence presented on whether the sale was for fair market value and/or whether there were broader market distortions that would be relevant to a finding of subsidy extinguishment.

2. Burden of Proof

Several commenters state that the burden of proof on the respondent under the new methodology is inconsistent with the requirements under U.S. law, and corresponding international agreements, permitting the imposition of countervailing duties. Specifically, they believe that this methodology unfairly and illegally shifts the burden of proof onto the respondent to demonstrate that there was a privatization at arm's length and for fair market value in order to rebut the presumption of a continuing benefit. Some commenters argue that the only burden that can properly be placed on the respondents is the burden of showing that there has been a privatization. Once this burden has been met, it is the petitioners' or the Department's responsibility to affirmatively demonstrate that the conditions exist to allow the subsidy benefit to continue after the privatization. One commenter suggests that once the petitioners have come forward with evidence to raise a genuine issue of current subsidization, the Department may then shift the burden to the respondent to counter with opposing evidence that the subsidy it received was extinguished.

Department's Position: We disagree that the new methodology unfairly or illegally shifts the burden of proof onto any particular party. Our baseline presumption that subsidies may benefit the recipient over a number of years is entirely consistent with U.S. law. The Delverde III Court found the presumption to be contrary to U.S. law only to the extent that it was applied as a *per se* rule, *i.e.,* a rule that precluded consideration of all of the facts and circumstances of the sale. Moreover, regardless of how one interprets the international agreements on this point, it is important to recognize that they are not automatically incorporated into U.S. law.[6] WTO findings are also not automatically incorporated into U.S. law.[7] In any event, the WTO findings here do, in fact, uphold the baseline presumption.[8] The Panel and Appellate Body made it clear that it is not the mere fact of privatization that is sufficient to disturb the baseline presumption. Rather, it is the payment of fair market value in an arm's-length privatization that can extinguish the prior subsidies.[9]

The implication at the heart of these commenters' arguments is that the occurrence of a privatization itself creates a presumption of subsidy extinguishment. This contention is without any support under U.S. law or even under the relevant WTO decisions. Neither the Federal Circuit nor the WTO has indicated that the baseline presumption ceases to apply simply because a privatization has occurred, regardless of its nature and terms, and that somehow it becomes the petitioners' or the Department's responsibility to demonstrate that such a privatization was not at arm's length for fair market value.[10]

As a practical matter, we anticipate that, in most if not all of the privatizations we examine, one party or

[6] 19 U.S.C. § 3512(a)(1).

[7] *See* SAA at 363 (1032).

[8] *See, e.g.,* AB Report at para. 84.

[9] As noted elsewhere, the starting point of the AB Report was the assumption that the privatizations in all 12 of the subject cases were arm's-length transactions for fair market value.

[10] For instance, the AB Report touches on the issue of burden in an administrative review when it states that '' * * * an investigating authority, in an administrative review, when presented with information directed at proving that a ''benefit'' no longer exists following a privatization, must determine whether the continued imposition of countervailing duties is warranted in the light of that information.'' (Emphasis added.) AB Report at para. 144.

another will raise the question of whether the sale was at arm's length and for fair market value. Also, in the normal course of an investigation or review, the Department will usually issue a questionnaire that solicits basic information about the privatization as well as the broader market conditions. As much of the necessary information to analyze such an issue will be in the possession of the respondent company and/or government, that company or government will necessarily bear the ''burden'' of providing the necessary information, as would be the case with most factual questions the Department must consider in the course of a countervailing duty investigation. To some extent, therefore, the question of who must raise the issue for it to be considered is of only limited practical importance.

3. Process Analysis and the Cost to Government

Several commenters agree that an analysis of the privatization process is pertinent, if not central, to determining whether the sale was for fair market value. One commenter suggests that a price determined through a fair and open sales process is, by definition, the fair market value. Some commenters caution that merely because a fair and open process can result in fair market value, it does not necessarily follow that a process that is less than ideal cannot result in fair market value. In such less-than-ideal sales, all circumstances of the sale, including the objective analysis, must be considered.

Other commenters argue that an emphasis on the process through which the government sold the company would represent an illegal cost-to-government approach. The government's actions or motives in selling the company, they argue, are irrelevant to whether the purchaser received a benefit by paying less than fair market value (*i.e.*, on terms more favorable than those in the market). They continue that any such examination of government motives is illegal—neither the statute nor the Subsidies Agreement instructs the Department to examine a government's motives in determining a subsidy. Moreover, some commenters argue, discerning the government's motives would be prohibitively difficult in practice.

Likewise, the proposed ''private seller'' standard, several commenters contend, is illegal and impractical. One commenter argues that such a standard effectively and improperly collapses the financial contribution finding (*i.e.*, what the government provides) with the benefit finding (*i.e.*, what the recipient receives). Other commenters, however, strongly support such a process-oriented approach, noting that the government, as seller, makes all of the critical decisions regarding the sale and, therefore, the Department's analysis must remain focused upon the government.

Department's Position: We disagree that our new methodology encompasses a cost-to-government standard, though we have revised the text to clarify any potential misunderstanding in this regard.

For this final modification, we have concluded that a useful and appropriate standard for determining whether a transaction was for fair market value is to assess its consistency with the normal sales practices of private, commercial sellers in that country. Preferably, in making a fair-market-value determination, we will compare the price paid for the company or its assets to a contemporaneous, benchmark price actually observed in the marketplace for a comparable company or assets. Where clear information on such a comparable, market-benchmark value is available, we will normally consider it to be highly probative in our fair-market-value analysis (though we may still consider other information regarding factors, where available and appropriate).[11] In our experience, however, such a clear market-benchmark price for a comparable sale rarely exists, and we will often have to resort to less conclusive benchmarks or alternative means for identifying a benefit.

One useful alternative approach is to examine the process through which the sale was made. As with the direct comparison with comparable market benchmarks, the purpose of examining the ''process-oriented'' factors is to determine whether the buyer ultimately paid less for the company or its assets than the buyer otherwise would have had to pay in the marketplace. In lieu of a more concrete and directly comparable benchmark price, we would have to evaluate what the buyer actually paid by examining whether the conditions and circumstances of the sale reflect those that the buyer would have faced if the buyer were purchasing the company or its assets from a private, commercial seller in the marketplace. If the conditions and circumstances of the sale reflect those the buyer would otherwise have faced in the market, and absent more concrete evidence to the contrary, it is reasonable to determine that the price paid is what the buyer would otherwise have had to pay.

While it is true that, under this approach, there is an emphasis on the government's actions, this does not necessarily make it a cost-to-government standard. Rather, this emphasis merely reflects the reality that the seller is usually the party that determines the process and circumstances through which a company will be sold. In a privatization, the government happens to be the seller and, therefore, the one making those decisions.

We have, however, revised the wording of our final modification to de-emphasize the importance of government motives or intent. We continue to believe that, in some cases, statements from the government about what it was attempting to achieve by structuring a sale in a particular way may provide useful insight into what actions the government actually took, and what impact those actions had on the purchase price. However, we are clarifying that any determination regarding fair market value will normally not be based primarily on the government's motives or intent, as those are generally difficult to establish precisely and, in any case, are not necessarily indicative of whether the transaction price was less than fair market value.

We note that the approach we are taking in this new methodology is, in fact, similar in many fundamental respects to the Department's established equity infusion methodology. Consistent with the statute, we determine whether a benefit to the recipient has been conferred as the result of a government equity infusion by examining whether ''the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made.'' Section 771(5)(E)(I). Under section 351.507(a) of the Department's regulations, we will generally determine whether an equity infusion confers a benefit by reference to market prices for comparable shares.

However, where such benchmark prices are not available, our equity benefit determination will depend on whether we find the infusion recipient to have been equityworthy. Equityworthiness will be determined with reference to ''the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made.'' Section 351.507(a)(4). In other words,

[11] We would not necessarily or automatically consider the predicted or hypothetical values cited in independent or objective analyses (referenced in our non-exhaustive list of factors) to constitute such a comparable market benchmark without further scrutiny of such analyses.

our benefit-to-recipient determination for equity infusions essentially is made by determining whether a private actor, when faced with the same investment circumstances and choices as those faced by the government, would have made the same decisions and taken the same actions as those of the government. Accordingly, the ''private, commercial seller'' standard that we have adopted for this final modification is consistent with our longstanding equity infusion practice.

Finally, the relevance of the government's actions to whether subsidies are extinguished during a privatization was recognized by the *Delverde III* Court where it stated, for example, that ''[t]he government has different concerns from those of a private seller. Unlike a private seller who seeks the highest market price for its assets, the government may have other goals, such as employment, national defense, and political concerns, which may affect the terms of a privatization transaction.'' *Delverde III,* at 1369. Likewise, the relevance has been clearly acknowledged by the WTO and, in fact, is central to the Appellate Body's reasoning with regard to broader market distortions, as detailed elsewhere in this notice.[12] Accordingly, the approach that we have adopted here is fully consistent with U.S. law and practice, as well as the WTO findings.

4. Arms-Length Analysis

At least one commenter expresses a view that an arm's-length transaction is not, in and of itself, a criterion for determining that subsidy benefits are extinguished. Rather, the commenter suggests that the existence of an arm's-length privatization is strong evidence of—and should create a presumption of—the payment of market value. The commenter notes that there are circumstances where the Department may find a transaction price to be fair market value even though the sale was not at arm's length. The commenter also suggests that where a private-to-private transaction is found to have occurred at arm's length, the sale was, by definition, for fair market value.

Another commenter states that the Department should not apply an arm's-length sale analysis unless the parties to the transaction are truly unrelated. In particular, the commenter believes that reorganizations of the structure of joint ventures or similar business entities are not transactions to which this proposed modification should be applied.

Department's Position: The Department's new methodology requires a finding of both an arm's-length transaction and a transaction price reflective of fair market value as the basis for overriding the baseline presumption. We note that this is entirely consistent with both the Panel's and Appellate Body's findings. Moreover, an arm's length sale is a necessary precondition for an accurate determination regarding the transaction price under the fair-market-value analysis we have adopted. Our private, commercial seller standard only makes sense where we first establish that the buyer's and seller's interests are independent of each other.

5. Fair-Market-Value Analysis

In General: At least one commenter urges the Department first to consider more broadly and develop a rationale as to why a privatization may extinguish prior subsidies, stating that this rationale should then underpin every aspect of the privatization methodology. Specifically, the correct rationale, this commenter suggests, is that where fair market value has been paid, the company no longer has inputs acquired at a cost artificially reduced by a government financial contribution. Many other commenters recognize that fair market value can be difficult to assess in the circumstances of particular cases. However, in looking at the Department's proposed approach to evaluating fair market value, some commenters argue that the Department should not establish a rigid ''hierarchy'' of factors to be examined in its analysis of fair market value, but rather remain flexible to address the diverse factual scenarios that may be encountered by the agency in the future.

Others disagree, emphasizing that a sales price consistent with the recommendations of an independent or objective analysis should be the primary consideration in analyzing the sale. Some commenters propose further criteria that could be included in the evaluation process, *e.g.*, industrial policies of a country and stock price trends following the offering. Other commenters find the Department's proposed factors to be too vague.

Barriers to Entry: Specifically with regard to artificial barriers to entry, some commenters argue that significant restrictions on stock purchased by the general public are inconsistent with seeking maximum return on the sale. Accordingly, the Department should carefully scrutinize any restrictions on the holding period or minimum purchase quantity, and examine whether different classes of stock have been created or whether there are any other advantages bestowed on those buying such stock. Additionally, some commenters urge the Department to scrutinize particularly closely situations where a government seeks ''strategic'' investors or where the parties to the transaction were already involved in a contract (*e.g.*, a lease), and to find any process that has only one or two bidders as not being truly open.

Other commenters state that, although entry barriers may be one relevant factor, they cautioned that a transaction should not be ruled to be not at fair market value solely because there were restrictions on the bidders. One commenter suggests that ''overly burdensome'' and ''unreasonable'' bidder qualifications are too ambiguous and could result in unpredictable determinations. Another emphasizes that limitations on eligibility matters only if the pool of eligible participants is insufficient to create a market driven transaction and if the limitations are not based on economic considerations. Finally, an additional commenter urges the Department to abandon this factor altogether because it would be too difficult to quantify the effect of such barriers on bid prices.

Objective Analysis: Regarding objective analyses, several commenters agree that a sale based on an objective analysis and which sets a minimum price based on that analysis should be presumed to be at fair market value if the sale is consummated near or above the minimum price. Thus, the combination of an independent valuation, a sale near or above the amount of the independent valuation, and the fact that the sale occurred in an economy not designated by the Department as a non-market economy should create a presumption that the sale was at fair market value. Other commenters caution against such objective analyses, urging that any such analysis must be compared with comments by the financial press as well as the stock price following privatization. One commenter argues that the independence of the analysis should be closely scrutinized, and that the absence of an independent analysis should be a dispositive indicator that the sale was not for fair market value.

Highest Bid: Regarding the selection of the highest bid, several commenters contend that the fact that a government seller does not accept the highest price bid does not, in and of itself, warrant the conclusion that fair market value was not paid. In such a case, the

[12] See, *e.g.*, AB Report at para. 124, where the Appellate Body noted that, ''[i]n privatizations, governments have the ability, by designing economic and other policies, to influence the circumstances and the conditions of the sale so as to obtain a certain market valuation of the enterprise.''

Department should not immediately determine that the price was not fair market value, but instead should inquire as to why the highest bid was rejected and whether those reasons were commercially sound. Several commenters contend that there are many situations where a private commercial seller may choose as the winning bid an offer with a lower cash component, but with a higher value of bonds or other securities. Another commenter suggests the use of the ''best-value'' approach, which looks not only at price but a the technical component of the transaction as well.

Other commenters, however, argue that whether the highest bid was selected is an appropriate consideration, and suggested additional scenarios (*e.g.*, where the government finances the transaction) in which the payment may not be considered ''cash equivalent.''

Similarly, several commenters object to ''profit maximization'' as a necessary condition for determining that the government's actions were consistent with that of a private, commercial seller. One commenter believes that a focus on profit maximization is contrary to WTO obligations and United States law. Many argue that merely because a government ''repackaged'' the company's assets differently, thus resulting in a lower cash price, this does not mean that the purchaser paid less than fair market value for what it received.

Committed Investment: As to committed investment, several commenters state that the fair market value of the privatized company should be determined in light of the overall bundle of property, rights and obligations involved in the privatization. So long as any limitations or conditions are known prior to the sale, they argue, those conditions become part of the bargained-for exchange between the parties and are factored into the fair market value of the privatization transaction. Accordingly, these commenters state, the presence of such conditions or promises of future investments are not *per se* evidence that the sale was not for fair market value.

Several commenters note that even private sellers of companies may place conditions on a sale that go beyond a mere listing of assets to be sold. For example, these conditions may govern the timing or form of payment, or may involve pre-existing obligations to workers. Moreover, some commenters explained that in many cases, the government-imposed conditions or required investments do not even necessarily affect the sales price, particularly if the requirements are actions the purchaser would have taken anyway. Furthermore, one commenter recalls, the purpose of the countervailing duty law is not to correct market distortions caused by previously bestowed subsidies but, simply, is to provide remedial relief to offset subsidies. Accordingly, these commenters urge the Department to eliminate this factor from the items to be examined in the determination of fair market value.

Another commenter urges the Department to retain the emphasis from its proposed modification on whether a benefit is actually conferred through committed investments. Specifically, unless there is both a required committed investment and a clearly demonstrable effect of that requirement on the price of the sale, the Department should find, *ceteris paribus,* the sale to be for fair market value.

In response, other commenters contend that where the agency is confronted with behavior such as the government's imposition of conditions on a sale, it should find such actions inconsistent with those of a commercial seller. Furthermore, they urge the Department to recognize that by seeking such commitments from the purchaser, the government is accepting less than full market value for the company. One commenter, although agreeing generally with the inclusion of this factor, suggests that it should not be necessary to identify explicit price discounts or other inducements in order to establish that the committed investment was not a normal commercial selling practice.

Additional Factors: Some commenters propose that the Department add to its fair-market-value analysis an examination, where appropriate, of the trends in stock prices of a company following its privatization. Specifically, the commenter suggests that a sudden run-up in post-sale prices due to ''flipping'' of the stock by the initial purchasers on or soon after the sales date strongly suggests that the sales price was less than fair market value. Other commenters disagree that such *post hoc* analysis of secondary prices is appropriate. Other commenters suggest additional criteria to consider, such as the original cost less depreciation of the assets, contemporaneous similar sales, and the presence of government industrial policies in that sector.

Department's Position: We have carefully considered the many comments we received on the proposed fair-market-value analysis, and have decided to retain the same basic approach articulated in our proposed modification. We agree with those commenters who argue that no hierarchy should be established among the factors, and that the list of factors should not be considered exhaustive. We will generally not consider any one factor in itself to be dispositive, but will consider all the relevant facts and circumstances of a privatization to determine whether the sales price was a fair market value.[13] For this reason, we disagree with other commenters' concern that the analysis is ''too vague.'' Our fair-market-value analysis must be sufficiently flexible to address the diverse factual scenarios that may be encountered in the future.

With regard to barriers to entry, as we noted in the proposed modification, the fundamental consideration here is not necessarily the number of bidders, but rather whether the market is contestable, *i.e.*, anyone who wants to buy the company or its assets has a fair and open opportunity to do so. We therefore do not believe that it would be useful to adopt a rigid rule with regard to how large the pool of bidders must be, or what would necessarily constitute ''overly burdensome'' or ''unreasonable'' bidder qualifications. Obviously, such considerations are case-specific, and we will judge them in the broader context of the overall privatization process and the relevant market. That said, we take note of the particular types of restrictions that some commenters argue are strongly indicative of a less-than-fair-market-value sales process, and agree that many of these would constitute sufficient cause for a more probing study. For example, we intend to scrutinize particularly closely any privatization where there is only one final bidder (or a few), particularly in those industries or economies where a relatively large pool of bidders for such a privatization would normally be expected.

With regard to an objective or independent analysis, we disagree that a sales price at or above the value cited in such an analysis is necessarily a dispositive indicator that the sale was for fair market value, other aspects of the sales process notwithstanding. We do not believe that private, commercial sellers normally follow or adopt such analyses blindly without a fuller understanding of, *inter alia,* the assumptions and scope of the analyses and the broader context of other market indicators and industry studies.

However, we do believe that the absence of such an analysis, in circumstances where private, commercial sellers would normally

[13] As explained below, we will normally consider the absence of an objective analysis to be highly probative in determining that the transaction was not a fair market value.

require such information, would be a very important consideration in our examination of the sales process. Accordingly, when examining fair market value, we will normally require from the respondents the information and analysis upon which the government relied in determining how, and for what price, to sell the company or its assets. Such analysis must be objective, timely (*i.e.*, completed prior to agreement on the final transaction price), and complete (*i.e.*,contain the information typically considered by private, commercial sellers contemplating such a sale). The absence of such information and analysis would normally be highly probative (though not necessarily dispositive) in determining that the transaction was not for fair market value.

We wish to clarify, however, that though such objective analysis can serve as one useful benchmark for the sales price and can provide useful information about whether the process the government pursued was consistent with that of a private, commercial seller, we must exercise caution in how we use such an analysis given that it is often speculative and subjective in nature. The Department has experience in considering similar types of independent studies and objective analyses in the related context of government equity infusions, and we intend to follow a similar approach here, to the extent appropriate. We discussed this issue at length in the preamble to our equity infusion regulations, wherein we stated,

> We will closely examine such studies. In order to be considered in our equityworthiness analysis, any study must have been prepared prior to the government's approval of the infusion and must be sufficiently objective and comprehensive. We intend to review such studies carefully to determine whether the government acted like a reasonable private investor, subjecting both the assumptions and the analysis to scrutiny. This will enable us to decide whether the decision to invest was commercially sound given the information at the disposal of the government.
>
> Some independent studies commissioned to analyze the merits of a given investment may present an assessment of the company's expected returns and risks that is predicated on certain future actions by the company in question. For instance, a study might conclude that the investment in a company planning to close one outmoded plant and construct a new one in a different location is commercially viable so long as the company also reduces its workforce by half. In this case, the Department would take into consideration whether the downsizing will actually occur. If the company has known for a long time that a reduction in its workforce was a necessary condition for improved financial performance, but has consistently shown itself unwilling or incapable of making that reduction, this may prove sufficient cause to believe that the projected return is unattainable.
>
> Some commenters cautioned the Department about relying too heavily on independent studies given their inherently speculative and subjective nature. We are well aware of the potential difficulties in using independent analyses, not least of which is the fact that independent experts often fundamentally disagree about the prospects of a given investment. In other instances, the objectivity of some studies is called into question. However, private investors are likewise usually faced with a similar variety of competing views and must exercise their own judgement with respect to the objectivity of information before them. When considering the suitability of a submitted study, we will seek to ensure the study is accurate and reliable, and exercise our own judgement with respect to a study's objectivity. Specifically, we will take into consideration the extent to which the study's premises and conclusions differ from those of other independent studies, accepted financial analysis principles, or market sentiment in general (*e.g.*, industry-specific business publications or general industry market studies).

Preamble to the CVD Regulations, 63 FR 65348, 65372 (November 25, 1998).

With regard to the acceptance of the highest bid, we disagree that this is not an important factor when considering whether the sale was for fair market value. This factor goes hand-in-hand with our ''primary consideration'' of whether the government maximized its return on what it sold, and is an important consideration in whether the government acted like a private, commercial seller. We recognize that there may be situations where a private, commercial seller will accept something other than cash or close equivalent as payment in a sale, but we believe those circumstances are exceptional and not the norm. We will, however, examine any information a party presents in demonstrating that the government's acceptance of non-cash or close-equivalent payment is consistent with private, commercial selling practice in the relevant market (*e.g.*, that country and/or industry).

We clarify that the phrase ''cash or close equivalent'' is intended to include normal types of payment that may take the form of a variety of financial instruments other than cash (*e.g.*, other shares or bonds). To the extent that these or similar forms of payment are used in transactions between private, commercial parties, there is generally no problem. What we would primarily be concerned with are forms of payment to which the government ascribes a value that is different from the monetary value that a private, commercial seller would ascribe to the payment. Examples of this might include illiquid forms of payment, or payments that have little or no tradeable value in the marketplace. As a general rule, we will carefully scrutinize any sale where the face or exchange value of a financial or other instrument given as payment differs from its market value.

We believe that the criterion of profit maximization is an appropriate consideration in our fair-market-value analysis. It is a basic principle of corporate finance and management that the primary function of a commercial enterprise is to maximize the financial return on its owners' investment.[14] Moreover, such a ''profit maximization'' standard is supported by the Federal Circuit:

> The government has different concerns from those of a private seller. Unlike a private seller who seeks the highest market price for its assets, the government may have other goals, such as employment, national defense, and political concerns, which may affect the terms of a privatization transaction. Thus a case involving privatization does not necessarily govern a private-to-private situation.

Delverde III, at 1369. Any of the government's actions in selling a company that do not maximize the financial return to the government on the sale are, therefore, legitimate and important areas of scrutiny under our fair-market-value analysis as they may indicate that the government has acted in a manner that is not consistent with the normal practices of private, commercial seller.

The profit-maximization standard is also fully consistent with the WTO findings. For example, the Panel noted that ''* * * in a market-based economy, the value of a company depends on its ability to generate returns for its shareholders.'' *Panel Report* at para. 7.51. The Panel further noted that, ''[f]ollowing privatization and consistent with commercial principles, the owners of the privatized company should be profit-maximizers, set on obtaining a market return on the entirety of their investment in the privatized company.'' *Panel Report* at para. 7.60. Although the Panel here was referring explicitly to the purchasers of the company (and not the seller), it is clear that in order for the sales price to be considered fair market value, both

[14] To the extent that a commercial firm may have goals other than profit maximization, those non-commercial pursuits are generally reflected in the company's market value to the extent they enhance or detract from the company's ability to generate a profit.

parties—the seller and the buyer—must be profit maximizers.

Regarding committed investment, we note that this appears to have been one of the most complicated and controversial parts of the proposed modification. In general, the numerous comments we received on this issue can be roughly divided into those that consider any committed investment to disqualify the sale automatically from being found to be at fair market value, and those arguing that any committed investment will be fully reflected in the purchase price. For this final modification, we have not adopted either argument as a *per se* rule, but find that our determination in a particular instance of committed investment must be based on the specific facts of that case, analyzed in their totality.

We would first like to clarify that by the term committed investment, we are referring to a range of possible restrictions or requirements that the government, as the seller, imposes on the future operation of, or investment in, the company or its assets. Some commenters noted that there are some practices which, on their surface, may appear to be committed investment, but are in fact actions which are sometimes taken by private, commercial sellers as well. As a threshold issue, therefore, we will first examine any evidence presented by parties that purports to demonstrate that a particular action is fully consistent with the normal sales practices of private, commercials sellers in the relevant market, even if that action would otherwise appear to fall within the scope of typical committed investment practices that the Department has encountered. Where such a demonstration is made, we normally will not regard such a practice as evidence that fair market value was not paid.

With regard to the impact a committed investment has on a sale, we disagree with the proposition that the presence of any committed investment necessarily means the sale is not for fair market value. As noted elsewhere in this notice, our analysis of fair market value under this new methodology is based on a benefit-to-recipient standard. The key question is whether, in purchasing the company or its assets, the buyer got something of value for which the buyer did not pay. In the relatively straightforward, hypothetical case of a requirement to maintain the workforce size at current levels for three years, we agree that, normally, a potential buyer will incorporate the cost (if any) of that restriction into the price the buyer offers to pay. Although this price may be lower than what the buyer would have been willing to pay absent the requirement, this does not necessarily mean that the buyer is receiving any net value that has not already been reflected in the transaction price.

In this hypothetical example, all other things being equal, our analysis and reasoning regarding this straightforward committed investment would resemble that of our analysis and approach to concurrent subsidies. Similar to concurrent subsidies, when making a finding that the value of the committed investment was fully reflected in the transaction price of an arm's-length privatization and, therefore, is fully extinguished in such a transaction, we will require the following criteria to be met: (1) The precise details of the committed investment were fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders, (2) there is no implicit or explicit understanding or expectation that the buyer will be relieved of the requirement or commitment after the sale, and (3) there is no evidence otherwise on the record indicating that the committed investment was not fully reflected in the transaction price.

We also disagree, however, that a lowering of bid prices in the face of committed investments is necessarily a result of an increase in anticipated costs. In the hypothetical case above, our analysis and findings would likely be different if, for example, it were also shown that the government offers bidders an automatic discount [15] in the sales price for buyers who make certain promises regarding future operation of or investment in the plant. In this more complex scenario, the buyer is very possibly getting a discount for doing something the buyer might have otherwise done without the discount, *i.e.*, the commitment or requirement does not impose any additional cost—and in fact may be viewed as revenue-enhancing. Possibly, under this scenario, the buyer has paid less for the company or assets than it otherwise would have paid had the government acted in a manner consistent with the normal sales practices of private, commercial sellers.

This hypothetical case can be further expanded to reflect a situation where the bidding pool begins with relatively few potential bidders, *e.g.*, three bidders. A requirement to maintain the workforce at a certain level for a specified number of years may affect the three bidders' assessments of expected costs and revenues differently. For example, assume the first bidder would have maintained or even increased the workforce regardless of the stipulation; therefore, the requirement would likely have only a limited impact on that bidder's expected future profitability. The second bidder, however, has been very public in stating that the company has too many redundant employees, and that any minimum employment levels would negatively impact the future cost competitiveness of the plant. Likely, that bidder will lower his or her bid value accordingly. Assume the third bidder intended all along to purchase and then dismantle the plant, perhaps in order to shift the productive assets to another location or to eliminate competition from the marketplace. Very likely, such a minimum employment requirement would lead the third bidder to drastically reduce his or her bid amount, or even to drop out of the bidding process altogether. If the first bidder was generally aware of the business plans of the other two bidders, the first bidder could lower his or her bid amount, even though the requirement will impose no additional cost on him or her, and still win the bidding contest.

We recognize that these scenarios just presented are complex and hypothetical (though they are not necessarily unusual). They are useful illustrations, however, of possible instances where, as a result of the government's imposition of requirements or restrictions that private, commercial sellers would not normally impose, a buyer might pay a lower price for a company or its assets than that buyer would otherwise pay even though such requirements or restrictions impose no additional cost on the buyer. This shows why any fixed rule one way or the other, as suggested by many of the commenters, would be inappropriate when analyzing committed investment. Accordingly, we will examine, on a case-by-case basis, whether the presence of committed investment resulted in the buyer paying less-than-fair-market-value for the company or its assets.

As to the additional factors some commenters suggested, we have not incorporated any of them explicitly into our non-exhaustive list at this time because we do not expect that they will have broad applicability across most of the privatizations we examine. However, we may consider these and any other relevant factors on a case-by-case basis where they are pertinent to the analysis of a particular privatization.

[15] For example, a credit towards the bid value keyed to the amount of the investment.

6. Safe Harbor

Some commenters argue for the Department to consider identifying a ''safe harbor'' with explicit guidelines for when a privatization will be deemed to eliminate the continuing benefit of past nonrecurring subsidies. Such a safe harbor, these commenters continue, would be desirable not only to simplify proceedings before the Department, but also to advance the U.S. policy of encouraging privatization, especially in developing countries. One approach, for example, would be to develop a clear rule that a privatization carried out under independent private advisors through commercial auction procedures, and/or that used post-privatization audits, would normally be deemed to be for fair market value. Other commenters suggest additional ''safe harbor'' rules, including a simple safe harbor for private-to-private sales.

In response to these suggestions, other commenters state that it is important that the Department maintain flexibility in its privatization methodology to consider the facts and circumstances of each case before it determines whether subsidies have been extinguished following a privatization. They find, therefore, that it would be premature for the Department to attempt to define ''safe harbors'' at this point without reviewing the various factual scenarios that accompany privatization. At least one commenter objects strongly, arguing that a safe harbor would merely become a ''roadmap'' for subsidization.

Department's Response: We disagree that any explicit ''safe harbor'' *per se,* as envisioned by certain commenters, is warranted. The new methodology described in this notice is sufficiently detailed and articulated to provide parties with a good understanding of how the Department will approach analyzing privatizations, and with a reasonable basis for forming expectations about how the Department will rule when examining a particular fact pattern. As discussed elsewhere in this notice, where we have refrained from detailing specific rules regarding various aspects of this methodology, we have done so either because such issues did not lend themselves to defined rules, or because we wanted to gain further experience in a particular facet of the methodology before establishing a defined rule.

7. Broader-Market-Distortions Analysis

In General: Several commenters state that the Department should not attempt analyzing broader market or economic conditions, but should instead focus its analysis solely on the benefit to the purchaser. Specifically, these commenters believe that the proposed analysis of broader market distortions would effectively allow the Department to ignore the fundamental importance of an arm's-length, fair-market-value privatization and impose countervailing duties against a company's products without determining the existence or amount of any countervailable benefit currently enjoyed by the company. A related comment is that this analysis of broader market distortions should not be a separate analysis, but should be included as part of the fair-market-value analysis because the issues are fundamentally the same.

Moreover, several commenters find the Department's proposed market distortion criteria in general to be too vague and sweeping, and therefore, unpredictable and impractical. Other commenters suggest that the macroeconomic distortions contemplated under this analysis would be too general to meet the specificity requirements of a countervailable subsidy, and that only those actions that specifically affect the value of the privatized entity may be relevant.

Some commenters also view the Department's ''reasonable basis for believing'' in regard to proof of severe market distortion as too low a standard. Instead, one commenter proposes that the Department restate the standard so that the presumption of extinguishment could only be rebutted with clear and convincing evidence that severe market distortion exists; in the absence of such evidence, the Department should not overturn the presumption of extinguishment that follows an arm's length sale at fair market value. Some commenters further argue that such distortions must be quantified in order to prove that such distortions are material.

Some commenters supported the Department's proposed approach to market distortions, but urged the Department to leave itself discretion to adapt its analysis to the circumstances of each case. Another commenter suggested that the distortion factors be preceded by a preamble allowing for general consideration of market distortion issues that may not be covered by the specific factors listed. One commenter also suggests that post-sale conditions be added to the proposed list of factors in evaluating market distortions.

Basic Conditions: With regard to the ''basic conditions'' criterion, although this proposed criterion was lifted from language in the WTO Appellate Body opinion, several commenters found it too vague and sweeping to provide any meaningful guide to parties. Several commenters suggested that the Department should determine that the ''basic conditions'' necessary for an undistorted market are present if the economy is a market economy, and that those conditions are not present if the economy is a non-market economy. Accordingly, the proposed analysis of these basic market conditions is not necessary where the Department has already deemed the country to be a market economy for countervailing duty purposes.

Related Incentives: Because they find this factor to be overly broad, several commenters think that the Department should amend the ''related incentives'' criterion to reflect the economic reality that all governments engage in activities that affect market transactions. Instead, they believe that the Department should focus on the question of whether the government action was intended to facilitate the sale for less than fair market value with a view to later reversing the action so as to effectively provide the buyer the asset or entity at less than fair market value. Other commenters, however, support consideration of this factor as it provides further insight into whether the government acted like a private, commercial seller.

Legal Requirements: Some commenters suggest that while legal requirements imposed by governments do affect the market price, they would have to be extremely restrictive (such as requiring a level of employment far in excess of what is economically justifiable) in order to vitiate the fair market value of the sale. Because of this, these commenters believe that this criterion is overly broad and should not be considered in the Department's analysis. Several other commenters argue that any such legal requirements would be fully reflected in the purchase price of the company so long as that price was a fair market value.

Creation/Maintenance: With specific reference to the effect on the market of subsidization of other companies, several commenters argue that the fact that other companies are subsidized is not evidence that the privatization in question does not ''fairly and accurately reflect'' the market value for the privatized asset but, rather, that such creation/maintenance effects are fully reflected in the fair market value. One commenter notes that the countervailing duty law is meant to offset the benefits to specific recipients, not to remove market distortions to an industry generally. Several commenters also query whether this analysis would include subsidization outside of the

country in question, suggesting that such a ''cross border'' analysis would be inappropriate. Some commenters further argue that this factor would fall particularly heavily on developing countries—precisely those countries where the United States is encouraging privatization—because they are more likely to have numerous companies and industries that are subsidized.

Department's Position: For this final modification, we have kept the analysis of broader market distortions separate and distinct from the arm's-length, fair-market-value analysis. We recognize that this distinction may appear somewhat formalistic, given that where there are broader market distortions, any conclusions regarding market value are necessarily implicated. Nevertheless, the overall emphases of the two inquiries are distinguishable.[16] The former focuses on the government in its capacity as seller, and whether its actions are consistent with those of a private, commercial seller. The analysis of broader market distortions, on the other hand, focuses on the government in its capacity as regulator and policymaker.[17] Such an analysis is appropriate because it takes into account the unique power of a government to institute a basic market regime, as well as to create particular laws, regulations, economic incentives and unique conditions that impact the purchasers' decisions.[18] The use of such governmental powers may be distortive where they make a particular sale possible that would not otherwise be possible, or at least not possible under the same terms as those of the transaction that actually took place, under normal market, legal, and regulatory conditions.[19]

With regard to the comment that the factors we have listed as potentially relevant are too broad, we disagree. We believe that it is important to leave room for flexibility in this analysis and not to circumscribe artificially or prematurely the nature of the factors that could be found to distort a market. Such distortions can be specific to the unique circumstances of particular countries or markets, and it is especially difficult for the Department to foresee at this time all of the factors that may be relevant to this analysis, particularly without obtaining more experience in this area. Therefore, we intend that this analysis will be conducted on a case-by-case basis, and that we will be able to refine such analysis over time building on our accumulated experience.

That said, we recognize that perfect markets seldom exist outside of economics textbooks. We do not intend to ''fail'' a privatization merely because the broader environment in which it took place did not perfectly conform to some market paradigm. Rather, we will be balanced and realistic in our analysis, focusing on those severe distortions that would have a meaningful impact on the transaction in question.

We further disagree with the suggestion that our ''basic conditions'' analysis and our market distortions analysis should generally be limited to those countries that have non-market or transitional economies. First, to limit this analysis to non-market economies would reduce this aspect of our new methodology to redundancy and irrelevance given that the Department's practice is not to countervail subsidies in countries it finds to have non-market economies. Moreover, we will not necessarily limit the basic-conditions analysis to economy-wide distortions, but may, where appropriate, examine distortions that primarily affect particular industries or sectors of the economy. Furthermore, there is no indication that the Appellate Body's reasoning in this regard was limited solely to the circumstances of a non-market or transitional economy.

After consideration of the comments regarding the standard of proof in this analysis, we have removed the reference to ''reasonable basis for believing'' when demonstrating that the transaction price is meaningfully different from what it otherwise would have been. Such language unnecessarily complicated and confused the standard. It will take more than mere speculation to demonstrate that market distortions exist. That said, we are mindful of the fact that it may be very difficult to identify ''hard data'' that conclusively demonstrates the extent of such distortions or their impact on the transaction price. It is inherently difficult to show and, more so, to quantify precisely what the price would otherwise have been had there been a properly functioning market and regulatory regime.[20] Therefore, we will guard against an interpretation of our evidentiary standard that is so high as to be unattainable in practice.

8. Privatization of Parent or Holding Companies

Several commenters state that this new privatization methodology should not be applied where the privatization at issue occurs at the level of a holding company or parent company several levels removed from the actual respondent in the case. Some commenters argue that such privatizations do not extinguish subsidies provided to the subsidiary company that is the respondent in the case. Another commenter argues that the Department should carefully analyze the facts of each transaction and determine whether a particular subsidiary is benefitting from assistance received at the parent company level.

Department's Position: We are not adopting any specific rule at this time with regard to how we will examine privatizations that occur at levels several times removed from the particular company under investigation, but will make such a determination on a case-by-case basis. We have learned from past experience that such an analysis is highly case-specific, and should take into consideration the context and all the facts surrounding a particular privatization.

9. Other Changes in Ownership

In the proposed modification, the Department invited comment on what percentage of shares or assets sold should be the threshold for triggering application of the methodology and, similarly, how incremental sales should be treated. Some commenters state that the partial sale of shares or assets does not provide any basis for reexamining an allocated benefit stream, noting that nothing in the WTO's decisions addresses partial sales and, therefore, the agency is not required to revise its methodology to address this situation.

Other commenters argue that restricting the circumstances in which the baseline presumption can be rebutted to full privatizations represents an arbitrary limitation that violates the fundamental principle that countervailing duties can only be imposed upon a company's products if

[16] This distinction is also clearly reflected in the *AB Report,* and was the basis for the finding that an arm's-length, fair-market-value privatization does not *necessarily* extinguish prior subsidies.

[17] A loose, but helpful analogy here may be that of a game. Our analysis of government ''as seller'' examines whether the government was playing, like a normal player, to win (*i.e.,* to maximize its winnings). Our analysis of government ''as government'' examines the rules of the game, to determine whether they were sufficient to ensure a meaningful game to begin with and whether they favor a particular outcome to the game.

[18] In this final modification, we have combined the four originally proposed criteria into two, to clarify and emphasize these two basic thrusts of the market-distortion analysis.

[19] The presence of severe market distortions can render inoperative the presumption that fair market value ''is deemed to include *(de facto)* the value of the advantage or benefit already received'' (*Panel Report,* at para. 7.72), or that ''the privatized producer paid for what he got and thus did not get any benefit or advantage from the prior financial contribution bestowed upon the state-owned producer.'' *Panel Report,* at para. 7.82.

[20] Accordingly, parties will not normally be required to quantify the difference between the actual transaction price and the ''undistorted market value.''

it is shown that the company is receiving a benefit from a financial contribution. By ignoring other circumstances under which the presumption may be rebutted, such as a partial privatization, the Department would, contrary to the Subsidies Agreement, impose countervailing duties at a level exceeding the actual benefit to the recipient.

Turning to the issue of control, some commenters believe that the Department should apply its methodology when a government has relinquished effective control, even if the privatization has not been completed. Several commenters, however, argue that the mere fact that the government retains some control in a privatized company cannot automatically justify the imposition of countervailing duties based upon the full amount of subsidies bestowed on the state-owned enterprise prior to privatization.

Assuming that the release of control is relevant to when the Department should apply its methodology, several commenters suggested that the ''use or direct'' standard in the Department's cross-ownership regulations might be applicable. Another commenter suggested that the nature and relevance of control should be determined by the Department on a case-by-case basis, taking into account all of the various means by which parties may exercise control over the corporation—the inquiry may well require the Department to examine factors beyond the level of share ownership.

Other commenters disagreed, stating that the issue should not be whether the government has relinquished control of a company, but instead the Department should require that the government has no ownership whatsoever of the company and no right in any way to exert control over the company in order for the prior subsidies to be considered extinguished. Moreover, the ''use or direct'' standard of cross ownership is not necessarily appropriate because cross-ownership issues are very different from privatization issues.

Finally, some commenters argue that any final modification should not be applicable to private-to-private sales as well as government-to-private sales (*i.e.*, privatizations) because private-to-private sales were not addressed in the WTO decisions. Some commenters state that in the private-to-private context, an arm's-length transaction is necessarily one in which fair market value is paid and, as a result, the purchaser receives no benefit from past subsidies. Another commenter states that while a private-to-private sale can extinguish pre-sale subsidy benefits, an analysis to determine whether the price paid for the private assets reflects the current market conditions would be appropriate.

Department's Position: We are not making a decision at this time as to whether or how we will apply this new methodology to types of changes in ownership and factual scenarios (*e.g.*, partial and gradual privatizations, private-to-private sales) other than the privatization of all or substantially all of a state-owned enterprise. Rather, we wish to provide the public with an additional opportunity for further comment on the applicability of the new methodology in those circumstances.[21] Although we have received some comments to date on such issues, as summarized above, we believe that with the benefit of seeing our final modification, parties will be in a position to provide more informed and precise arguments as to how and why this final modification might be applied to these other types of sales.

In this regard, we encourage parties to address whether, if the government remains in a position of control over a privatized company, that company may continue to be operated in a manner that furthers the government's agenda. Further, at what point does a change away from government ownership cause the subsidy recipient to become a full profit maximizer? Is it where the government holds only a minority ownership in the company? Where the government retains only latent control (*e.g.*, a ''golden share'')? Or where it retains no control whatsoever? How should control even be defined in this regard?

Moreover, parties might wish to explain why becoming a profit maximizer is relevant to the extinguishment of prior subsidies in a sale. How does this logic apply, if at all, to a private-to-private sale where, presumably, the seller was already a profit maximizer? Would the application of this final modification to private-to-private sales be consistent with the *Delverde III* Court statement that

> [t]he government has different concerns from those of a private seller. Unlike a private seller who seeks the highest market price for its assets, the government may have other goals, such as employment, national defense, and political concerns, which may affect the terms of a privatization transaction. Thus a case involving privatization does not necessarily govern a private-to-private situation.

Delverde III, at 1369.

We ask that any additional comments on these specific issues be submitted to the Department within 60 days of publication of this final modification.[22] Parties should submit four written copies and an electronic copy (in WordPerfect, MS Word, or Adobe Acrobat format) of their comments to Room 1870, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Attention: Greg Campbell, Office of Policy. Re: Privatization Comments. Comments should be double-spaced and limited to 10 pages. All comments will be made available for public viewing in the Department's Central Records Unit, which is located in room B–099 of the main Department building. The Department also intends to post on Import Administration's Web site, shortly after the comment deadline, all public comments received pursuant to this request.

10. Concurrent Subsidies[23]

Regarding subsidies that may have been provided to encourage or facilitate privatization, some commenters argue that an analysis should be undertaken to determine the role of that subsidization in the transaction in question. Specifically, they state that the new methodology should recognize that the provision of subsidies prior to or during privatization proves that the market was distorted and that the privatization did not occur at fair market value. At a minimum, subsidies provided in the context of privatization are new subsidies to the new company and are therefore countervailable. Another commenter proposes that any subsidies provided within two years of a company's privatization should be considered as subsidies to the new owners, since they were, or may presumed to have been, provided to benefit the new owners at the time of sale. One commenter cited to Article 27.13 of the Subsidies Agreement to support its contention that concurrent subsidies are a unique type of subsidy that is not necessarily extinguished in a fair market value sale. Any failure to countervail concurrent subsidies, some

[21] The Panel and Appellate Body explicitly refrained in their findings from addressing these alternative fact patterns. Therefore, deferring a decision on how this new methodology might apply to these other changes in ownerships in no way detracts from the United States' implementation of the Dispute Settlement Body's recommendations in this dispute.

[22] This additional comment period is separate and distinct from the current proceeding in which we are modifying our practice pursuant to section 123 of the URAA.

[23] For the purposes of this final modification, we consider ''concurrent subsidies'' to be subsidies given to facilitate, encourage, or that are otherwise bestowed concurrent with a privatization.

commenters argue, would merely encourage governments to heavily subsidize companies that they intend to privatize.

Other commenters disagree, stating that the Department should make clear that the fact that a government provides companies with subsidies to make them marketable should not prevent the extinguishment of the subsidy by an arm's-length sale at fair market value. As the WTO and U.S. courts have recognized, when a party pays fair market value for an asset (even if the asset is a whole company), all prior subsidies, regardless of when given, are extinguished. Several commenters maintain that as long as the assistance, such as debt forgiveness, is negotiated by the parties as part of the privatization transaction, any value of the assistance will be reflected in the purchase price paid by the new owners and there would therefore be no countervailable benefit accruing to the newly privatized company from the assistance. However, if the government provided the debt forgiveness after the bids were finalized, according to one commenter, the debt forgiveness would not necessarily have been reflected in the bid price, and therefore the debt forgiveness should be treated as a new subsidy.

Another commenter states that, where the government offers certain inducements (*e.g.*, debt forgiveness) to encourage buyers, these inducements would be expected to increase the transaction price above market value. Although these may constitute new subsidies, the commenter maintains, such inducements generally cannot be considered evidence that the sale was for less than fair market value.

Department's Position: As we noted in the proposed modification, the Department has long wrestled with the issue of subsidies given to encourage, or that are otherwise concurrent with, a privatization.[24] However, based on our considerable experience to date with analyzing these subsidies and on the comments received, we are now prepared to provide more definitive guidance on how we intend to analyze these types of subsidies.

For the purposes of this new methodology, the Department intends to scrutinize very carefully any instances of concurrent subsidies, and will normally determine that the value of a concurrent subsidy is fully reflected in the fair market value price of an arm's-length change privatization and, therefore, is fully extinguished in such a transaction, if the following criteria are met: (1) The nature and value of the concurrent subsidies were fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders, (2) the concurrent subsidies were bestowed prior to the sale, and (3) there is no evidence otherwise on the record demonstrating that the concurrent subsidies were not fully reflected in the transaction price.

We believe that this approach is consistent with analyzing a privatization from the point of view of the purchaser. All other things being equal, in a normally functioning and transparent market, we would expect that potential investors would be willing to increase the value of their offer prices to reflect the additional value that such concurrent subsidies are expected to contribute to the overall value of the company or its assets. Such additional value is therefore properly considered to be ''paid for'' in the purchase price, barring clear evidence to the contrary.

We are sympathetic to the argument that concurrent subsidies may be special in the sense that, in certain cases, without such subsidies, bidders may not be willing to purchase the company or its assets, and that capacity which would otherwise cease to exist is thereby allowed to continue producing. This is a particularly important consideration for industries characterized by chronic overcapacity and excess production. It is for this reason, among others, that we intend to scrutinize very closely all instances where subsidies are given to facilitate or induce a privatization.[25]

We recognize, however, that most concurrent subsidies are given in an effort to increase the attractiveness of the company or assets as an investment. In other words, normally these subsidies increase the value and, therefore, in a normally functioning market, increase the price the purchaser pays over what he or she would otherwise pay. Thus, normally, there would be no reason to believe that a concurrent subsidy would lead to a purchaser paying less than fair market value.

With regard to the suggestion that concurrent subsidies be considered to be *new* subsidies to the new owners, we have not adopted that approach at this time because, for the purposes of this final modification, we are not distinguishing between a company and its owners.[26]

We caution that our rationale for addressing concurrent subsidies should only be understood to apply to the circumstances of concurrent subsidies in the privatization context. If pushed to an extreme beyond these circumstances, such reasoning may lead to absurd conclusions that undermine the very effectiveness of the countervailing duty remedy. The Department would not consider the extreme argument, for example, that because the bid of a new owner reflected a recurring tax benefit that the company is expected to receive indefinitely into the future, that those future tax benefits are not countervailable. Any actionable subsidy bestowed subsequent to the privatization will be countervailed in full.

11. Continuing Benefit Amount

In instances in which the privatization was for less than fair market value and, therefore, did not result in the extinguishment of the benefits of pre-privatization subsidies, the Department sought comments on how it should quantify the amount of the benefit from those subsidies the company continues to enjoy. Some commenters state that, in such circumstances, the unallocated portion of the subsidy must continue to be countervailed at the same level as if no privatization had occurred. This is the only logical result where the baseline presumption of continuing benefit has not been rebutted. Other commenters propose formulas, *e.g.*, the difference between what the purchaser actually paid and the ''fair market value'' of the company or assets purchased, while still others proposed that such calculations should be made on a case-by-case basis with no set formula. One commenter proposes that the quantification of the amount of continuing benefit should, at the very least, take into account both the normal allocation period for the original assets and the price paid for the assets.

Department's Position: Where the Department determines that the baseline presumption has not been rebutted

[24] The Department spoke to this issue in the Preamble to the CVD Regulations (63 FR 65348, 65355):

[w]hile we have not developed guidelines on how to treat this category of subsidies, we note a special concern because this class of subsidies can, in our experience, be considerable and can have a significant influence on the transaction value, particularly when a significant amount of debt is forgiven in order to make the company attractive to prospective buyers. As our thinking on changes in ownership continues to evolve we will give careful consideration to the issue of whether subsidies granted in conjunction with planned changes in ownership should be given special treatment.

[25] The special treatment for certain privatization-related subsidies in developing countries under Article 27.13 also suggests that these subsidies are distinguishable under the Subsidies Agreement.

[26] This approach is consistent with the WTO's findings. *See, e.g., AB Report* at para. 115.

because, *inter alia,* the transaction was not at arm's length and for fair market value or because there were severe market distortions, we will find that the company continues to benefit from the prior subsidies in the full amount of the remaining unallocated balance of the subsidy benefit. This is fully consistent with the logic of our baseline presumption, *i.e.*, that subsidy recipients can benefit from subsidies over a period of time unless the intervening event of an arm's-length, fair-market-value sale extinguishes such subsidies.

This approach is also fully consistent with the WTO findings.[27] As we have noted elsewhere in this notice, neither the Panel nor the Appellate Body elaborated on the issue of how to determine fair market value. Likewise, neither body opined or ruled on how payment of less-than-fair-market-value would bear on existing subsidy benefits; in fact, they explicitly refrained from making any decision on this issue. *AB Report* at footnote 177.

We also note that there are practical reasons for finding that subsidy benefits continue in their entirety under such circumstances. For example, some commenters suggested that we determine that the amount of continuing benefit is the difference between the actual transaction price and the (higher) fair market value. However, in circumstances where our analysis is focused on the *process* through which the company or its assets were privatized, such a ''shortfall'' approach could be impossible because there may not be any precise ''fair market value'' available for such a calculation.

Moreover, the shortfall approach resembles more an analysis of a new subsidy, with an identification of financial contribution (*e.g.*, government provision of a good or service), and a new identification and quantification of a new benefit (*e.g.*, in the amount of the shortfall). Though we do not preclude the possibility of the privatization transaction giving rise to a new subsidy, we address above whether the privatized company continues to benefit from prior subsidies, not from new subsidies starting at the beginning of their allocation stream.

12. Previous Remand Determinations

Several commenters note that the Department made arm's-length, fair-market-value findings in certain recent CIT remands involving some of the same privatizations currently before the WTO. Many commenters raise case-specific facts and analysis, arguing for a particular result in a specific case when this new methodology is applied to the case facts. Other commenters object to the argument that any earlier determinations by the Department are now binding on the Department's implementation of the new methodology.

Department's Position: In the proposed modification we noted that, in the context of several recent remand redeterminations in privatization cases before the CIT, the Department has applied a process-oriented approach to analyzing the facts and circumstances of particular privatizations and the resulting value paid.[28] Our approach and findings in those remand redeterminations, however, may or may not reflect the full extent of the analysis of the transaction appropriate under this new methodology. Moreover, our position with regard to those redeterminations is unaffected by this notice.

As to commenters' arguments regarding the application of this new methodology to the particular facts of specific cases, we do not believe that this notice is the appropriate context for considering and responding to particular claims regarding particular determinations. Rather, as noted elsewhere in this notice, we intend to apply this new methodology in separate ''section 129'' proceedings for each case before the WTO. In the context of those proceedings, we will provide all interested parties opportunity to present evidence and argument as to the appropriate determination in each case given the case-specific facts and the application of this methodology.

13. Timetable for Application

One commenter urged that the final modification clarify that, as a general matter, the new privatization methodology would apply immediately to any pending investigations and reviews, except to the extent that the privatization issues have already been resolved by court decisions interpreting the current U.S. statutory provisions. In addition, in order to ensure that countervailing measures are not improperly imposed on merchandise that is not benefitting from subsidies, this commenter urged the Department to consider self-initiation of changed circumstance reviews of any countervailing duty orders in which the alleged subsidy recipient had been privatized after the subsidies were received.

Department's Response: We intend to implement this final modification according to the timetable discussed below. Our approach to implementation here is consistent with the approach we took in implementing the WTO's findings in *U.S. Antidumping Measures on Certain Hot-Rolled Steel Products from Japan. See Antidumping Proceedings: Affiliated Part Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002) *(Japan Hot Rolled Implementation).* Our reasons for why this approach to implementation is fully consistent with the statute and our WTO obligations are fully explained in that notice.

Implementation Timetable

This methodology will be used in implementing the WTO's findings in *European Certain Steel Products* pursuant to section 129 of the URAA. The Department intends to make such ''section 129'' determinations in the relevant segments of each of the 12 proceedings before the WTO on or before November 8, 2003. To the extent that the relevant segment of such proceeding establishes a cash deposit rate going forward, in accordance with section 129(c)(1) of the URAA, these section 129 determinations will establish new cash deposit rates for all producers for whom the rates from the relevant segments of the proceedings are still applicable and will apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative directs the Department to implement that determination. With respect to other proceedings, as well as other segments of the *Certain Products* proceedings that are not included in the dispute, the new methodology will be applied in all investigations and reviews initiated on or after June 30, 2003.

Dated: June 17, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–15795 Filed 6–20–03; 8:45 am]

BILLING CODE 3510–DS–P

[27] The baseline presumption was upheld by the Appellate Body. *See, e.g., AB Report* at para. 84.

[28] *See, e.g., Results of Redetermination Pursuant to Remand, Allegheny Ludlum Corp.* v. *United States,* CIT No. 99–09–00566 (January 4, 2002); *Results of Redetermination Pursuant to Remand, GTS Industries, S.A.* v. *United States,* CIT No. 00–03–00118 (January 4, 2002).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 030506116–3156–02, I.D. 050103E]

Financial Assistance for Fisheries Disasters

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

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this notice to amend the application deadline for the **Federal Register** notice of solicitation for applications entitled Financial Assistance for Fisheries Disasters. The application deadline is changed from June 27, 2003 to June 25, 2003, 5 p.m., EDT.

DATES: Your application must be received by close of business (5 p.m. EDT June 25, 2003). Applications received after that time will not be considered for funding.

ADDRESSES: You can obtain an application package from, National Marine Fisheries Service, State/Federal Liaison Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Send completed applications to this same address. You may also obtain forms from: *http://caldera.sero.nmfs.gov/grants/grants.htm.*

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office at (727) 570–5324 or at *Ellie.Roche@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice amends the **Federal Register** notice of May 28, 2003 (68 FR 31686) announcing the solicitation of application for economic assistance to the South Atlantic shrimp fishery and the Gulf shrimp fishery. This notice amends the closing date for application of the referenced **Federal Register** notice from June 27, 2003 to June 25, 2003. This action is taken to expedite award of financial assistance to fisherman harmed by the disaster in the shrimp fisheries. NOAA does not believe this action prejudices any applicant's ability to apply. Applications received after the revised due date will not be considered for funding. All other requirements and criteria published in the May 28, 2003 notice remain the same.

Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67FR 55109), are applicable to this solicitation.

Intergovernmental Review—Applications under this program are subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under Executive Order 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's Home page at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 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 inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, and 269 has been approved by OMB under the respective control numbers 0348–0043, and 0348–0039. Notwithstanding any other provision of 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 Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) control number.

Dated: June 19, 2003.

Timothy R.E. Keeney,

Deputy Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 03–15877 Filed 6–19–03; 12:59 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060903B]

Marine Mammals; File No. 848–1695

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Marine Mammal Research Program, Pacific Islands Fisheries Science Center, Honolulu Laboratory, 2570 Dole Street, Honolulu, HI 96822 (Principal Investigator, Dr. Bud Antonelis), has been issued a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

PProtected Species Coordinator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On January 22, 2003, notice was published in the **Federal Register** (68 FR 3015) that a request for a scientific research and enhancement permit to take the species identified above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes the Holder to take Hawaiian monk seals in the Hawaiian Archipelago and Johnston Atoll over a 5–year period for purposes of (1) population assessment (ground monitoring and aerial surveys, flipper tagging and retagging, bleach marking, genetics analyses) to determine survivorship, reproductive rates, pup production, incidence and causes of injury or mortality, and abundance; (2) disease and health assessment (health screening of healthy and ill animals, lancing of abscesses, analyses of parasites, dietary analyses, satellite and VHF tag deployment, euthanasia of moribund animals, necropsies) to gain information on pathogens and other

factors that affect individual animals; and (3) recovery actions (relocations and translocations of pups and juveniles, adult male removals, and disentanglements) to enhance the survival of the population.

An unlimited number of specimens (hard and soft parts including but not limited to blood serum, blubber biopsy, and placentae) may be exported to countries (including but not limited to Canada, the Netherlands, Scotland, and Australia) for scientific analyses related to health assessment of monk seals; samples not used in analyses may be re-imported. An unlimited number of specimens (hard and soft parts) from Mediterranean monk seals (*Monachus monachus*) may be imported to the U.S. and re-exported to the country of origin for opportunistic research related to the conservation of monk seals.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 10, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15803 Filed 6–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 23, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 18, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Postsecondary Education

Type of Review: Reinstatement.

Title: Preparing Tomorrow's Teachers to Use Technology.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 450.

Burden Hours: 18,000.

Abstract: Capacity Building and Catalyst grants will be awarded for two years to prepare future teachers to use modern learning technologies. These grants will address critical issues in the integration of technology into the classroom curriculum. These issues include (1) Access to modern educational tools; (2) support in the preparation of well-qualified, technology proficient teachers; and (3) bridging the digital equity to ensure access to modern learning technology and qualified teachers for all students.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2253. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–15778 Filed 6–20–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Grants and Cooperative Agreements; Availability, etc.: Elementary and Secondary Education—Indian Education Formula Grants to Local Educational Agencies

AGENCY: Office of Elementary and Secondary Education, Office of Indian Education.

ACTION: Notice inviting applications, including applications for Integration of Services projects under section 7116 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, for awards for fiscal year (FY) 2003, Indian Education Formula Grants to Local Educational Agencies.

Purpose of Program: The Indian Education Formula Grants program provides grants to support local educational agencies (LEAs) in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The programs funded are to be based on challenging State academic content and student academic achievement standards used for all students, and be designed to assist Indian students to meet those standards. Under section 7116 of ESEA, Integration of Services, the Indian Education Formula Grants program also authorizes the consolidation of funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively

serve Indian children, that are awarded under a statutory or administrative formula, for the purposes of providing education and related services that would be used to serve Indian students. Instructions for an Integration of Services project are included in the application package.

Eligible Applicants: LEAs and certain schools funded by the Bureau of Indian Affairs; and Indian tribes under certain conditions, as prescribed by statute in ESEA section 7112(c).

Applications Available: Applications were mailed May 27, 2003. To request a copy of the application, see the contact information under the ''For Applications or Information Contact'' heading.

Deadline for Transmittal of Applications: July 23, 2003. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. However, if funds become available after the initial allocation of funds, applications not meeting the deadline *may* be considered for funding if the Secretary determines, under section 7118(d) of ESEA, that reallocation of those funds to late applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, may be less than the applicant would have received had the application been submitted on time.

Deadline for Intergovernmental Review: August 22, 2003.

Available Funds: The appropriation for this program for FY 2003 is $96,501,636, which should be sufficient to fund all eligible applicants.

Estimated Range of Awards: $4,000 to $2,210,000.

Estimated Average Size of Awards: $75,040.

Estimated Number of Awards: 1,286.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months for new applications.

Budget Requirement: All projects with budgets of $115,000 or more are encouraged to plan and budget for one person to attend a one-day Project Directors' meeting to be held in Greensboro, NC in November 2003. Other projects not meeting that level of funding specified may attend at their discretion.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774. An electronic version of the application is available at: *http://www.ed.gov/offices/OESE/oie/index.html.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request of the person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF you must have Adobe Acrobat Reader, which is available free this previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7421.

Dated: June 17, 2003.

Eugene Hickok,

Under Secretary.

[FR Doc. 03–15808 Filed 6–20–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of correspondence from January 2, 2003 through March 31, 2003.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from January 2, 2003 through March 31, 2003.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B

Assistance for education of All Children With Disabilities Section 611—Authorization; Allotment; Use of Funds; Authorization of Aappropriations Section 619—Preschool Grants

Topic Addressed: Use of funds

- Letter dated March 25, 2003 to American Samoa Special Education Division Director Moeolo Vaatausili, regarding whether the purchase of vehicles to meet the transportation needs of children with disabilities using Part B funds is an allowable cost.
- Letter dated March 21, 2003 to Louisiana Department of Education Director Virginia Beridon, regarding criteria for determining whether use of Part B funds for international travel is an allowable cost.

Section 612—State Eligibility.

Topic Addressed: Confidentiality of Education Records

• Letter dated February 14, 2003 to Bergen County, New Jersey Freeholder Louis A. Tedesco, clarifying that rights under the confidentiality provisions of the Family Educational Rights and Privacy Act (FERPA) and the IDEA vest with the parent or eligible student and that FERPA does not provide for these rights to be vested in a third party that has not suffered an alleged violation.

Topic Addressed: Procedural Safeguards

• Letter dated February 26, 2003 to Vermont Director of Special Education Dennis Kane, regarding issues the State needs to review and resolve pursuant to State complaint procedures and the complaint requirements in the part B regulations at 34 CFR 300.660–300.662.

• Letter dated March 6, 2003 to individual, (personally identifiable information redacted), regarding the change in the Part B regulations that removed the Secretarial review process under the State complaint procedures effective May 11, 1999.

Topic Addressed: State Education Agency General Supervisory Authority

• Letter dated March 24, 2003 to Connecticut Commissioner of Education Theodore S. Sergi, regarding the State's due process hearing procedures and compliance with the Special Conditions on its Federal fiscal year 2002 grant award under Part B.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations

• Letter dated March 20, 2003 to Vermont Department of Education Legal Counsel Geoffrey A. Yudien, clarifying (1) that a school district may not override parental consent for the initial provision of special education and related services, (2) that a school district is not required to obtain separate parental consent for additional services that the individualized education programs team deems necessary or for a continuation of services after the parent has previously consented to the initial provision of services, and (3) that the protections under the IDEA, including the discipline procedures at 34 CFR 300.520–300.529, would not apply to children whose parents have refused consent for the initial provision of special education and related services.

• Letter dated February 11, 2003 to New Jersey Director of Special Education Barbara Gantwerk, clarifying (1) the ways in which school districts can document efforts to obtain parental consent for the initial provision of special education and related services and reevaluations, and (2) that school districts are not required to provide the Part B discipline protections to children who are not receiving special education because their parents have refused to consent.

Topic Addressed: Individualized Education Programs

• Letter dated February 4, 2003 to West Virginia Advocate Susan Given, regarding factors that States may use in determining when extended school year services are appropriate under Part B.

Section 615—Procedural Safeguards

Topic Addressed: Independent Educational Evaluations

• Letter dated March 20, 2003 to Arkansas Volunteer Educational Advocate David Young, clarifying that a school district's practice of maintaining and requiring a parent to use a list of qualified independent educational evaluation (IEE) examiners is not inconsistent with the parent's right to an IEE.

Topic Addressed: Surrogate Parents

• Letter dated March 11, 2003 to Vermont Department of Education Legal Counsel Geoffrey A. Yudien, regarding the authority of the State and the role of the surrogate parent in making educational decisions for children with disabilities placed in State custody.

Part C

Infants and Toddlers With Disabilities

Section 636—Individualized Family Service Plan

Topic Addressed: Early Intervention Services

• Letter dated March 25, 2003 to Connecticut Birth to Three System Director Linda Goodman, regarding whether assistive technology can be provided under Part C.

• Letter dated March 13, 2003 to South Carolina Part C Coordinator David K. Steele, clarifying that although the provision of respite or other care arrangements may be necessary for some families to participate in appropriate early intervention activities, the term ''respite'' is not intended to serve as child-care or ''baby-sitting'' assistance in ordinary circumstances.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: June 18, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–15807 Filed 6–20–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–769–000]

American PowerNet Management, LP; Notice of Issuance of Order

June 16, 2003.

American PowerNet Management, LP (APN) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. APN is a limited partnership located in Pennsylvania that intends to engage in the wholesale trading of electricity. APN also requested waiver of various Commission regulations. In particular, APN requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by APN.

On June 6, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by APN should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 7, 2003.

Absent a request to be heard in opposition by the deadline above, APN is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of APN, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of APN's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15752 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–123–000]

Richard Blumenthal, Attorney General of the State of Connecticut, The Connecticut Department of Public Utility Control v. NRG Power Marketing, Inc.; Notice of Clarification of Complaint

May 29, 2003.

Take notice that on May 22, 2003, Richard Blumenthal, Attorney General for the State of Connecticut (CTAG), and the Connecticut Department of Public Utility Control (CDPUC) (collectively, the Connecticut Representatives) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, a clarification of complaint. The Connecticut Representatives state that this filing supplements and incorporates by reference the complaint and motion for an emergency stay of NRG Power Marketing Inc.'s (NRG–PMI) threatened termination of its competitively bid wholesale power sale contract with the Connecticut Light and Power Company (CL&P) filed by the Connecticut Representatives on May 16, 2003.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the clarification of complaint and all comments, interventions or protests must be filed on or before the comment date below. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the clarification of complaint, 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.

Comment Date: June 6, 2003.

Editorial note: This document was received at the Office of the Federal Register June 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15789 Filed 6–18–03; 4:00 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–123–000]

Richard Blumenthal, Attorney General of the State of Connecticut and the Connecticut Department of Public Utility Control v. NRG Power Marketing Inc.; Notice Shortening Answer Period

May 29, 2003.

On May 27, 2003, NRG Power Marketing Inc. (NRG) filed a Motion for Summary Disposition by May 29, 2003 Vacating the May 16 Order, Dismissing the Amended Complaint, and Terminating the Proceeding, in the above-docketed proceeding. By this notice, the date for filing answers to NRG's motion is shortened to and including June 6, 2003.

Editorial note: This document was received at the Office of the Federal Register June 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15790 Filed 6–18–03; 4:00 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–129–000]

The Connecticut Light and Power Company; Notice of Filing

May 29, 2003.

Take notice that on May 27, 2003, The Connecticut Light and Power Company (CL&P) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order and Request for Expedited Treatment, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the

applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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.

Editorial note: This document was received at the Office of the Federal Register June 18, 2003.

Comment Date: June 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15791 Filed 6–18–03; 4:00 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–739–000]

El Dorado Irrigation District; Notice of Issuance of Order

June 16, 2003.

El Dorado Irrigation District (El Dorado) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. El Dorado also requested waiver of various Commission regulations. In particular, El Dorado requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by El Dorado.

On June 6, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by El Dorado should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 7, 2003.

Absent a request to be heard in opposition by the deadline above, El Dorado is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of El Dorado, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of El Dorado's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15749 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–763–000]

Innovative Technical Services, L.L.C.; Notice of Issuance of Order

June 16, 2003.

Innovative Technical Services, L.L.C. (InTech-LLC) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates and the reassignment of transmission capacity. InTech-LLC also requested waiver of various Commission regulations. In particular, InTech-LLC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by InTech-LLC.

On June 6, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by InTech-LLC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 7, 2003.

Absent a request to be heard in opposition by the deadline above, InTech-LLC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of InTech-LLC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of InTech-LLC's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15751 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–719–000, ER03–720–000, ER03–721–000, and ER03–722–000]

New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company; New Millennium Power Partners, LLC; Notice of Issuance of Order

June 16, 2003.

New Athens Generating Company, LLC, New Covert Generating Company, LLC, New Harquahala Generating Company, and New Millennium Power Partners, LLC (collectively, ''Applicants'') filed applications for market-based rate authority, with accompanying tariffs. The proposed tariffs provide for the sale of capacity, energy and ancillary services at market-based rates, resale of firm transmission rights, and reassignment of transmission capacity. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On June 6, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 7, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15748 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–520–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 16, 2003.

Take notice that on June 10, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet Number 124, to become effective July 10, 2003.

Northern Border proposes to revise its tariff to allow firm shippers an opportunity to work with the Company to establish a mutually agreeable contract term extension time period prior to the issuance of a notice of termination under subsection 5.3 of Rate Schedule T–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15755 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2494–028]

Puget Sound Energy, Inc.; Notice of Meeting To Discuss Update on White River Collaborative Settlement Process

June 16, 2003.

a. *Date and Time of Meeting:* June 23, 2003; 1:30 p.m. eastern daylight time.

b. *Place:* Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

c. *FERC Contact:* Mike Henry at *mike.henry@ferc.gov* or (503) 552–2762.

d. *Purpose of Meeting:* Puget Sound Energy, Inc., has requested a meeting with Commission staff to discuss (1) status of National Marine Fisheries Service's Biological Opinion regarding Puget Sound Chinook salmon; (2) status of agreement with Lake Tapps Homeowners to address concerns regarding future reservoir operations; (3) status of efforts to coordinate with the U.S. Army Corps of Engineers, and the efforts of the Corps to address fish passage for White River and Mud Mountain Dam; (4) schedule for completing settlement agreement; (5) request for a 6-month extension of the stay to the license order and related proceedings; and (6) other issues that

may be of interest or concern to parties to the proceeding for the White River Project (P–2494–028). The project is located on the White River, east of Seattle, Washington.

e. *Proposed Agenda:* (1) Introduction of participants, (2) Puget presentation on purpose of meeting, (3) discussion, and (4) meeting wrap up.

f. All local, State, and Federal agencies, Indian tribes, and other interested parties are invited to participate. Please call Mike Henry at (503) 552–2762 by June 19, 2003, for instructions on how to participate in person or by phone.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15754 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–59–002]

Questar Pipeline Company; Notice of Compliance Filing

June 16, 2003.

Take notice that on June 10, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 3, Fourth Revised Sheet No. 3, to be effective March 1, 2003.

Questar states that, on May 8, 2003, it filed tariff sheets in compliance with the Commission's order issued April 24, 2003, in Docket No. CP03–59–000, which approved the abandonment of Rate Schedule X–34 of Questar's FERC Gas Tariff, Original Volume No. 3. This compliance filing was accepted to be effective March 1, 2003, by the Commission's June 2, 2003, letter order. Questar explains that an additional tariff sheet in the Table of Contents has been affected by this acceptance and is being tendered in this filing to reflect the cancellation of Rate Schedule X–34.

Questar states that a copy of this filing has been served upon Questar's Original Volume No. 3 customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15746 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–742–000]

RMKG, LLC; Notice of Issuance of Order

June 16, 2003.

RMKG, LLC (RMKG) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. RMKG is a Texas corporation that intends to engage in the wholesale trading of electricity. RMKG also requested waiver of various Commission regulations. In particular, RMKG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by RMKG.

On June 6, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by RMKG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 7, 2003.

Absent a request to be heard in opposition by the deadline above, RMKG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of RMKG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of RMKG's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15750 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–860–001]

Sierra Pacific Industries; Notice of Filing

June 16, 2003.

Take notice that on June 12, 2003, Sierra Pacific Industries (SPI), filed with the Federal Energy Regulatory Commission an errata to its May 2, 2003, application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's

regulations. SPI requests a shortened notice period for the errata filing.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 26, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15753 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–76–001]

Southern Natural Gas Company; Notice of Refund Report

June 16, 2003.

Take notice that on June 10, 2003, Southern Natural Gas Company (Southern) tendered for filing a Refund Report reflecting its refund of certain amounts to its eligible firm shippers.

Southern states that the refund represents amounts collected as overrun charges for a firm shipper's use of receipt points in zones downstream of its contracted delivery zone(s), but within its Transportation Demand, plus interest calculated in accordance with section 154.501(d) of the Commissions's regulations. The report states that Southern credited $373,674.21 to its eligible shippers on June 10, 2003, per the Commission's Order dated May 6, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15757 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–521–000]

Texas Gas Transmission, LLC formerly Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 16, 2003.

Take notice that on June 10, 2003, Texas Gas Transmission, LLC (Texas Gas), formerly Texas Gas Transmission Corporation, tendered for filing as part its FERC Gas Tariff, Second Revised Volume No.1, the tariff sheets as shown on Appendix A to the filing, to reflect a name change to become effective on May 16, 2003.

Texas Gas states that copies of its transmittal letter and appendices have been mailed to all parties on the Commission's Official Service list, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15756 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–96–000, et al.]

Fresno Power Investors, L.P., et al.; Electric Rate and Corporate Filings

June 13, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Fresno Power Investors, L.P., Harold E. Dittmer, and Hanover Power (Gates), LLC

[Docket No. EC03–96–000]

Take notice that on June 11, 2003, Fresno Power Investors, L.P. (FPILP), Harold E. Dittmer, and Hanover Power (Gates), LLC (HPG) (collectively, the Applicants), filed with the Federal

Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 92.5% of the upstream membership interests in Wellhead Power Gates, LLC from HPG to Mr. Dittmer and FPILP.

Comment Date: July 1, 2003.

2. California Independent System Operator Corporation

[Docket Nos. EL00–111–006 and EL01–84–002]

Take notice that on June 10, 2003, California Independent System Operator Corporation (ISO), tendered for filing a report on ''Neutrality Adjustment'' pursuant to Commission Order of March 12, 2003. *Comment Date:* July 10, 2003.

3. Public Utilities Commission of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources California Electricity Oversight Board v. Sellers of Energy and Capacity Under Long-Term Contracts with the California Consolidated Department of Water Resources, Allegheny Trading Finance Company

[Docket Nos. EL02–60–000, EL02–62–000, and ER01–1847–001]

Take notice that on June 11, 2003, the California Electricity Oversight Board (CEOB), the California Public Utilities Commission (CPUC), and Allegheny Energy Supply Company, LLC (AESC) and Allegheny Trading Finance Company (ATF) (jointly or individually Allegheny), submitted for Commission approval a Settlement Agreement by and among the Governor of the State of California, acting on behalf of the agencies, departments, subdivisions, boards, and commissions of the executive branch of the State of California (including the California Department of Water Resources (CDWR); the CEOB, the CPUC; and the People of the State of California, by and through the Attorney General). Allegheny states that the Settlement Agreement resolves, among other things, complaints against Allegheny filed with the Commission by the CPUC and the CEOB in Docket Nos. EL02–60–000 and EL02–62–000.

Initial comments on the Settlement Agreement are to be filed with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, on or before the comment date stated at the end of this notice. Reply comments to the initial comments on the Settlement Agreement shall be filed on or before July 1, 2003.

As required by the Settlement Agreement, in Docket No. ER01–1847–001, ATF also tendered for filing an amendment to its Service Agreement No. 121, under which it provides firm delivery of power to the CDWR. The revised rates and volumes to be provided by ATF to CDWR are set forth in the amended and restated contract. ATF requests an effective date of June 10, 2003, for the Amended and Restated Service Agreement No. 121. Comments on the amended and restated contract shall be filed on or before the comment date.

Allegheny states that copies of the filing were served upon CDWR, the CPUC, the CEOB, the California Attorney General's Office, the West Virginia Public Service Commission, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, and the Maryland Public Service Commission.

Comment Date: June 24, 2003.

4. Entergy Services, Inc.

[Docket No. EL03–132–000]

Take notice that on June 10, 2003, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., filed a Petition for Declaratory Order. Entergy seeks Commission guidance with respect to a weekly procurement process proposed to facilitate the continued integration of merchant generation and other wholesale suppliers into the procurement processes Entergy uses to serve Entergy's native load customers, and to establish an additional mechanism for granting short-term firm transmission service.

Comment Date: July 10, 2003.

5. Brownsville Power I, L.L.C., Caledonia Power I, L.L.C., CinCap IV, L.L.C., CinCap V, L.L.C., CinCap VIII, L.L.C., Cinergy Capital & Trading, Inc., Cincinnati Gas & Electric Co., Cinergy Power Investments, Inc., PSI Energy, Inc.]

[Docket Nos. ER00–826–001, ER00–828–001, ER98–421–011, ER98–4055–008, ER00–1834–002, ER93–730–018, ER96–2504–004, ER02–177–004, and ER96–2506–005]

Take notice that on June 5, 2003, the above referenced entities (collectively the Applicants), submitted for filing with the Federal Energy Regulatory Commission a triennial market power update pursuant to the Commission orders granting them market-based rate authorizations. Applicants state that they are all direct or indirect subsidiaries of Cinergy Corp.

Comment Date: June 26, 2003.

6. Exelon Corp.

[Docket No. ER03–949–000]

Take notice that on June 5, 2003, Exelon Corp., tendered for filing an Interim Report of the services the PJM Interconnection, L.L.C. will be performing for ComEd between June 1, 2003, and October 1, 2003, the transition period before ComEd is integrated into PJM in accordance with the Commission's Order of April 1, 2003, in Docket No. ER03–262–000.

Comment Date: June 26, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15747 Filed 6–20–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CA091–OPP; FRL–7517–1]

Expiration of Interim Approval of Antelope Valley's Clean Air Act Operating Permits Program in California; Announcement of a Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that as of January 21, 2003, pursuant to EPA's title V operating permits program regulations, interim approval of the title V operating permits program in Antelope Valley Air Pollution Control District (Antelope Valley APCD or the District) has expired. EPA was unable to grant full approval to the District's title V program before the expiration date because the District could not resolve EPA's finding that California's agricultural permitting exemption in Health and Safety Code Section 42310(e) unduly restricts the District's ability to adequately administer and enforce the title V program. As a result of the expiration of the interim approval of the District's program, EPA will implement the federal operating permits program for all major stationary sources in Antelope Valley APCD.

ADDRESSES: Correspondence with the Region IX Air Permits Office should be mailed to EPA Region 9, Air Division, Permits Office (AIR–3), 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3974 or *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. Background
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I. Background

Title V of the Clean Air Act (CAA or Act) requires all state permitting authorities to develop operating permits programs that meet certain federal criteria codified at 40 Code of Federal Regulations (CFR) part 70. California has delegated responsibility for adopting and implementing the required title V permitting programs to the local air pollution control districts. On November 30, 2001, EPA approved the permitting programs for 34 air districts in the State. 66 FR 63503 (December 7, 2001). Our approval, however, was challenged by several groups alleging that the approval was unlawful based in part on a State law provision (Health and Safety Code Section 42310(e)), which precludes local air districts from permitting major agricultural sources that would otherwise be subject to title V permitting. Because of this permitting exemption, EPA determined that the title V programs in these 34 districts were inadequate and published this determination in a Notice of Deficiency (NOD). 67 FR 35990 (May 22, 2002). The State had 90 days to take corrective action. Since the State did not take corrective action, EPA partially withdrew approval of the title V programs in these 34 districts, with the final rule effective November 14, 2002. 67 FR 63551 (October 15, 2002). In conjunction with this partial withdrawal, EPA announced that we would implement a federal title V permitting program in these districts for major agricultural sources. *Id.*

Antelope Valley APCD is a relatively new air pollution control district in California, created by the State legislature in 1997. As a result, review of the District's title V program has been independent from review of the other 34 districts' programs. Antelope Valley APCD's title V operating permits program was granted interim approval, effective January 18, 2001. 65 FR 79314 (December 19, 2000). EPA identified three deficiencies in the District's program which prevented full approval.[1] In the final interim approval, EPA explained that if these deficiencies were not corrected such that EPA could grant full approval of the District's program by January 21, 2003, federal law would require EPA to administer and enforce a federal permits program for the District. Id. at 79315.

Of the three deficiencies noted by EPA, two were corrected by Antelope Valley APCD in a timely manner (submittal dates of October 22, 2001, and June 17, 2002). The third deficiency—EPA's finding that the State's agricultural permitting exemption at Health and Safety Code Section 42310(e) unduly restricts the local district's ability to adequately administer and enforce its title V program—has not been corrected by the State. This is the same deficiency identified in the NOD regarding the inadequacy of the title V programs for the 34 other districts (*see* 67 FR 35990, May 22, 2002). Because this deficiency has not been corrected and interim approval of the District's program has expired, EPA must implement and enforce the part 71 program for major stationary sources, including major stationary agricultural sources, in Antelope Valley APCD. EPA will continue to implement the title V permitting program in the District until the permitting exemption in state law is removed and EPA grants full approval to the District's program.

II. Effect of Today's Notice

As a result of the expiration of the interim approval, EPA began implementation of the part 71 program for major stationary sources in the Antelope Valley APCD, effective January 21, 2003. EPA is not promulgating a part 71 program with today's notice, since such a program has already been promulgated by the Agency. *See* 61 FR 34202 (July 1, 1996). The purpose of today's notice is to inform the public that the interim approval of Antelope Valley APCD's title V program has expired and that EPA is now implementing the federal part 71 permitting program for major stationary sources, including major stationary agricultural sources, in the District.

Pursuant to 40 CFR 71.5(a)(1)(i), major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program or on or before such earlier date as the permitting authority may establish. For Antelope Valley APCD, the deadline will be 12 months after January 21, 2003. Therefore, major stationary sources (including major stationary agricultural sources) that do not have a title V permit are required to submit part 71 permit applications to the EPA Region IX Permits Office (*see* **ADDRESSES** section) no later than January 21, 2004. Existing major stationary sources planning to undergo modification(s) should note that applications or supplemental information for a pending application should be sent to the EPA Region IX Permits Office and that EPA will review the application.

The deadline for submitting fees depends on the type of source or, more specifically, on the source's SIC code. Pursuant to 40 CFR 71.9(f)(1)(i), agricultural sources have six months from the effective date of the part 71 program. Therefore, agricultural sources

[1] In addition to the permitting exemption for agricultural sources described above, EPA also directed the District to address inconsistencies between District rules and federal requirements governing reopening of certain permits and emission cutoffs for insignificant sources.

must submit fees by July 21, 2003. However, agricultural sources should note that EPA has published a direct final rule and parallel proposal to amend these regulations to defer fees for agricultural sources. 68 FR 25507 (May 13, 2003); 68 FR 25548 (May 13, 2003). For other types of sources, refer to 40 CFR 71.9(f)(1) for fee submittal deadlines.

As we noted in the final rulemaking for the 34 other districts in California, EPA is committing to provide additional guidance on the implementation of the part 71 program for new major stationary agricultural sources. The additional guidance, which EPA will make widely available through direct outreach to potentially subject sources and through other means, will provide clearer direction as to the types and sizes of operations that are presumptively major under the title V program.

In line with this commitment, EPA is developing streamlined application forms [2] and user-friendly instructions for agricultural sources. The documents, along with regularly updated information, are available at a web page dedicated to the topic of title V permitting for agricultural sources in California.[3] The Web site is at: *http://www.epa.gov/region09/air/ca/title5app.html.* It should be noted that it is ultimately the responsibility of the source to submit a permit application if it is subject to the part 71 program, regardless of whether contact is initiated by EPA or any other regulatory authority.

If you have questions, EPA has also implemented a toll-free voicemail hotline as well as a dedicated e-mail address for any agricultural-permit-related questions. The phone number and e-mail address are listed below and can also be found on the Web site.

Toll-free voicemail hotline: 1–800–810–9798

E-mail: *farmpermits@epa.gov*

An owner or operator of a source may request a part 71 applicability determination from EPA. Pursuant to 40 CFR 71.3(e), the written request shall be made by the source's responsible official to the EPA Region IX Regional Administrator, shall include identification of the source and relevant facts about the source, and shall meet the certification requirements of 40 CFR 71.5(d).

III. Notification of Part 71 Program Effectiveness

Section 71.4(g) requires that, in taking action to implement and enforce a part 71 program, EPA shall publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program. By this notice, EPA is today informing the public of the Agency's implementation of the part 71 federal operating permits program for major stationary sources located within the jurisdiction of Antelope Valley APCD. The effective date of this program is January 21, 2003.

In addition to today's **Federal Register** notice, EPA will also, to the extent practicable, publish notice in a newspaper of general circulation within the Antelope Valley APCD area in accordance with the requirements of 40 CFR 71.4(g). Finally, in accordance with 40 CFR 71.4(g), EPA has provided a letter to Winston H. Hickox, Secretary, California Environmental Protection Agency, as California Governor Gray Davis' designee, to provide notice of the effectiveness of EPA's part 71 program for major stationary sources in Antelope Valley APCD.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–15763 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–P

[2] If an owner or operator of a subject source prefers to use the standard part 71 permit application, those forms, as well as instructions for completing the forms, are available electronically at *www.epa.gov/air/oaqps/permits/p71forms.html.* Part 71 permit applicants may also contact the EPA Region IX Air Permits Office as described in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

[3] Note that the Web site lists an application deadline of May 14, 2003. This deadline applies only to the 34 other districts in California. The application deadline for all major stationary sources in Antelope Valley APCD that do not have a title V permit is January 21, 2004.

ENVIRONMENTAL PROTECTION AGENCY

[ND–001–0010; FRL–7516–8]

Notice of Availability of Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; extension of comment period.

SUMMARY: The EPA is hereby extending for 8 days the public comment period established by the May 23, 2003, notice of availability of a dispersion modeling analysis of Prevention of Significant Deterioration (PSD) increment consumption in North Dakota and eastern Montana. EPA's air quality modeling analysis is contained in a report titled *Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana* (May 2003).

DATES: Comments must be received on or before July 1, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. The Report and supporting documentation are available on EPA's Web site at *http://www.epa.gov/region8/air/ndair.html.* Copies of the Report and supporting documentation and data are also available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Interested persons should contact the person listed below to arrange a time to view the Report.

FOR FURTHER INFORMATION CONTACT: Carl Daly, EPA, Region VIII, (303) 312–6416.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** issued on May 23, 2003 (68 FR 28211). In that document, EPA provided a notice of availability of a dispersion modeling analysis of Prevention of Significant Deterioration (PSD) increment consumption in North Dakota and eastern Montana. EPA's air quality modeling analysis is contained in a report titled *Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana* (May 2003). The results of this analysis show numerous violations of the Class I PSD increments for sulfur dioxide (SO_2) in four Class I areas. These Class I areas are the Theodore Roosevelt National Park and the Lostwood Wilderness Area in North Dakota and the Medicine Lakes Wilderness Area and Fort Peck Indian Reservation in Montana. The EPA is soliciting additional public comments on this analysis before taking any further actions. EPA is hereby extending the comment period, which was set to end on June 23, 2003, to July 1, 2003. This extension is in response to requests from interested stakeholders. EPA is extending the comment period 8 days in order to be consistent with the comment period extension granted by the North Dakota Department of Health to their public process on the issue of Prevention of Significant Deterioration (PSD) increment consumption in North Dakota and eastern Montana.

Dated: June 16, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–15764 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7516–6]

Science Advisory Board, Environmental Economics Advisory Committee, Advisory Panel on the Environmental Economics Research Strategy; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) is establishing a panel to review the EPA's Environmental Economics Research Strategy. The panel will consist of members of the EPA SAB Environmental Economics Advisory Committee (EEAC) to which will be added additional experts to constitute the Advisory Panel on the Environmental Economics Research Strategy (APEERS).

DATES: Nominations should be submitted no later than July 14, 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, *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 Thomas O. Miller, Designated Federal Officer as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Thomas O. Miller, Designated Federal Officer (DFO), via telephone/voice mail at (202) 564–4558; or via e-mail at *miller.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Summary: The U.S. Environmental Protection Agency (EPA) Science Advisory Board is establishing a panel to review EPA's Environmental Economics Research Strategy (EERS). The panel will consist of members of the SAB Environmental Economics Advisory Committee to which will be added experts to form the Advisory Panel on the Environmental Economics Research Strategy (APEERS). The Strategy draws together all relevant research needs of the EPA offices and laboratories into an understandable framework for guiding EPA's research planning and implementation in this topical area.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

The project the panel will undertake is expected to be no more than a six-month effort. 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 found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf.* Those selected to serve on the panel will review the draft materials identified in this notice and respond to the charge questions provided below. Upon completion, the panel's report will be submitted to the SAB Executive Committee for final approval.

Background: The EPA Science Advisory Board was asked by the National Center for Environmental Economics (NCEE) and the Office of Research and Development's National Center for Environmental Research (ORD/NCER) to review the EPA Environmental Economics Research Strategy.

The ''Strategy'' integrates together all relevant research conducted by EPA offices and laboratories and provides a blueprint for economic research priorities for the agency. The Strategy ''* * * identifies priorities and research gaps, evaluates research tools, sets out strategic research objectives and suggests responsibilities and sequences for conducting or sponsoring research.'' These research needs were developed from an initial survey of EPA economists who identified research topics for consideration. The top ten categories identified were: Valuation of reduced morbidity benefits; environmental behavior and decision-making; valuation of ecological benefits; benefits of environmental information disclosure; valuation of mortality benefits; market mechanisms and incentives other than trading; green accounting-international trade-finance; market mechanisms and incentives—trading; discounting-intergenerational equity; and risk and uncertainty techniques-integration with valuation. Research will be conducted externally through cooperative agreements, grants, contracts, and internally at EPA's National Center for Environmental Economics and in relevant EPA Office of Research and Development (ORD) National Laboratories and Centers.

The identified research priorities were evaluated by EPA staff in relation to four criteria in order to select the areas that EPA would emphasize in its research program. The selection criteria used require that research must: be needed by EPA, state, or other clients; reflect a gap in the existing knowledge base (*i.e.*, not have been conducted already); be scientifically feasible and potentially of high quality; and be related to EPA's mission in a policy-relevant context and be able to come to conclusions on the topic within 5 to 10 years. The selected objectives for EPA's economics research focus, include: environmental (compliance) behavior and decision-making; benefits of environmental information disclosure; ecological valuation; health valuation; and market mechanisms and incentives. The Science Advisory Board Review Draft of EPA's research strategy for environmental economics can be found at the SAB's Web site at *http://www.epa.gov/sab/.*

Proposed Charge to the Panel: The following is the accepted charge that has been given to the Science Advisory Board by the Agency:

Charge Question 1: For each of the major subject areas described in the EERS, EPA has attempted to articulate the research questions most relevant to EPA that can be effectively addressed given the available tools and resources. In this context, please address the following for the key research questions identified in the EERS in each of the subject areas.

(a) Is the characterization of each of the major research gaps in the literature for the key subject areas of relevance to EPA's economic sciences, as identified in the EERS adequate? Will these priorities and implementation approaches effectively address the areas of greatest scientific uncertainty?

(b) Given the implementation strategy laid out in the EERS;

—To what extent is this research scientifically feasible at a high level of quality?

—How successful is this research likely to be in answering policy-relevant questions for EPA within the next 8–10 years?

(c) What improvements in the design and implementation of the EERS would make each research project more useful to EPA and other environmental management agencies?

Charge Question 2: What methodological research needs in valuation should EPA investigate as a complement to the needs derived from the strategy interviews?

In the valuation areas, EPA's expressed needs are primarily practical: better values for ecological and human health impacts of environmental policies. However, most grant proposals (and most journal articles) investigate practical questions as well as methodological or other questions (*e.g.* incentive compatibility or elicitation methods in stated preference or more refined models of behavior in revealed preference). EPA does not expect that researchers will propose to estimate only the practical values that EPA needs, but will also propose to investigate methodological issues. Since the research strategy interviews did not elicit methodological needs, and EPA believes that improving methodology while generating practical values provides useful synergy, further input on prioritizing methodological issues from the EEAC would be useful.

Charge Question 3: Can the SAB identify by consensus any environmental economics issues of overriding importance to EPA that the EERS has missed, and that EPA should address provided that more resources be made available for Environmental Economics Research? Could the SAB explain why this (these) issue(s) should be of high concern to EPA's research programs.

Charge Question 4: What is the best way for EPA to communicate the results of the research strategy and plans for achieving its long-term research goals to the wider research community, and other potential users?

SAB Request for Nominations: This review will be conducted by a panel comprised of the EPA SAB's Environmental Economics Advisory Committee, an existing Standing Committee of the Board. Because some EEAC members may not be able to participate, the SAB may choose to include on the panel, persons who are members of other existing SAB Committees, or who have been nominated by the public, for panel inclusion, in response to this notice. Therefore, the EPA SAB is requesting nominations of individuals who are recognized, national-level experts in environmental economics who specialize in one or more of the following areas:

(a) Environmental (compliance) behavior and decision-making (*e.g.*, why and how firms react to government intervention in markets, voluntary programs, perceptions of environmentally related costs);

(b) Benefits of environmental information disclosure;

(c) Ecological valuation;

(d) Human health valuation;

(e) Market mechanisms and incentives;

(f) Cost analysis;

(g) Benefit-Cost analysis and Uncertainty analysis in BCA;

(h) Discounting and intergenerational equity.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the Advisory Panel on the Environmental Economics Research Strategy (APEERS).

Anyone who is unable to submit nominations in electronic format may contact Thomas O. Miller as indicated in this FR notice. Nominations should be submitted before July 14, 2003. Any questions concerning either this process or any other aspects notice should be directed to Thomas O. Miller, as indicated in this FR notice.

The EPA Science Advisory Board will acknowledge receipt of these nominations to the nominators. 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 the specific expertise to add to the Advisory Panel on the Environmental Economics Research Strategy (APEERS).

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) scientific credibility and impartiality; (c) availability and willingness to serve; (d) absence of financial conflicts of interest; 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 be asked to attend one public meeting and two public teleconferences during this review.

Dated: June 16, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–15766 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7516–7]

Availability of ''Allocation of Fiscal Year 2003 Operator Training Grants''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled ''Allocation of Fiscal Year 2003 Operator Training Grants'' issued on June 6, 2003. This memorandum provides National guidance for the allocation of funds under section 104(g)(1) of the Clean Water Act. Each

grant recipient will receive a copy of this document from EPA.

ADDRESSES: Municipal Assistance Branch, (4204–M), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gary Hudiburgh. (202) 564–0626 or *hudiburgh.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's home page, *http://www.epa.gov/owm/mab/owm0321.pdf.*

Dated: June 13, 2003.

Jane S. Moore,

Acting Director, Office of Wastewater Management.

[FR Doc. 03–15765 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0030; FRL–7314–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 28, 2003 to May 23, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0030 and the specific PMN number or TME number, must be received on or before July 23, 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: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), 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 Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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–2003–0030. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA 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.

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 and specific PMN number or TME 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 OPPT–2003–0030. 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 *oppt.ncic@epa.gov,* Attention: Docket ID Number OPPT–2003–0030 and PMN Number or TME Number. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0030 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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 technical 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 or collection activity.
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 and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why Is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 28, 2003 to May 23, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of

commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 67 PREMANUFACTURE NOTICES RECEIVED FROM: 04/28/03 TO 05/23/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0518	04/29/03	07/28/03	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–03–0519	04/29/03	07/28/03	Optima Chemical Group, LLC	(G) Enhances fibers	(S) 2,4-dichloro-n-((2,4-dichlorophenyl) methyl)-n-hydroxy-benzenemethanamine
P–03–0520	04/29/03	07/28/03	Dow Corning Corporation	(G) Stabilizer	(G) Silicone resin
P–03–0521	04/29/03	07/28/03	CBI	(G) Processing aid	(G) Salt of a copolymer of acrylic acid and acrylic acid derivatives
P–03–0522	04/30/03	07/29/03	BASF Corporation	(S) Diesel additive	(G) Octa-alkyl ethylenediamine tetraacetamide
P–03–0523	04/30/03	07/29/03	CBI	(G) Highly dispersive use	(G) Disubstituted benzene
P–03–0524	04/30/03	07/29/03	Ashland Chemical Company	(G) Open non-dispersive manufacture of reinforced plastics	(G) Unsaturated polyester
P–03–0525	05/01/03	07/30/03	CBI	(G) Can coating resin	(G) Phenolic Resin
P–03–0526	05/01/03	07/30/03	CBI	(G) Paper additive	(G) Substituted aromatic carboxylic acid salt
P–03–0527	05/01/03	07/30/03	Vantico Inc.	(G) Accelerator for epoxy thermoset uses	(G) 2-propenoic acid, 2-methyl-, polymer with 1,2-ethanediyl bis(2-methyl-2-propenoate), 2-ethyl-2-[[(2-methyl-1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl bis(2-methyl-2-propenoate) and methyl 2-methyl-2-propenoate, compound with imidazole
P–03–0528	05/01/03	07/30/03	Vantico Inc.	(G) Accelerator for epoxy thermoset uses	(G) 2-propenoic acid, 2-methyl-, polymer with 1,2-ethandiyl bis(2-methyl-2-propenoate), 2-ethyl-2-[[(2-methyl-1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl bis(2-methyl-2-propenoate) and methyl 2-methyl-2-propenoate, compound with imidazole
P–03–0529	05/01/03	07/30/03	CBI	(G) Processing aid	(G) Salt of mixed fatty amidoamines and polyethylenepolyamines
P–03–0530	05/01/03	07/30/03	CBI	(G) Processing aid	(G) Salt of a polyethylenepolyamine derivative
P–03–0531	05/01/03	07/30/03	CBI	(G) Processing aid	(G) Salt of mixed fatty amidoamines
P–03–0532	05/05/03	08/03/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Unsaturated alkyl grignard reagent
P–03–0533	05/05/03	08/03/03	Wacker Chemical Corporation	(S) Crosslinker for adhesives/sealants	(S) 2-propenoic acid, 2-methyl-, (trimethoxysilyl)methyl ester
P–03–0534	05/05/03	08/03/03	CBI	(S) Surfactant as an ashphalt emulsifier	(G) Propoxylated tallow polypropylene polyamine
P–03–0535	05/06/03	08/04/03	Advanced Silicon Materials LLC	(G) Chemical reactant (destructive use)	(S) Silicon hydride
P–03–0536	05/05/03	08/03/03	CBI	(G) Ink Additive	(G) Polymer of substituted allylamine
P–03–0537	05/05/03	08/03/03	CBI	(G) Paint additive	(G) Polyurethane
P–03–0538	05/05/03	08/03/03	CBI	(G) Paint additive	(G) Polyurethane
P–03–0539	05/05/03	08/03/03	CBI	(G) Paint additive	(G) Polyurethane
P–03–0540	05/08/03	08/06/03	BASF Corporation	(G) Component for polyurethane foam.	(G) Hexanedioic acid, polymer with aliphatic diols
P–03–0541	05/08/03	08/06/03	UCB Chemicals Corporation	(S) Resin for coatings	(G) Polyurethane resin
P–03–0542	05/09/03	08/07/03	CBI	(G) Thermoset, 2-part adhesive component. open nondispersive use	(G) Nitrile-butadiene extended epoxy resin
P–03–0543	05/09/03	08/07/03	CBI	(G) Thermoset, 2-part adhesive component. open nondispersive use	(G) Nitrile-butadiene extended epoxy resin
P–03–0544	05/13/03	08/10/03	CBI	(G) Textile additive	(G) Difattyacid amidoethyl dialkyl ammonium salt

I. 67 PREMANUFACTURE NOTICES RECEIVED FROM: 04/28/03 TO 05/23/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0545	05/14/03	08/11/03	CBI	(G) Organic foundry binder, fast-curing wood adhesives, tire cord adhesive; rubber cross-linking agent tires, flame retardant for thermoplastics	(G) Alkyl polyhydroxy aromatics
P–03–0546	05/14/03	08/11/03	Cardolite Corporation	(S) Epoxy curing agent	(G) Amine functional epoxy curing agent
P–03–0547	05/15/03	08/12/03	Cytec Engineered Materials Inc. (cem)	(G) Resin for non-dispersive use	(G) Epoxy-bisphenol adduct
P–03–0548	05/15/03	08/12/03	BASF Corporation	(S) Processing aid for leather tanning	(G) Ethoylated alkyl alcohol
P–03–0549	05/15/03	08/12/03	CBI	(G) Open, non-dispersive	(G) 1,3-bis(dimethoxyethylol) 4,5-dihydroxyethylene urea
P–03–0550	05/13/03	08/10/03	Cardolite Corporation	(S) Epoxy curing agent	(G) Amine functional epoxy curing agent
P–03–0551	05/13/03	08/10/03	Cardolite Corporation	(S) Epoxy curing agent	(G) Amine functional curing agent
P–03–0552	05/16/03	08/13/03	Reichhold, Inc.	(G) Resin for coatings	(G) Amine salt of cyclic carboxylic acid, polymer with hydroxy substituted alkane, branched alkyl diol, alkanediol, alkoxylated triol and alkanetriol
P–03–0553	05/16/03	08/13/03	Zeon Chemicals L.P.	(S) Tackifier for use in manufacturing composite laminates	(G) Elastomer modified epoxy resin
P–03–0554	05/16/03	08/13/03	CBI	(G) Adhesives for automotive applications	(G) Polyurethane
P–03–0555	05/19/03	08/16/03	Forbo adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–03–0556	05/19/03	08/16/03	Ashland Inc., Environmental Health and Safety	(G) Pressure sensitive adhesive for labels	(G) Copolymer of acrylic esters, methacrylic esters and styrene
P–03–0557	05/16/03	08/13/03	CBI	(G) Laminating adhesive	(G) Polyurethane
P–03–0558	05/16/03	08/13/03	CBI	(G) Laminating adhesive	(G) Polyurethane
P–03–0559	05/19/03	08/16/03	PPG Industries, Inc.	(G) Component of coating with an open use	(G) Silica dispersion
P–03–0560	05/19/03	08/16/03	CBI	(G) Ingredients for use in consumer products: highly dispersive use	(G) Macrocyclic alkoxy ether
P–03–0561	05/19/03	08/16/03	Idemitsu Chemicals U.S.A. Corporation	(G) Monomer	(S) 2-propenoic acid, 2-methyl-, 3-hydroxytricyclo[3.3.1.13,7]dec-1-yl ester
P–03–0562	05/19/03	08/16/03	Idemitsu Chemicals U.S.A. Corporation	(G) Monomer	(S) 2-propenoic acid, 2-methyl-, 2-methyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0563	05/19/03	08/16/03	Idemitsu Chemicals U.S.A. Corporation	(G) Monomer	(S) 2-propenoic acid, 2-methyl-, 2-ethyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0564	05/19/03	08/16/03	Idemitsu Chemicals U.S.A. Corporation	(G) Monomer	(S) 2-propenoic acid, 3-hydroxytricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0565	05/19/03	08/16/03	Idemitsu Chemicals U.S.A. Corporation	(G) Monomer	(S) 2-propenoic acid, 2-methyltricyclo[3.3.1.13,7]dec-2-yl ester
P–03–0566	05/19/03	08/16/03	Idemitsu Chemicals U.S.A. Corporation	(G) Monomer	(S) 2-propenoic acid, 2-ethyltricyclo[3.3.1.13,7□dec-2-yl ester
P–03–0567	05/20/03	08/17/03	E.I. Dupont De Nemours and Co.	(G) Polymer additive	(G) Phosphonium salt of substituted alkylsulfonate
P–03–0568	05/20/03	08/17/03	Atk Thiokol Propulsion	(S) Exlposive; propellants	(S) 5,2,6-(iminomethenimino)-1h-imidazo[4,5-b]pyrazine, 1,3,8,10-tetraacetyloctahydro-
P–03–0569	05/20/03	08/17/03	CBI	(S) Film coating	(G) Saturated copolyester
P–03–0570	05/21/03	08/18/03	Blaser swisslube Inc.	(G) Metalworking fluid	(G) Phosphate of a substituted alkanol
P–03–0571	05/20/03	08/17/03	Croda Inc.	(S) Fragrance solubilizer into non polar solvents; pigments wetting agent	(S) Poly[oxy(methyl-1,2-ethanediyl)],.alpha.,.alpha.′-(1,6-dioxo-1,6hexanediyl)bis[.omega.-(tetradecyloxy)-
P–03–0572	05/22/03	08/19/03	CBI	(G) Semiconductor manufacture	(G) Alkylated polyamide
P–03–0573	05/19/03	08/16/03	DSM Resins U.S. Incorporated	(G) Raw material for can coatings	(G) Polyester resin

I. 67 PREMANUFACTURE NOTICES RECEIVED FROM: 04/28/03 TO 05/23/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0574	05/20/03	08/17/03	Ilford Imaging USA	(S) Dye for inkjet printer ink	(S) Cuprate(4-), [2-(amino-.kappa.n)ethanol][7-[[3-(hydroxy-.kappa.o)-4-[[1-(hydroxy-.kappa.o)-3-sulfo-7-[(2-sulfoethyl)amino]-2-naphthalenyl]azo]-.kappa.n1]phenyl]azo]-1,3-naphthalenedisulfonato(6-)]-, tetrasodium

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 47 NOTICES OF COMMENCEMENT FROM: 04/28/03 TO 05/23/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–1106	05/20/03	05/06/03	(G) Polymer of aliphatic/aromatic polycarboxylic acids and aliphatic /alicyclic polyols, neutralized with alkanolamine
P–01–0661	05/09/03	05/02/03	(G) Alkylated aromatic
P–02–0211	05/14/03	04/28/03	(G) Siloxane polyol ester
P–02–0224	05/13/03	05/09/03	(G) Poly(oxyalkylene) aromatic amine colorant
P–02–0417	05/14/03	04/09/03	(G) Polyol
P–02–0501	05/13/03	04/14/03	(S) Ferrite substances, magnetoplumbite-spinel type, magnesium manganese strontium
P–02–0534	05/13/03	04/28/03+	(G) Substituted vinylether, ethoxylated
P–02–0861	05/12/03	04/16/03	(G) Silico-titano-aluminophosphates
P–02–0894	05/01/03	04/04/03	(S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2,5-furandione
P–02–0957	05/15/03	05/08/03	(G) Aromatic mixed esters
P–02–0969	05/05/03	04/03/03	(G) Polymer of a carbomonocyclic diisocyanate, a modified polyalkene, hydroxyalkane and a substituted alkoxysilane
P–02–1009	05/14/03	05/05/03	(G) Polyurethane crosslinker
P–02–1086	05/22/03	04/03/03	(G) Polymer of a carbomonocyclic diisocyanate, a modified polyalkene, hydroxyalkane and a substituted alkoxysilane
P–03–0009	05/01/03	04/15/03	(G) Acrylic polymer
P–03–0030	05/21/03	05/06/03	(G) Epoxy-amine adduct
P–03–0044	05/19/03	05/09/03	(S) Glycerides, soya mono- and di-, phosphates
P–03–0060	05/12/03	05/01/03	(G) Meko blocked prepolymer of cycloaliphatic isocyanate and hydroxyalkane carboxylic acid, neutralized with aminoalkanol
P–03–0064	04/30/03	03/26/03	(G) 2,5-furandione, polymer with ethenylbenzene,4-[(1-oxo-2-propenyl)oxy]butyl propyl ester, compound with ammonia and amine
P–03–0071	05/13/03	03/19/03	(S) 2-propenoic acid, 2-hydroxyethyl ester, adduct with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane (1:1), reaction products with ethoxylated reduced me ethers of reduced polymd. oxidized tetrafluoro-ethylene
P–03–0090	05/06/03	04/17/03	(G) Acrylic resin
P–03–0144	04/28/03	04/24/03	(G) Aliphatic polyurethane
P–03–0173	05/13/03	05/01/03	(G) Modified polycarbocycles, maleated
P–03–0174	05/13/03	05/05/03	(G) Modified polycarbocycles, maleated, ethoxylated
P–03–0175	05/13/03	05/05/03	(G) Modified polycarbocycles, maleated, ethoxylated, phosphates
P–03–0187	05/14/03	04/29/03	(G) Organometallic compound
P–03–0195	05/05/03	04/11/03	(G) Aromatic acid ester
P–03–0201	05/06/03	04/17/03	(G) Fatty acid amide ammonium chloride salts
P–03–0210	04/28/03	04/21/03	(G) Urethane modified acrylic copolymer
P–03–0213	05/01/03	04/18/03	(G) Modified polythioaminoketone
P–03–0216	05/22/03	05/06/03	(G) Acrylic copolymer
P–03–0217	05/08/03	04/08/03	(G) Polyester polyol
P–03–0218	04/25/03	04/11/03	(G) Alkyl borate
P–03–0219	04/28/03	04/21/03	(G) Urethane modified acrylic copolymer
P–03–0241	05/12/03	04/24/03	(G) Vinyl acetate copolymer
P–03–0242	05/06/03	04/24/03	(G) Vinyl acetate copolymer
P–03–0243	05/14/03	04/09/03	(G) Polyol
P–03–0244	05/14/03	04/09/03	(G) Polyol
P–03–0245	05/14/03	04/09/03	(G) Polyol
P–03–0259	04/30/03	04/18/03	(G) Self-crosslinking acrylic polymer

II. 47 NOTICES OF COMMENCEMENT FROM: 04/28/03 TO 05/23/03—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–03–0260	04/30/03	04/22/03	(S) 1,3-benzenedimethanol, alpha,alpha,alpha′,alpha′-tetramethyl-polymer with phenol, glycidyl ethers
P–03–0261	05/22/03	05/12/03	(G) Acrylated uretahane
P–03–0281	05/06/03	04/30/03	(G) Acrylic copolymer
P–03–0285	05/07/03	04/24/03	(S) 1h-benz(e)indolium, 1,1,2,3-tetramethyl-, salt with 4-methylbenzenesulfonic acid (1:1)
P–03–0287	05/07/03	04/29/03	(G) Substituted pyridinemethanesulfonic acid, [[[(sulfooxy)ethyl]sulfonyl]phenyl] [sulfophenyl], sodium salt
P–03–0289	05/15/03	04/28/03	(G) Modified polyolefin polyacrylate copolymer
P–95–0594	05/23/03	04/29/03	(G) Synthetic alkanes, $C_{8–15}$
P–97–0457	04/29/03	03/26/03	(S) Fatty acid, $C_{14–18}$ and $C_{16–18}$-unsatured, reaction products with C_{18}-unsatured fatty acid dimers and trimethylolpropane

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 12, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–15768 Filed 6–20–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, June 26, 2003 at 11 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Extension of Ex-Im Bank's Environmental Procedures & Guidelines and the Nuclear Procedures & Guidelines.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: For further information contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

James K. Hess,

Senior Vice President and Chief Financial Officer.

[FR Doc. 03–15962 Filed 6–19–03; 3:27 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–67; DA 1939]

Pleading Cycle Established for Comment on Petition for Interim Waiver and Rulemaking on the Cost Recovery for Wireless Telecommunications Relay Service Calls

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on a petition for interim waiver requesting that all Telecommunication Relay Service (''TRS'') calls placed using a wireless phone be reimbursed from the Interstate TRS Fund and requesting a rulemaking to decide how relay calls should be reimbursed where the jurisdiction of the call cannot be determined from the automatic number identification system.

DATES: Interested parties may file comments in this proceeding on or before July 14, 2003. Reply comments may be filed on or before July 30, 2003. Parties that may have already submitted comments in this proceeding need not resubmit those comments unless they choose to update them.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail at *Erica.Myers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 03–1939, released June 13, 2003. When filing comments, please reference CC Docket No. 98–67. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get from your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Erica Myers, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW, Room 6-A432 Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (tty).

This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–15735 Filed 6–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Securities of Insured Nonmember Banks.

OMB Number: 3064–0030.

Form Number: F–7, F–8, and F–8A.

Annual Burden:

Estimated annual number of respondents: 1,755.
Number of Responses per Respondent: 1.35.
Estimated time per response: 0.62 hours.
Total annual burden hours: 1,470 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: The information is collected from FDIC-supervised banks and from officers, directors and shareholders subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The information is considered necessary for actual and potential investors making investment decisions concerning securities issued by reporting banks.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Fair Housing Lending Monitoring System.

OMB Number: 3064–0046.

Annual Burden:

Estimated annual number of respondents: 2,000.
Estimated Annual Number of Loan Applications: 1,000,000.
Estimated time per response: 5 minutes.
Total annual burden hours: 83,333 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

3. *Type of Review:* Renewal of a currently approved collection.

Title: Public Disclosure by Banks.

OMB Number: 3064–0090.

Annual Burden:

Estimated annual number of respondents: 5,500.
Estimated time per response: 0.5 hours.
Total annual burden hours: 2,750 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: 12 CFR 350 requires a bank to notify the general public, In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

4. *Type of Review:* Renewal of a currently approved collection.

Title: Procedures for Monitoring Bank Protection Act Compliance.

OMB Number: 3064–0095.

Annual Burden:

Estimated annual number of respondents: 5,500.
Estimated time per response: 1/2 hour.
Total annual burden hours: 2,750 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB 3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before July 23, 2003 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: June 18, 2003.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–15786 Filed 6–20–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Community State Bank Employee Stock ownership Plan & Trust, Union Grove, Wisconsin; to become a bank holding company through the retention of at least 29.59 percent, of the voting shares of Union Bancorporation, Inc., Union Grove, Wisconsin, and thereby indirectly acquire Community State Bank, Union Grove, Wisconsin.

Board of Governors of the Federal Reserve System, June 17, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–15730 Filed 6–20–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0222]

Agency Information Collection Activities; Proposed Collection; Comment Request; Product Jurisdiction; Assignment of Agency Component for Review of Premarket Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which an applicant may obtain an assignment or designation determination.

DATES: Submit written or electronic comments on the collection of information by August 22, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Product Jurisdiction; Assignment of Agency Component for Review of Premarket Applications

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Public Law 101–629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of: (1) A drug and a device; (2) a device and a biological; (3) a biological and a drug; or (4) a drug, a device, and a biological. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for classifying and determining which agency component is designated to have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute.

The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which agency component should have primary jurisdiction, with an accompanying statement of reasons. The information submitted would be used by FDA as one

of the bases for making the assignment or designation decision. Most information required by the proposed regulation is already required for premarket applications affecting drugs, devices, biological and combination products. The respondents will be businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3	28	1	28	24	672

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15699 Filed 6–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0226]

Draft Guidance for Industry and FDA Staff; Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002—Identification of Manufacturer of Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled ''Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002—Identification of Manufacturer of Medical Devices.'' Section 301 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) requires that a device, or an attachment to the device, bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol that identifies the manufacturer. Section 301 becomes effective on April 26, 2004, for devices introduced or delivered for introduction into interstate commerce after that date. This draft guidance provides that the agency, in the exercise of enforcement discretion, does not intend to object if a manufacturer has not yet fully implemented the changes required by section 301 of MDUFMA for devices introduced or delivered for introduction into interstate commerce after April 26, 2004, for a period of up to 18 months after FDA issues final guidance on its interpretation and implementation of section 301. This draft guidance is neither final, nor is it in effect at this time.

DATES: Submit written or electronic comments by September 22, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled ''Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002—Identification of Manufacturer of Medical Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692, or Leonard Wilson, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0799.

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA (Public Law 107–250) added a provision to the Federal Food, Drug, and Cosmetic Act that requires a device, or an attachment to the device, to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol that identifies the manufacturer. The requirement may be waived based on a determination that compliance is not feasible or would compromise the provision of reasonable assurance of safety and effectiveness for the device. Failure to comply with the new requirement misbrands the device (section 301 of MDUFMA (21 U.S.C. 352(u))). This provision is effective April 26, 2004, with respect to devices introduced or delivered for introduction into interstate commerce after that date.

This draft guidance provides that, in the exercise of enforcement discretion, FDA does not intend to object if a manufacturer has not yet fully implemented the changes required by section 301 of MDUFMA for devices introduced or delivered for introduction into interstate commerce after April 26, 2004, the effective date of the provision, for a period of up to 18 months after FDA issues final guidance on the implementation of section 301.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the compliance with section 301 of MDUFMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

To receive the draft guidance for industry and FDA staff entitled ''Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002–Identification of Manufacturer of Medical Devices'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1217) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh.* A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html.* Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets.*

Dated: June 13, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15731 Filed 6–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999P–1656]

Posting Warning Letter Responses on FDA's Web Site; Notice of Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) plans to implement a 6-month pilot program in which we (FDA) will post on our Internet Web site certain responses to warning letters. The pilot program is part of our ongoing efforts to keep the public informed regarding agency activities and to make information publicly available. During this pilot, we will post copies of certain responses to warning letters if the recipient requests that the response be posted on our Web site and submits the response in an appropriate electronic format. We will review the responses and redact certain information to ensure that the responses comply with protections available under the Freedom of Information Act (FOIA).

DATES: The pilot program will begin on September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION:

I. Background

FDA traditionally receives many requests under FOIA (5 U.S.C. 552) for warning letters issued to FDA-regulated entities. In compliance with the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), we post on our Web site warning letters that are, or are likely to be, frequently requested documents under FOIA. Updated information regarding a specific issue discussed in a warning letter, however, may not be available on the Web site. In a citizen petition dated May 26, 1999, we were asked to draft regulatory procedures that would require us to promptly post, to the extent permitted under FOIA, agency records related to any previously posted warning letters. The petition requested that this policy extend to agency memoranda or letters that relate, refer, or pertain to any resolution of any of the issues in the warning letters and, where applicable, updates to the firm profile. We declined to post all materials related to warning letters on our Internet Web site, but decided to initiate a 6-month pilot program in which we will post certain responses to warning letters.

II. Pilot Program Description

The pilot program is part of our ongoing efforts to keep the public informed regarding agency activities and to make information available in a manner that is accessible and fair. Accordingly, we plan to test, for 6 months, a pilot program that provides warning letter recipients the opportunity to have their responses to warning letters posted on our Web site. For purposes of this pilot only, we consider warning letter recipients to be the addressee and any other individuals or entities specifically named in a warning letter.

When the pilot program begins, responses submitted to us: (1) With request that the response be posted, and (2) in the format described in the following paragraphs, will be considered for the pilot program. After 180 days, we will evaluate the pilot and determine whether the program should become permanent. However, if we experience undue burden in dealing with the process, find that the process is too resource-intensive, or determine that misleading information is being conveyed to the public as a result of the pilot, we may discontinue the program.

We will post a warning letter recipient's response on our Web site if the recipient: (1) Requests that the response be posted, and (2) submits to us a copy of the response in a word processing format on a disk or CD–ROM. (The disk or CD–ROM should be submitted to the FDA office that issued the warning letter and should be submitted with the response.) We will review the response and redact certain information to ensure that the response complies with protections available under FOIA. For purposes of this pilot program only, we consider a warning letter recipient to be the addressee and any other individual or entity specifically named in a warning letter. If a warning letter recipient wishes to participate in this pilot, the recipient should submit a copy of the response on a computer disk in a word processing format. We will electronically redact and also convert the document to a format that is consistent with 29 U.S.C. 794d. Warning letter recipients submitting a response should clearly identify the warning letter to which they are responding by noting the date of the warning letter and the company(ies) or individual(s) involved.

We reserve the right not to post responses in some cases, such as when a response would likely mislead the public concerning the safety or efficacy of a company's product(s). During this pilot program, we also intend to place a disclaimer on our Web site stipulating the following:

Note: The Food and Drug Administration cannot assure the accuracy of information submitted to the agency without a complete review of the submitted materials and resolution of the issues discussed therein. To make certain information available to the public, the agency has undertaken a pilot program to post responses to warning letters before evaluating the documents and resolving the issues. The responses are redacted to the extent permitted by the Freedom of Information Act.

We believe the disclaimer allows us to properly inform the public about the information contained on our Web site. We reserve the right to change the language in the disclaimer should we consider it appropriate to do so.

Once we have had sufficient opportunity to assess our experience in implementing the pilot program, we will decide whether to make the program permanent.

Dated: June 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15732 Filed 6–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, ZMD1 (04) Loan Repayment Programs: Extramural Clinical and Health Disparities Research.

Date: July 16–18, 2003.

Time: 5 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lorrita Watson, PhD, National Center on Minority Health, and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, 301 594–7784, *watsonl@ncmhd.nih.gov*.

Dated: June 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15716 Filed 6–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Collaborative Program for Research in Bronchopulmonary Dysplasia.

Date: July 15–16, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. (301 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15719 Filed 6–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Relay/Rapid Applications.

Date: June 25, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Danyelle Sterling, Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6154F, MSC9606, Bethesda, MD 20892–9606. 301–443–8188. *dsterlin@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15720 Filed 6–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS-H (93) Metabolic Profiling.
Date: July 1, 2003.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC: 7806, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB 54R: Improvements in Imaging Methods & Technologies: RFA EB03–007.
Date: July 1, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.
Date: July 7–8, 2003.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower, 1127 Connecticut Avenue NW., Washington, DC 20036.
Contact Person: Mark Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5218 MSC 7852, Bethesda, MD 20892, 301–435–2398, *rubertm@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2 (55) Gene Delivery.
Date: July 7–8, 2003.
Time: 8:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Kaliedoscope, Washington, DC 20007.
Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6707 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, 301 435–8367, *atreyap@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders & Clinical Neuroscience/ZRG1 SSS S 11/SBIR.
Date: July 7–8, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301 435–1246, *etcheber@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System, SBIR and Devices.
Date: July 7–8, 2003.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6707 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, 301 435–1164, *custerm@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Developmental Outcomes.
Date: July 7, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–402–4454, *champoum@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSX 50R: EB03–007 Improvements in Imaging Methods & Technologies.
Date: July 8–9, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171. *rosenl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Systems and Methods for Imaging.
Date: July 8–9, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate for Imaging.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Nat'l. Inst. of Biomed. Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, MSC 5469, Bethesda, MD 20892, 301–496–8633, *dunnbo@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro-SBIR.
Date: July 8, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Language and Cognition.
Date: July 8, 2003.
Time: 9 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1856. *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethics of Health Research.
Date: July 8, 2003.
Time: 10:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 435–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Special Emphasis Panel on Mating and Reproduction.

Date: July 8, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Maribeth Champoux, PhD, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm: 3184 MSC: 7848, Bethesda, MD 20892, 301–402–4454, *champoum@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review Overflow and Member Conflict Applications from BSCH and BSPH.
Date: July 8, 2003.
Time: 1 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CPA 03M: Metastasis and Invasion.
Date: July 8, 2003.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System SBIRs and Devices.
Date: July 8, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Psychophysics.
Date: July 8, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Room 5172 MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Related SBIR & STTRs.
Date: July 9, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Mayflower, 1127 Connecticut Ave. NW., Washington, DC 20036.
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS9 50B: Biomedical Informatics.
Date: July 9, 2003.
Time: 8 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–M 52R: PAR–03–032: Tissue Engineering Bioengineering Research Partnerships.
Date: July 9–10, 2003.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Psychology.
Date: July 9, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Michael Micklin, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, HEPATITIS C: Natural History, Pathogenesis, Therapy and Prevention RO1s.
Date: July 9–10, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
*Contact Person:*Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2 (50) Drug Delivery.
Date: July 9–10, 2003.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Kaleidoscope, Washington, DC 20007.
Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F04 20L Chemistry/Biophysics Fellowship Panel.
Date: July 9–11, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Genetics.
Date: July 9, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS9 10B: Small Business: Biomedical Informatics.
Date: July 9–11, 2003.
Time: 1:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CCVS 01:Clinical CV.
Date: July 9–10, 2003.
Time: 1:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coping With Cancer.

Date: July 9, 2003.

Time: 6:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Claire E Gutkin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Proteomics-Glycomics Resource Review.

Date: July 9–11, 2003.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15717 Filed 6–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cardiovascular and Renal Study Section, June 23, 2003, 8 a.m. to June 25, 2003, 1 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD, 20814 which was published in the **Federal Register** on June 9, 2003, 68 FR 34406–34408.

The meeting will be held at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD,20815. The meeting date and time remains the same. The meeting is closed to the public.

Dated: June 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–15718 Filed 6–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Private Nonprofit Facility (PNP) Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: We give notice of our reinterpretation of section 102(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and of our regulations at 44 CFR 206.221(e) and as a result the change in our policy concerning private nonprofit facilities.

DATES: Effective date: June 23, 2003. Applicability date: This applies to all disasters declared on or after January 20, 2001.

FOR FURTHER INFORMATION CONTACT: James A. Walke, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2751, or email *James.Walke@dhs.gov.*

SUPPLEMENTARY INFORMATION: In response to the September 11, 2001, terrorist attacks, we have been working to expeditiously provide assistance to as many disaster victims are possible. In order to do so, we have looked at our authorities and determined that in some cases, our interpretation of those authorities has been too restrictive. We give notice of our reinterpretation of the authority regarding eligibility of private nonprofit facilities in section 102(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122(9) and of our regulations at 44 CFR 206.221(e).

The definition of ''private nonprofit facility'' (PNP) in the Stafford Act is a ''private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.'' We have interpreted that provision to mean all private nonprofit facilities must be open to the general public.

1. The following change to the PNP definition is effective immediately and applies to all disasters declared on or after January 20, 2001. This affects eligibility for the Public Assistance Program, as well as for the Hazard Mitigation Grant Program (HMGP) (*see* 206.434(a)(2).) Only those private nonprofit facilities that do not meet the definition in 44 CFR 206.221 of an educational, utility, emergency, medical, or temporary or permanent custodial care facility must be open to the general public. Since this policy is applicable retroactively, the normal application deadlines have been extended for Public Assistance. The Regions and States will take appropriate measures to identify and re-evaluate applicants who may have been denied assistance in disasters declared on or after January 20, 2001. For HMGP, the States may amend their applications until December 31, 2003, with respect only to PNP applicants who are now eligible because of the revised policy and were PNPs at time of declaration, and only for major disaster declarations where HMGP funds are available. The following is FEMA's policy on Private Nonprofit Facility (PNP) Eligibility.

2. *Response and Recovery Directorate Policy Number:* 9521.3.

3. *Title:* Private Nonprofit Facility (PNP) Eligibility.

4. *Purpose:* This policy provides guidance in determining the eligibility of private nonprofit (PNP) organizations and facilities not specifically identified in 44 CFR 206.221.

5. *Scope and Audience:* This policy is applicable to all major disasters and emergencies declared on or after January 20, 2001. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the Public Assistance Program.

6. *Background:* The guidelines for eligibility of PNP organizations and facilities have been refined over the past several years as eligibility issues have surfaced. The regulatory definition of a PNP organization and facility can be found in 44 CFR 206.221. However, PNP organizations offer so many types of services that it is still necessary to provide this additional policy guidance regarding organizations and services listed in the regulations and in the preamble of the final rule of September 14, 1993. The terms, ''purposes,'' ''activities,'' ''uses,'' and ''services'' as used in this policy are derived from the governing statute, regulations and customary usage and may overlap. In the past, all PNPs had to be open to the

general public. However, a careful reading of legislative authorities makes clear that in 1988, in amending the Disaster Relief Act of 1974, Congress did intend that facilities within the category of ''other private nonprofit facilities which provide essential services of a governmental nature'' (as defined in § 206.221(e)(7)) must be open to the general public. Furthermore, with passage of the Disaster Mitigation Act of 2000 Congress added ''irrigation'' facilities to the extent they provide water for essential services of a governmental nature to the general public. These changes have been incorporated into the existing policy, which is presented in its entirety below.

7. *Policy:* Guidance for determining the eligibility of PNP organizations and their facilities follows:

A. Applicants—Basic Statutory and Regulatory Requirements.

(1) The applicant must have a ruling letter from the U.S. Internal Revenue Service or satisfactory evidence from the State that it is a nonprofit organization doing business under State law.

(2) The applicant must meet requirements as listed in 44 CFR 206.221—44 CFR 206.226, including the need to own or operate an eligible facility and to be legally responsible for disaster-related repairs.

(3)The applicant must meet the requirements of the Civil Rights Act of 1964.

B. Facilities—Basic Statutory and Regulatory Requirements/Information.

(1) The facility, at a minimum, must meet the criteria outlined in 44 CFR 206.221(e).

(2) The facility must be *primarily used* for one of the services or facilities listed in 44 CFR 206.221(e).

(3) Certain types of facilities are not required to be open to the general public if they meet the definition of an educational, utility, emergency, medical, or custodial care facility (enumerated in § 206.221(e)(1), (2), (4), (5), (6)). Other types of private nonprofit facilities that provide certain essential government type services to the general public, which include PNP irrigation facilities (as defined in § 206.221(e)(3)) and facilities that provide ''other essential government services'' as defined in § 206.221(e)(7), and as listed in 4(g) below, must be open to the general public.

(4) *Eligible PNP Facilities.* The following generally are eligible for assistance, and may be subject to the requirements of paragraph F of this policy:

(a) Educational facilities (as defined in § 206.221(e)(1)),

(b) Utilities (as defined in § 206.221(e)(2)),

(c) Irrigation facilities (as defined in § 206.221(e)(3)),

(d) Emergency facilities (as defined in § 206.221(e)(4)),

(e) Medical facilities (as defined in § 206.221(e)(5) (which includes, rehabilitational facilities)),

(f) Custodial care facilities (as defined in § 206.221(e)(6)),

(g) Facilities that provide essential governmental services and which must be open to the general public (as defined in § 206.221(e)(7)), such as:

(i) Museums,

(ii) Zoos,

(iii) Community centers,

(iv) Libraries,

(v) Homeless shelters,

(vi) Senior citizen centers,

(vii) Shelter workshops, and

(viii) Health and safety services of a governmental nature, including, for example:

- Low-income housing (as defined by Federal, State or local law or regulation),
- Alcohol and drug treatment centers,
- Residences and other facilities offering programs for battered spouses,
- Animal control facilities directly related to public health and safety,
- Facilities offering food programs for the needy, and
- Daycare centers for children, or individuals with special needs (*e.g.*, those with Alzheimer's disease, autism, muscular dystrophy, etc.)

(5) *Ineligible PNP Facilities.* Some PNP facilities that might have been assisted prior to 1993 are no longer eligible under the governing statutes and regulations. Examples include:

(a) Recreation facilities,

(b) Job counseling and training centers,

(c) Facilities for advocacy groups not directly providing health services,

(d) Public housing (other than low-income),

(e) Cemeteries,

(f) Performing arts facilities,

(g) Parking garages,

(h) Conference facilities,

(i) Facilities maintained by property owners' associations such as roads and recreational facilities (except those facilities that could be classified as utilities or emergency facilities), and

(j) Daycare centers for purposes other than those described in paragraph 4 above.

C. *Facility Eligibility Based on Primary Use.* Even though an organization that owns the facility is an eligible PNP, the facility itself must be primarily used for eligible services. Space is the primary consideration in determining if a facility is eligible.[1] Where certain spaces are used both for eligible and ineligible purposes, eligibility is determined by looking at the time the facility is used for eligible versus ineligible services.

(1) A facility must have over 50% of its space dedicated to eligible uses in order for any of the facility to be eligible. Common space (lobbies, restrooms, utility closets, janitorial closets, elevators, stairs, parking, etc.) is not included in calculating the proportion of eligible use. A facility is assessed as an entire structure and not its individual parts such as a basement, floor or building wing.

(2) When space is not dedicated to specific activities, or is used for eligible and ineligible purposes, primary use is determined by the amount of time used for eligible services.

(3) Space dedicated to or primarily used for religious purposes is not eligible for Public Assistance Program assistance under the governing statutes and regulations.

(4) FEMA will consider damages to the entire facility, not just to the portion occupied by the eligible services. However, the assistance is in direct proportion to the percentage of space dedicated to eligible services. The balance of costs to repair damages or replace a facility will not be funded by FEMA.

(5) Contents that are the responsibility of an ineligible occupant are not eligible for reimbursement if damaged.

D. *Ownership.* There are instances when an eligible organization will use part of a facility for eligible services and lease the remaining portion for an ineligible service or use. In other situations an eligible organization may be a partial owner in a facility with an ineligible organization. The following guidelines are to be used in determining the eligible costs for such facilities.

(1) *Total Ownership by PNP.* A facility must have over 50% of its space dedicated to an eligible purpose/mission in order to be eligible.

(a) If the facility meets the 50% threshold, then the eligibility of the repairs is in direct proportion to the percentage of space dedicated to its eligible purpose/mission. In any event, the applicant must repair the entire building. Exceptions to repairing the entire building may be granted in unusual situations.

(b) A facility that does not meet the 50% space threshold is not an eligible PNP facility.

[1] PNP irigation facilities used in delivering water for essential governmental services are exempt from this requirement.

(c) A section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant must mitigate the entire building if the applicant opts to request the pro-rated mitigation project funding.

(2) *Partial Ownership by PNP.* Reimbursement depends upon the percentage of ownership, amount of space being occupied by the applicant and amount of space dedicated to eligible services. The grant assistance may fund work in any part of the facility; however, reimbursement is contingent upon the entire facility being repaired. Exceptions to repairing the entire building may be granted in unusual situations.

(a) The eligible applicant: (1) Must own more than 50% of the facility, and (2) must occupy and use for eligible services more than 50% of the facility's space at the time of the disaster. If the eligible space meets that threshold, funding is in direct proportion to the percentage of space dedicated to the eligible use.

(b) The percentage eligible cannot exceed the percentage represented by the space being occupied by the applicant. For example, if the applicant owns 70% of the building but only uses 60% for its eligible purposes, then the maximum eligible percentage is 60%.

(c) A section 406 Hazard Mitigation grant would be eligible at the same percentage as the repair. However, the applicant and/or other owners must mitigate the entire building if the pro-rated mitigation project funding is requested.

(d) Alternate project or improved project funding may be approved but reimbursement is based on the eligible funding of the original repairs. A section 406 Hazard Mitigation grant is not eligible for either of these funding options with the exception of an improved project that maintains the same facility for which the mitigation is approved.

(e) If a partnership agreement states the repair responsibilities of each partner, the eligible reimbursement will be based on the percentage of responsibility.

E. *Defining ''open to the general public.''* Being ''open to the general public'' and ''providing services to the general public,'' are requirements for facilities that provide ''other essential governmental services'' (as defined in § 206.221(e)(7)), and for irrigation facilities (as defined in § 206.221(e)(3)) but are not requirements for facilities that meet the definition of an educational, utility, emergency, medical, or custodial care facility as defined in § 206.221(e)(1–2)–(4–6).

(1) A private nonprofit facility that provides ''other essential governmental services'' (defined in § 206.221(e)(7)) is likely to meet the ''open to the general public'' requirement if:

(a) It is open to the general public;

(b) Membership fees, if any, are nominal;

(c) Membership fees, if any, are waived in instances in which someone can show inability to pay the fee.

(2) A private nonprofit facility that provides ''other essential governmental services'' (defined in § 206.221(e)(7)) is not likely to meet the ''open to the general public'' requirement if:

(a) A membership fee is of such magnitude as to preclude access to the facility by a significant portion of the community.

(b) The membership fee clearly exceeds what would be considered an appropriate user fee based upon a reasonable assumed use of a facility.

(c) Membership is limited to a certain number of people in the community.

(d) Membership is limited to a defined group of individuals who have a financial interest in the facilities managed by the PNP (for example, a condominium association).

(e) Membership discriminates against certain discrete classes of people, or is limited to individuals from some geographic area that is more restrictive than the community from which the facility in question could normally be expected to draw users.

F. *Requirement for Application to the Small Business Administration (SBA).* PNP facilities potentially eligible for permanent work assistance that provide ''non-critical services'' must first apply for a disaster loan from the SBA before applying to FEMA for disaster assistance. ''Non-critical'' PNPs, however, may apply directly to FEMA for emergency work costs. ''Non-critical services'' include educational facilities as well as those facilities defined in § 206.221(e)(7). (Facilities providing ''critical services'' as defined in § 206.226(c)(1), including power, water, sewer and wastewater, communications, medical treatment, fire protection, emergency rescue, and nursing homes, may apply directly to FEMA for disaster assistance.) The SBA loan application process for these ''non-critical'' PNP facilities will result in one of three outcomes:

1. If the PNP is declined for an SBA loan, the PNP may then apply to FEMA for public assistance.

2. If the SBA loan fully covers eligible damages from the disaster event, then no assistance from FEMA is available.

3. If the maximum SBA loan for which the facility is eligible does not fully cover eligible damages, the PNP may then apply to FEMA for the excess eligible damages.

Eligible PNPs are also required to apply to SBA for any 406 Hazard Mitigation costs.

G. *Lease Agreements.* An eligible applicant must be legally responsible for disaster-related repairs whether they own a facility or lease it. An eligible applicant that leases an asset of an otherwise ineligible applicant and uses it in a way that normally would qualify it for assistance may be eligible for assistance. The lease, pre-dating the disaster, must clearly specify that the eligible applicant is responsible for repair of *major* damage and not just maintenance or minor repairs.

H. *Examples.* Several examples are offered for clarification purposes in the attached Appendix A. In addition, RR Policy #9521.1, ''Community Center Eligibility,'' and RR Policy #9521.2, ''Private Nonprofit Museum Eligibility'' should be reviewed as complementary policies and for more examples of partial eligible use.

8. *Supersession:*

A. RR Policy #9521.3, '' Private Nonprofit (PNP) Facility Eligibility'' dated April 25, 2000.

B. All other relevant provisions of other public assistance policy documents on this subject.

9. *Authorities:* Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206, and 44 CFR part 206.

10. *Originating Office:* Recovery Division, Emergency Preparedness & Response Directorate.

11. *Review Date:* One year from date of publication.

APPENDIX A

Private Nonprofit Facility (PNP) Eligibility

Case Examples

Below are examples of private nonprofit facilities that could be expected to request eligibility determinations. *See also:* ''Community Center Eligibility'', RR Policy 9521.1.

Parkland Hospital Medical Office Building

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are 70% of the floor space excluding the common area floor space as defined in this policy.

Analysis: The building is *not* eligible because the eligible services were offered in less than 50% of the building space. If the for-profit leases had not exceeded the 50% threshold, the grant assistance would have been pro-rated based on the percentage of the building occupied by the eligible nonprofit services.

Springtown Recreation Center

The PNP Springtown Recreation Center claims that it provides eligible essential government services in addition to its recreation activities and should be eligible for assistance. The organization claims that its services now include day care for elderly adults, senior citizen center programs, programs for battered spouses, and shelter workshops. These programs are provided by the recreation center staff and offered five days a week. Recreation activities are limited to evenings and weekends. The entire center is used for the eligible services.

Analysis: The organization would not appear to be eligible based upon its name and presumed mission. A detailed examination is necessary to determine the eligibility of the organization and its facility based upon the eligible services provided. In cases where space is not dedicated to any specific activity, the amount of time dedicated to eligible purposes in such spaces will determine eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, the level of FEMA assistance will be pro-rated based on the proportion of the total time it is used for eligible services.

Community Church School

The Community Church operates a State certified school offering first through eighth grades. The teaching curriculum includes math, science, English, history, physical education and religious doctrine. The school has an average attendance of 500 students. The church has constructed three education buildings that are used exclusively by the school. The church occasionally uses the education buildings for religious activities. The school occasionally uses the church, but that use is always substantially less than 50%.

Analysis: Look at the church and three education buildings separately. The three education buildings are eligible because: (a) The school meets FEMA requirements to be considered an eligible education institution; (b) the buildings generally are not used for ineligible purposes and their primary purpose is to serve the school; and (c) the few religious classes in the curriculum is not sufficient to influence the primary use for secular education. However, in the spaces used for eligible *and* ineligible purposes, the level of FEMA assistance will be based on the proportion of the total time that such spaces are used for eligible purposes. The church's primary use is an ineligible service under the governing statutes and regulations and its peripheral use by the school is not sufficient to establish its eligibility.

Southlake Hospital Parking Garage

The parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor that faces a busy public street is leased to retail businesses. The leased space occupies 15 percent of the total space of the garage.

Analysis: 44 CFR 206.221(e) authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes Southlake Hospital's parking garage. Since the hospital uses more than 50% of the parking garage, the facility is eligible based on primary use. The leased space does not make the garage ineligible because it only represents 15% of the total space in the facility. FEMA assistance would be pro-rated based on the percentage of space used for the eligible parking purpose. If the leased space had exceeded 50% of the facility space, the primary use of the facility would become ineligible. The parking garage is eligible only because of its association with the hospital.

Woodlands Homeowners' Association

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a two hundred home development. The Homeowners' Association's services are local neighborhood streets, water system, sewage system, fire station, medical clinic, neighborhood park, community center and a recreational lake and dam.

Analysis: The Homeowners' Association operates facilities that provide essential government services and therefore is an eligible PNP. The lake and dam, park and streets do not meet the definition of eligible facilities. The water and sewage systems meet the definition of a utility and are eligible for assistance. The fire station and medical clinic are eligible as emergency and medical facilities. The community center might be eligible if it is open to the general public outside the Homeowners' Association community and if it is established and primarily used as a gathering place for a variety of social, educational enrichment and community service activities (*i.e.*, meeting the requirements of RR Policy 9521.1).

Midwest Methodist University

The University is a private nonprofit education facility as defined in the Stafford Act, section 102. It is supported by the United Methodist Church organization and offers both secular and religious education. The State's Department of Education officially recognizes the University as a school of higher education offering courses such as history, math, English, science, theology, religious education and religious counseling. The University offers undergraduate and graduate degrees in all fields of study. The campus consists of a large number of buildings for education, administration and religious worship.

Analysis: Damaged buildings that are primarily used for secular courses normally found on university campuses are eligible. Buildings containing student and administrative services also are eligible because they support educational, emergency, or medical facilities (as outlined in 44 CFR 206.221). The damaged buildings with religious courses must be carefully reviewed for eligibility. If a damaged building is primarily used for religious worship or religious instruction, it is not eligible because a peripheral eligible service is not sufficient to establish the eligibility of a facility.

Dated: June 17, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–15781 Filed 6–20–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–41]

Order of Succession for the Office of Administration

AGENCY: Office of the Assistant Secretary for Administration/Chief Information Officer, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Administration/Chief Information Officer designates the Order of Succession for the Office of Administration. This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Administration, published on August 22, 2000.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Brennan, Director, Management Operations Division, Office of Administration, Department of Housing and Urban Development, Room 2182, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (202) 708–1583. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration/Chief Information Officer is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary for Administration/Chief Information Officer, when by reason of absence, disability, or vacancy in the office, the Assistant Secretary for Administration/Chief Information Officer is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice on August 22, 2000 (65 FR 51014).

Accordingly, the Assistant Secretary for Administration/Chief Information Officer designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Administration/Chief Information Officer is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Administration/Chief Information Officer, the following officials within the Office of Administration are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary for Administration;

(2) Deputy Assistant Secretary for Operations;

(3) Deputy Assistant Secretary for Human Resource Management;

(4) Chief Procurement Officer;

(5) Chief Technology Officer;

(6) Director, Administrative Service Center 2;

(7) Director, Administrative Service Center 1;

(8) Director, Administrative Service Center 3

The officials shall perform the functions and duties of this Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Administration, published on August 22, 2000 (65 FR 51014).

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 13, 2003.

Vickers B. Meadows,

Assistant Secretary for Administration, Chief Information Officer.

[FR Doc. 03–15705 Filed 6–20–03; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–36]

Amendment of Redelegation of Authority Under the Privacy Act of 1974

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of amendment of redelegation of authority.

SUMMARY: This notice amends a redelegation of authority under the Privacy Act from HUD's General Counsel to certain Associate General Counsels. The amendment reflects a change in the organizational structure of the Office of General Counsel that created a new position.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Assistant General Counsel for Administrative Proceedings, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B–133, CEP, Washington, DC 20410–0500, telephone (202) 708–2350. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 11, 1996 (61 FR 53382), the Department published a notice delegating and redelegating certain authority under the Privacy Act, as specified in the redelegation of authority, to the General Counsel and to certain Associate General Counsels. In order to assist in enforcement activities carried out by the Office of General Counsel on behalf of the Department, the delegation provides the General Counsel with the authority under the Privacy Act of 1974 to make written requests, for purposes of law enforcement activities, to other agencies for the transfer of records or copies of records maintained by such other agencies, as the General Counsel deems necessary. The General Counsel redelegated this authority to various Associate General Counsels in the Department. This delegation and redelegation are necessary to assist in enforcement activities carried out by the Office of General Counsel on behalf of the Department. This amendment makes the redelegation consistent with a reorganization within the Office of General Counsel. The redelegation of authority is being amended to replace the Associate General Counsel for Litigation and Fair Housing Enforcement with the Associate General Counsel for Litigation and the Associate General Counsel for Fair Housing.

Accordingly, the redelegation of authority published on October 11, 1996 (61 FR 53382) is amended as follows:

Section B. Amendment of Redelegation of Authority

Section B of the delegation and redelegation of authority published on October 11, 1996 (61 FR 53382) is amended to read as follows:

The General Counsel of the Department of Housing and Urban Development hereby redelegates all of the power and authority delegated in Section A., above, to the following Associate General Counsels:

The Associate General Counsel for Program Enforcement;

The Associate General Counsel for Finance and Regulatory Enforcement;

The Associate General Counsel for Litigation; and

The Associate General Counsel for Fair Housing.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 12, 2003.

Richard A. Hauser,

General Counsel.

[FR Doc. 03–15704 Filed 6–20–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing. This draft document provides internal guidance for conducting the Candidate Conservation Agreement with Assurances permit program under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for section 10(a)(1)(A) procedures to promote efficiency and nationwide consistency within the Service. The Service seeks public comment on this draft guidance document.

DATES: Comments on the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing must be received on or before August 22, 2003 to be considered during preparation of a final guidance document.

ADDRESSES: Persons wishing to review the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of

Survival Permit Processing may obtain a copy by contacting the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (telephone (703) 358–2105), and may be viewed at: *http://endangered.fws.gov/candidates/ccaahandbook.html.* Written comments and materials regarding the draft guidance should be directed to the same address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, at the above address (703) 358–2105.

SUPPLEMENTARY INFORMATION:

Background

The Candidate Conservation Agreements with Assurances Policy, dated June 17, 1999 (64 FR 32726), is intended to facilitate the conservation of species proposed for listing under the Endangered Species Act (Act), species that are candidates for listing, and species that become candidates, by giving non-Federal property owners incentives to implement conservation measures for declining or at-risk species. The incentives available through Candidate Conservation Agreements with Assurances involve the Service providing property owners certainty that no further land, water, or resource use restrictions beyond those agreed to in the Candidate Conservation Agreement with Assurances will be imposed if the species later becomes listed under the Act. If the species does become listed, the property owner is authorized, through an enhancement of survival permit that is issued in association with the Candidate Conservation Agreement with Assurances, to take the covered species as long as the level of take is consistent with the level identified and agreed upon in the Agreement. Before entering into a Candidate Conservation Agreement with Assurances, however, the Service must determine that the benefits of the conservation measures to be implemented, when combined with the benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. ''Other necessary properties'' are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species. These assurances will be provided in the property owner's Candidate Conservation Agreement with Assurances and in an associated enhancement of survival permit issued under section (10)(a)(1)(A) of the Act.

The purpose of the Candidate Conservation Agreements with Assurances Program is to facilitate the conservation of proposed and candidate species, and species that may become candidates. Much of the property containing our nation's fish and wildlife and their habitat is owned by private citizens, States, local governments, Native American Tribal governments, conservation organizations, and other non-Federal entities. The future of many of these declining species is dependent upon conservation efforts on these non-Federal lands, but conservation efforts for these species will be most effective and efficient when initiated early in a species' decline. Early conservation efforts can, in some cases, preclude or remove any need to list species as threatened or endangered under the Act. By preventing or removing the need to list a species through early conservation efforts, property owners can maintain land use flexibility. Specifically, initiating or expanding conservation efforts before a species and its habitat are critically imperiled increases the probability that simpler and less expensive conservation options will be available and that conservation of the species will more likely be successful.

This draft handbook provides consistent procedures and policies for the Service's compliance with the enhancement of survival permit provisions of section 10(a)(1)(A) of the Act. Consistency in the section 10(a)(1)(A) program will be achieved by (1) providing national procedural and policy guidance; (2) providing standardized guidance to our offices and personnel who participate in the Candidate Conservation Agreements with Assurances program and review and process enhancement of survival permit applications; (3) ensuring uniform Service compliance with section 10(a)(1)(A) of the Act associated with a Candidate Conservation Agreement with Assurances; (4) providing assistance to applicants in the non-Federal sector who wish to apply for enhancement of survival permits; and (5) providing for conservation of federally proposed, candidate, and other at-risk species.

Public Comments Solicited

We intend that a final decision on the Draft Handbook for Candidate Conservation Agreement with Assurances and Enhancement of Survival Permit Processing will take advantage of information and recommendations from all interested parties. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of a final document.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Required Determinations

Regulatory Planning and Review

This Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permitting Process will not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

a. The purpose of the draft handbook is to clarify concepts previously discussed in the CCAA Policy and is intended as guidance for the Service and applicants to use with the existing CCAA and enhancement of survival permitting process. Any economic effects associated with enhancement of survival permits and the CCAAs under which they are issued would be attributable as effects of the Agreements under section 10(a)(1)(A) of the ESA. We are issuing the guidance to assist applicants with filing adequate CCAAs under section 10(a)(1)(A) and would not expect to generate economic effects. Further, this notice concerns a handbook being issued for education purposes which is expected to assist applicants by promoting a better understanding of application requirements. As such, the Government expects a positive effect on the environment because the guidance improves the CCAA development and enhancement of survival permitting processes by addressing the various concepts associated with these processes.

As of December 2002, the Service has issued 5 enhancement of survival permits, and approximately 30 CCAAs are currently under development. Any economic effects associated with the 30 CCAAs under current review would be attributable to the implementation of the CCAA policy itself and not to this

guidance. As such, there are no economic effects on commodity prices, competition, or jobs until approval and implementation of specific CCAAs, and then the impact would be due to the individual CCAA. Similarly, no effect on public health and safety is expected from this draft handbook.

The burden of time spent on filling out the application for a CCAA depends on the complexity of the Agreement. The Service does not have an estimate of time spent on an average CCAA. However, it is reasonable to expect that the time cost of filling out as many as 30 applications per year (assuming the current number of CCAAs under review is indicative of an annual number of applications) is relatively small and certainly below the $100 million threshold for a major rule. In accordance with the criteria in Executive Order 12866, this draft handbook is not significant and, therefore, not subject to Office of Management and Budget review.

b. This draft handbook will not create inconsistencies with other agencies' actions. This handbook is expected to increase consistency within the Fish and Wildlife Service. Additionally, the CCAA permit process under section 10 of the ESA does not apply to Federal agency actions.

c. This draft handbook will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, not does it apply to them.

d. This draft handbook will not raise novel legal or policy issues. This handbook provides internal guidance for and clarifies the CCAA process.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department does not expect any significant effects on non-Federal cooperators exercising their option to enter into the CCAA program because the CCAA process will not require additional information.

The current holders of the 5 enhancement of survival permits, as well as the 30 applications pending, are made up of State and county governments, companies, and private individuals. We assume that many would qualify as small entities under the Regulatory Flexibility Act. The economic impact of the draft CCAA handbook would be a benefit to these entities. The guidance provided is expected to reduce the time spent developing the CCAA and therefore reduce the time before implementation of the CCAA. Therefore, this draft handbook would have a positive effect on entities. If all of the 5 current permits were held by small entities and the additional 30 under current review were also from small entities, the combined total would not comprise a significant proportion of the number of State/county governments, small businesses, and private landowners in the United States who would all be potential applicants for CCAAs. Therefore, this draft handbook would not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This draft handbook is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. As noted above under the Regulatory Flexibility Act, the issuance of this draft handbook is not expected to have economic effects of $100 million annually or to affect a significant number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this draft handbook will not impose a cost of $100 million or more in any given year on local or State governments or private entities. No additional information will be required from a non-Federal entity solely as a result of this handbook. Since the draft handbook is to be implemented with existing data, no incremental costs are being imposed on non-Federal landowners.

b. This draft handbook will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the draft handbook does not have significant takings implications.

Federalism

In accordance with Executive Order 13132, the draft handbook does not have significant Federalism effects. The draft handbook will not have a substantial direct effect on the States, in the relationship between the Federal Government and the States, or on the distribution of power or responsibilities among the various levels of government. Since States have been and will be potential CCAA permit applicants, the guidance will improve the CCAA process for States.

Civil Justice Reform

In accordance with Executive Order 12988, the draft handbook does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the draft handbook, requirements under section 10(a)(1)(A) of the ESA will be clarified to enhancement of survival permit applicants.

Paperwork Reduction Act

This handbook does not require an information collection under the Paperwork Reduction Act. The Service has examined this handbook under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with enhancement of survival permits other than those already approved for enhancement of survival permits. Currently we have approval from OMB to collect information under OMB control number 1018–0094. This approval expires July 31, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB number.

National Environmental Policy Act

We have analyzed this draft handbook in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). This draft handbook does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the handbook is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10 and 516 DM 6.6, Appendix 1.4 A (1).

Section 7 Consultation

The Service does not need to complete a section 7 consultation on this draft handbook as it is a guidance document and not an action. Individual enhancement of survival (CCAA) permits under section 10(a)(1)(A) of the ESA are actions that may affect a listed species. Therefore, an intra-Service consultation is completed prior to issuing incidental take permits.

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:

This draft handbook does not directly affect tribal resources. The draft handbook contains guidance on public participation in the development of CCAAs, including tribes according to Secretarial Order #3206 on Federal-Tribal trust responsibilities and the Endangered Species Act. Therefore, the effect of this guidance on Native American Tribes would be determined on a case-by-case basis with individual CCAAs. Although the development of a CCAA is the applicant's responsibility, we will recommend the inclusion of Native American tribes during the development of the CCAA if tribal resources are affected. Under Secretarial Order 3206, the Service will, at minimum, share with the applicant any information provided by the tribes, through the public comment period or formal submissions, and advocate the incorporation of measures that will restore or enhance Tribal trust resources. In those instances where permit applicants choose not to invite affected tribes to participate in those negotiations, the Service will consult with the affected tribes to evaluate the effects of the proposed CCAA on tribal trust resources and will provide the information resulting from such consultation to the CCAA applicant prior to the submission of the draft CCAA for public comment. After consultation with the tribes and the non-federal landowner and after careful consideration of the tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected tribe(s). This will be addressed with individual CCAAs.

b. We have not yet treated tribes on a government-to-government basis. This will be addressed with individual CCAAs.

c. We will consider tribal views in the development of individual CCAAs.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft handbook on Indian tribes. This will be addressed with individual CCAAs.

Dated: March 20, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–15697 Filed 6–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–1310–AG]

Notice of Intent To Amend the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan and To Prepare an Accompanying Environmental Impact Statement, Request for Information, and Call for Nominations and Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to amend the Northeast National Petroleum Reserve-Alaska (NPR–A) Integrated Activity Plan (IAP) and to prepare an accompanying Environmental Impact Statement (EIS), Request for Information, and Call for Nominations and Comments.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended; Title I of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 *et seq.*), as amended by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1981, Pub. L. 96–514, 94 Stat. 2957, 2964 (codified in 42 U.S.C. 6508); the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371, section 810, 16 U.S.C. 3120; and the regulations at 43 CFR parts 2360 and 3130; the Bureau of Land Management (BLM), Alaska State Office, is preparing an amendment to the existing IAP for the Northeast portion of the NPR-A and an accompanying EIS. The purpose of this Notice is to seek comment on the proposed amendment and to call for nomination of areas to be considered for oil and gas leasing. Information and comments on specific issues to be addressed in the amendment are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the BLM Alaska State Director for decisions in land use, planning and management.

DATES: Responses to this request for information and comments, and call for nominations must be received no later than September 30, 2003. Nominations must be submitted in envelopes labeled ''Nominations Related to the NPR-A IAP/EIS'' to protect the confidentiality of the nominations. Information, comments, and nominations submitted in response to this publication will assist in early scoping and later development of alternatives for the IAP/EIS. Comments are sought on activities and measures to protect surface resources within the planning area, including the Teshepuk Lake and Colville River Special Areas, fish and wildlife, and historical and scenic values. Comments are sought on subsistence uses and needs within the plan area and possible impacts on subsistence from other uses of the area. Comments should include recommendations for particular sections of the plan area that are of value for surface and subsurface resources, as well as conditions, and restrictions that would protect surface resources. Comments are also sought on any potential conflicts with approved coastal management plans (CMPs) and other land use plans that may result from possible future activities in the area. These comments should identify specific policies of concern as listed in CMPs or other plans, the nature of the conflicts foreseen, and steps that BLM could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular townships of concern.

ADDRESSES: Comments should be submitted to the Northeast NPR–A Amendment Planning Team Leader, 222 West 7th Avenue, #13 Anchorage, Alaska 99513–7599. The original Call map with nominations must be submitted to the NPR–A Planning Team Leader at the above address.

FOR FURTHER INFORMATION, CONTACT: Curt Wilson, (907) 271–5546, by e-mail at *c1wilson@ak.blm.gov* or by mail at 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

SUPPLEMENTARY INFORMATION: The BLM published a Record of Decision (ROD) October 7, 1998, for the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement. Among other decisions, this document makes 589,000 acres in the Teshekpuk Lake area unavailable for leasing and restricts an additional 268,862 acres to leasing, but with no permanent facilities and no exploratory wells. The ROD also contains a set of prescriptive stipulations that are very specific and in some cases may be inappropriately or needlessly restrictive.

The BLM initiated an oil and gas leasing program for the planning area in May of 1999 and has conducted two successful lease sales. Many lease tracts were sold around the perimeter of the Teshekpuk Lake area. In the four years since the initial lease sale industry has completed many miles of additional seismic lines and drilled 14 exploratory wells after environmental assessments

were completed. The BLM has conducted various scientific studies on the biological resources of the plan area in cooperation with the North Slope Borough, the State of Alaska and other federal agencies. Information gained since the completion of the Northeast plan has led the BLM to conclude that it is appropriate to consider amending it with two specific objectives in mind: (1) To consider changing the current prescriptive stipulations on existing and future leases into a mixture of prescriptive and performance-based stipulations; and, (2) to evaluate additional lands for exploration and development opportunities that could provide access to new oil discoveries, while remaining sensitive to biological and subsistence values.

Description of the Area: The planning area is composed of those BLM-administered lands, subject to valid existing rights, in the northeastern portion of NPR–A. The northeastern portion of NPR–A is described as beginning on the NPR–A boundary on the township line between T.3 S., R. 5 W. and T. 3 S., R. 6 W., Umiat Meridian (U.M.), and thence northerly along the township lines to the northeast corner of T. 2 N., R. 6 W., U.M., thence westerly along the township line to the right bank of the Ikpikpuk River, thence northerly along the right bank of the Ikpikpuk River to the northern boundary of NPR–A, thence in a generally easterly and southerly direction following the boundary of NPR–A to the point of beginning. This area consists of approximately 4.6 million acres. A large scale map of the plan area (which also serves as the Call map) showing boundaries of the area on a township-by-township basis is available from the Alaska State Office, BLM, 222 West 7th Avenue, Anchorage, AK 99501, telephone (907) 271–3369.

Pursuant to 43 CFR 3131.1 and 3131.2, relevant information related to possible oil and gas leasing is requested for the plan area. Oil and gas companies are specifically requested to nominate within the plan area, areas that they would like to have considered for oil and gas leasing. Nominations must be depicted on the Call map by outlining the area(s) of interest along township lines. Nominators are asked to submit a list of townships nominated to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations for oil and gas leasing become a matter of public record, the individual nominations will be held confidential consistent with applicable law.

Nominators also are requested to rank townships nominated for oil and gas leasing according to priority of interest [(*e.g.*, priority 1 (high), 2 (medium), or 3 (low)]. Townships nominated that do not indicate priorities will be considered priority 3. Nominators are encouraged to be specific in indicating townships by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response.

The regulations at 43 CFR part 3130 limit the size of an oil and gas lease tract within the NPR-A boundaries to no more than 60,000 acres (43 CFR 3130.4–1). Although nominations are to be submitted along township lines, comments are also being sought on the preferred size of tracts for leasing in this area, not to exceed 60,000 acres.

Tentative Schedule: Approximate dates for actions and decisions in the planning process for this proposal are:

Comments Due on Notice, and Request—September 30, 2003
Scoping meetings (precise dates to be announced later)—September 2003
Draft IAP/EIS available for comment—April 2004
Public meetings/hearings—April–May 2004
Comments due on Draft IAP/EIS—May 31, 2004
Final IAP/EIS available for public review—October 31, 2004
Record of Decision—November 30, 2004

Dated: May 16, 2003.

Henri R. Bisson,

State Director.

[FR Doc. 03–15737 Filed 6–20–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–03–840–1610–241A]

Canyons of the Ancients National Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 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) Canyons of the Ancients National Monument (Monument) Advisory Committee (Committee), will meet as directed below.

DATE: The meeting will be held July 29, 2003 at the Anasazi Heritage Center in Dolores, Colorado at 9 a.m. The public comment period will begin at approximately 3:30 p.m. and the meeting will adjourn at approximately 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager or Stephen Kandell, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882–4811.

SUPPLEMENTARY INFORMATION: The eleven member committee provides counsel and advice to the Secretary of the Interior, through the BLM, concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. At this meeting, topics we plan to discuss include:

(1) Committee member introductions
(2) Overview and status of the Monument planning process
(3) Monument schedule and budget
(4) Lunch in the field
(5) Public comment period
(6) Advisory Committee meeting strategy
(7) Agenda for next meeting

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Committee meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Committee can be obtained from the Monument Web site at: *http://www.co.blm.gov/canm/index.html* which will be updated following each Committee meeting.

Dated: June 16, 2003.

LouAnn Jacobson,

Manager, Canyons of the Ancients National Monument.

[FR Doc. 03–15722 Filed 6–20–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–5882–PF–SB01; GP3–0198]

Salem District Resource Advisory Committee (RAC) Meetings

AGENCY: Bureau of Land Management, USDI.

ACTION: Meeting notice for the Salem, Oregon, Bureau of Land Management (BLM) Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (PL 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 Salem Oregon 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 Salem BLM Resource Advisory Committee include: reviewing 2004 project applications, developing funding recommendations for 2004 projects, and monitoring progress of previously approved projects and scheduling field reviews of projects.

DATES: The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306, 8:30 a.m. to 4 p.m., on August 7, 2003. Additional meeting dates are scheduled for August 14, 2003 and August 28, 2003.

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 Road 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 Salem BLM Resource Advisory Committee may be obtained from Trish Hogervorst, Salem BLM Public Affairs, 1717 Fabry Road SE, Salem, Oregon 97306. (503–375–5657).

Dated: June 16, 2003.

Denis Williamson,

Salem District Manager.

[FR Doc. 03–15721 Filed 6–20–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

[OR–958–1430–ET; GPO–03–0124, OR–5773 et al.]

Public Land Order No. 7571; Revocation of 14 Public Land Orders; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes 14 public land orders in their entirety as they affect approximately 150.37 acres of public and Revested Oregon and California Railroad Grant lands withdrawn and reserved for the Department of Agriculture for constructed Forest Service roads. The reservations are no longer needed. This action will open the lands to all forms of appropriation under the public land laws, including location and entry under the mining laws. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–808–6155. Copies of the withdrawal orders being revoked are available from this location.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawals are no longer needed and has requested the revocations. The lands are located in several counties throughout Oregon and Washington.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The following Public Land Orders are hereby revoked in their entirety: (a). Public Land Orders Nos. 4521, 4626, 4874, 4876, 5065, 5089, and 5092, affecting approximately 40.80 acres of Revested Oregon and California Railroad Grant Lands. (b). Public Land Orders Nos. 4392, 4598, 4846, 4858, 4878, 4993, and 5560, affecting approximately 109.57 acres of public lands.

2. At 8:30 a.m. on July 23, 2003 the lands referenced in paragraph 1(a) will be opened to such uses as may by law be made of Revested Oregon and California Railroad Grant lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

3. At 8:30 a.m. on July 23, 2003, the lands referenced in paragraph 1(b) will be opened to all forms of appropriation under the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

4. At 8:30 a.m. on July 23, 2003, the lands referenced in paragraph 1(a) and 1(b) will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession is governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory right since Congress has provided for such determination in local courts.

Dated: June 2, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–15736 Filed 6–20–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Revision of a currently approved collection; Application for explosives license or permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives 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 68, Number 106, page 33181 on June 3, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 23, 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, or facsimile (202) 395–5806.

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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice:* Form Number: ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individual or households. The purpose of this collection is to enable ATF to ensure that persons seeking to obtain a license or permit under 18 U.S.C. Chapter 40 and responsible persons of such companies are not prohibited from shipping, transporting, receiving, or possessing explosives.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 10,000 respondents will complete a 1 hour and 30 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection; There are an estimated 15,000 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION 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: June 13, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–15710 Filed 6–20–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Long Term Implantable Glucose Monitor

Notice is hereby given that, on June 3, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Animas Corporation and PD–LD, Inc., as a joint research venture, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PD–LD, Inc., Pennington, NJ has been added as a party to this venture. Also, Sarnoff Corporation, Princeton, NJ has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Animas Corporation intends to file additional written notification disclosing all changes in membership.

On September 27, 2001, Animas Corporation and Sarnoff Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 2002. (67 FR 2909).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–15801 Filed 6–20–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Anker West Virginia Mining Company, Inc.

[Docket No. M–2003–038–C]

Anker West Virginia Mining Company, Inc., 22 Hampton Road, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (Weekly examination) to its Spruce Fork Mine No. 1 (MSHA I.D. No. 46–08622) located in Upshur County, West Virginia. The petitioner proposes to establish an evaluation point to be examined weekly to monitor quality, quantity and direction of air flow through the A Mains intake air course starting at spad 428 and ending at spad 388, a distance of 3100 feet (Hereinafter ''A Mains air course''). The evaluation point will be established at the inby end of this intake air course near spad 388 to test for methane accumulation, oxygen deficiency, quantity of air and for the proper direction of air flow. The results of these tests will be recorded in a book provided on the surface. The petitioner states that a pre-shift examination of the belt side of the intake stopping line separating the belt from the intake air course will be made every 8 hours, and any hazardous conditions found will be recorded in a book provided on the surface. The petitioner asserts that the proposed

alternative method would provide at least the same measure of protection as the existing standard.

2. Rivers Edge Mining, Inc.

[Docket No. M–2003–039–C]

Rivers Edge Mining, Inc., 1970 Barrett Court, PO Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Rivers Edge Mine (MSHA I.D. No. 46–08890) located in Boone County, West Virginia. The petitioner requests a modification of the existing standard to allow the mine to use the Getman Diesel grader underground with rear wheel brakes only. The petitioner proposes to: (i) Limit the diesel grader speed to 10 miles per hour maximum; (ii) physically block higher gear ratios on the Getman diesel grader in order to limit the speed to 10 miles per hour maximum; and (iii) provide training to the grader operators on how to drop the grader blade in the event the brakes fail and the machine needs to be stopped. The petitioner states that the modification will provide the same protection that is realized from the current standard in that the grader can be stopped using the blade as a brake system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Pine Ridge Coal Corporation

[Docket No. M–2003–040–C]

Pine Ridge Coal Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Big Mountain No. 16 Mine (MSHA I.D. No. 46–07908) located in Boone County, West Virginia. The petitioner requests a modification of the existing standard to allow the mine to use the Getman Diesel grader underground with rear wheel brakes only. The petitioner proposes to: (i) Limit the diesel grader speed to 10 miles per hour maximum; (ii) physically block higher gear ratios on the Getman diesel grader in order to limit the speed to 10 miles per hour maximum; and (iii) provide training to the grader operators on how to drop the grader blade in the event the brakes fail and the machine needs to be stopped. The petitioner states that the modification will provide the same protection that is realized from the current standard in that the grader can be stopped using the blade as a brake system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. R & D Coal Company, Inc.

[Docket No. M–2003–041-C]

R & D Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.311(b)(2) and (b)(3) (Main mine fan operation) to its Buck Mountain Slope Mine (MSHA I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the electrical circuits entering the underground mine to remain energized to the mine's pumps, while the main fan has been intentionally shut down during idle shifts when no miners are working underground. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Orchard Coal Company, Inc.

[Docket No. M–2003–042–C]

Orchard Coal Company, Inc., 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.311(b)(2) and (b)(3) (Main mine fan operation) to its Orchard Slope Mine (MSHA I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the electrical circuits entering the underground mine to remain energized to the mine's pumps, while the main fan has been intentionally shut down during idle shifts when no miners are working underground. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Canyon Fuel Company, LLC

[Docket No. M–2003–043–C]

Canyon Fuel Company, LLC, PO Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its Dugout Canyon Mine (MSHA I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to allow mining through one abandoned gas well (Drill Hole No. TD–3). The petitioner has listed specific procedures in this petition that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before July 23, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 13th day of June 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–15701 Filed 6–20–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, June 26, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Rule: Section 701.22 of NCUA's Rules and Regulations, Loan Participations.
2. Proposed Rule: Part 745 of NCUA's Rules and Regulations, Share Insurance.
3. Notice and Request for Comment as Required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–15932 Filed 6–19–03; 2:14 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq*. One committee will be renamed,

#10749 (previous name is in parenthesis.) This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Alan T. Waterman Award Committee, #1172
Advisory Committee for Biological Sciences, #1110
Proposal Review Panel for Biological Infrastructure, #10743
Proposal Review Panel for Environmental Biology, #10744
Proposal Review Panel for Integrative Biology and Neuroscience, #10745
Proposal Review Panel for Molecular and Cellular Biosciences, #10746
Advisory Committee for Education and Human Resources, #1119
Advisory Committee for Engineering, #1170
Advisory Committee for Small Business Industrial Innovation, #61
Advisory Committee for Geosciences, #1755
Proposal Review Panel for Geosciences, #1756
Proposal Review Panel for Earth Sciences, #1569
Proposal Review Panel for Atmospheric Sciences, #10751
Proposal Review Panel for Ocean Sciences, #10752
Advisory Committee for Polar Programs, #1130
Advisory Panel for Integrative Activities, #1373
Advisory Panel for Science Resources Studies, #10750
Proposal Review Panel for Social, Behavioral, and Economic Sciences, #1766
Proposal Review Panel for Behavioral and Cognitive Sciences, #10747
Proposal Review Panel for International Science and Engineering, #10749 (Proposal Review Panel for International Programs)

Effective date for renewal is July 1, 2003. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 18, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–15806 Filed 6–20–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; 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: Business and Operations Advisory Committee (9556).

Date/Time: July 10, 2003; 2 p.m. to 3 p.m. (EST).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 565–II, Arlington, VA.

Type of Meeting: Teleconference (OPEN) Please contact Mary Ann Birchett (below) for a dial-in phone number.

Contact Person: Mary Ann Birchett, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8100.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda: July 10, 2003. Discussion of NSF's Strategic Plan, which is currently available, online for public review at: *http://www.nsf.gov/od/stratplan 03-08/draft-stratplan.htm.*

Dated: June 18, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–15805 Filed 6–20–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 790, ''Classification Record''.

2. *Current OMB approval number:* 3150–0052.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC employees, NRC contractors, NRC licensees, and its only certificate holder who classify NRC information.

5. *The number of annual respondents:* 600.

6. *The number of hours needed annually to complete the requirement or request:* 40.

7. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for licensees, contractors, and only certificate holders who classify and declassify NRC information is accordance with Executive Order 12958, as amended, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives.

Submit, by August 22, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 C3, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of June, 2003.

For the Nuclear Regulatory Commission.

Brenda J. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–15734 Filed 6–20–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04783]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for a License Amendment for the Dow Chemical Company Facility in Midland, MI

I. Introduction

The U.S. Nuclear Regulatory Commission is considering amending The Dow Chemical Company (Dow Chemical) Byproduct Material License Number 21–00265–06 to authorize the use a new incinerator for the disposal of radioactive waste at its facility in Midland, Michigan and has prepared an Environmental Assessment (EA) in support of this action in accordance

with the requirements in 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

An EA has been prepared to evaluate the environmental impacts of the proposed amendment to Dow Chemical Byproduct Material License to authorize the licensee to use a new incinerator for the disposal of radioactive waste at its facility in Midland, Michigan. The amendment would reflect that radioactive waste will be disposed of using a new 33 Incinerator instead of either the 703 or 830 Incinerators. Pursuant to 10 CFR 20.1302 and 10 CFR 20.2002, the license has been authorized since 1966 to dispose of licensed material by incineration, provided the gaseous effluents from incineration did not exceed ten percent of the limits specified in Appendix B, Table II, 10 CFR Part 20.

On October 28, 2002, Dow Chemical notified the NRC that, to meet U.S. Environmental Protection Agency (EPA) requirements, it was in the process of upgrading its Incineration Complex from two existing rotary kilns (703 Incinerator and 830 Incinerator) which are currently used to incinerate waste, to a single story rotary kiln. The new kiln is close to completion, and is expected to begin operation by October 1, 2003. Although both existing kilns are licensed to incinerate radioactive waste, only the 703 Incinerator has been used for that purpose. The 830 Incinerator had been licensed to burn radioactive waste in 1998 in anticipation of it being upgraded to meet the new EPA requirements, but Dow Chemical subsequently decided to build a new incinerator in place of upgrading the 830 Incinerator.

III. Finding of No Significant Impact

The NRC staff has evaluated Dow Chemical's request in an EA (summarized above). On the basis of the EA, NRC has concluded that there will not be a significant effect on the quality of the human environment resulting from the incineration of radioactive waste in the 32 Incinerator at its facility in Midland, Michigan. Accordingly, NRC has concluded that a FONSI is appropriate and has determined not to prepare an Environmental Impact Statement for the proposed action.

IV. Further Information

The Environmental Assessment and other documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* ADAMS Accession No. ML031470394 and ML031540803 for the licensee's letter requesting the amendment and ML031540819 for other documents related to this action). These documents are also available for inspection and copying for a fee at the Region III Office, 801 Warrenville Road, Lisle, Illinois 60532–4351. Any questions with respect to this action should be referred to William Snell, Health Physics Manager, Decommissioning Branch, Division of Nuclear Materials Safety (DNMS), Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9871 or by email at *wgs@nrc.gov.*

Dated at Lisle, Illinois, this 10th day of June, 2003.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 03–15733 Filed 6–20–03; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8241, 34–48039, 35–27687, IC–26078; File No. S7–52–02]

RIN 3235–AI26

Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

SUMMARY: The Commission adopted, on May 7, 2003, rule and form amendments to mandate the electronic filing, and website posting by issuers with corporate websites, of beneficial ownership reports filed by officers, directors and principal security holders (collectively, ''insiders'') under section 16(a) of the Securities Exchange Act of 1934, generally as required by Section 403 of the Sarbanes-Oxley Act of 2002. The Commission has implemented changes to the EDGAR system in order to facilitate electronic filing. In addition, the Commission also adopted rule changes to eliminate magnetic cartridges as a means of electronic filing. The Commission expected certain provisions of the amendments, as proposed, to change existing ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) for Forms ID, SE, TH and ET. The Commission submitted its proposed revisions to the collection of information requirements imposed by these forms to the Office of Management and Budget (''OMB'') for review. OMB has approved the revised collection of information requirements.

DATES: The effective date of the amendments is June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mark W. Green, Senior Special Counsel (Regulatory Policy), at (202) 942–1940, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0301.

SUPPLEMENTARY INFORMATION:

I. Amendments to Rules and Forms Relating to Electronic Filing and Web Site Posting

On May 7, 2003,[1] the Commission adopted amendments that revise Rules 13,[2] 101,[3] 104[4] and 201[5] under Regulation S–T[6] and Rule 16a–3(h)[7] and Forms 3, 4 and 5[8] under the Securities Exchange Act of 1934 (''Exchange Act'').[9] The Commission also adopted an amendment that adds new Rule 16a–3(k) under the Exchange Act. Finally, the Commission adopted amendments that rescind Form ET[10] and revise Rule 12 of Regulation S–T,[11] Rule 110[12] under the Securities Act of 1933 (''Securities Act''),[13] the description of Form 144 contained in the Code of Federal Regulations,[14] Rule 0–2[15] under the Exchange Act, Rule 21[16] under the Public Utility Holding Company Act of 1935 (''Public Utility Act''),[17] and Rule 0–5[18] under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[19] The amendments mandate the electronic filing, and website posting by issuers with corporate websites, of

[1] The Commission adopted the amendments in Release No. 33–8230 [68 FR 25788] (May 13, 2003) (''Adopting Release'').

[2] 17 CFR 232.13.

[3] 17 CFR 232.101.

[4] 17 CFR 232.104.

[5] 17 CFR 232.201.

[6] 17 CFR 232.10 *et seq.*

[7] 17 CFR 240.16a–3(h).

[8] 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are authorized under the Investment Company Act of 1940 (''Investment Company Act'') [15 U.S.C. 80a–1 *et seq.*] under 17 CFR 274.202 and 274.203.

[9] 15 U.S.C. 78 *et seq.*

[10] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[11] 17 CFR 232.12.

[12] 17 CFR 230.110.

[13] 15 U.S.C. 77a *et seq.*

[14] 17 CFR 239.144.

[15] 17 CFR 240.0–2.

[16] 17 CFR 250.21.

[17] 15 U.S.C. 79a *et seq.*

[18] 17 CFR 260.0–5.

[19] 15 U.S.C. 77aaa *et seq.*

Section 16 reports filed by insiders. The amendments also eliminate magnetic cartridges as a means of electronic filing.

II. Collection of Information Requirements

The Commission expected certain provisions of the amendments, as proposed,[20] to change ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [21] for Forms ID,[22] SE,[23] TH [24] and ET. In proposing the amendments, the Commission estimated the resulting burden hours for these collection of information requirements and solicited comments on the collection of information requirements and the burden estimate. The Commission submitted the proposed revisions to these collection of information requirements to OMB for review as required by 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission did not receive any comments on the collection of information requirements.

The intended general effect of mandating electronic filing and website posting is to facilitate compliance with the will of Congress, as reflected in section 16(a),[25] and to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission.[26] The Commission expected the amendments, as proposed, to increase the collection of information burden of Forms ID, SE and TH and the revisions to these collections of information submitted to OMB for these forms reflected this expectation. The changes made to the proposed amendments prior to adoption did not affect the estimates for Forms ID (new total 29,520 hours) and SE (new total 78 hours). As discussed further below, however, the changes reduced the estimate for Form TH.

Form ID is used by registrants, individuals, third party filers or their agents to request the assignment of access codes that permit the electronic filing of securities documents on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR''). The Commission expects the amendments to increase the collection of information burden of Form ID by causing additional respondents to file a Form ID as a result of initially being subject to the mandated filing rules and by causing additional respondents to file a Form ID each year on a recurrent basis.

Form SE is used by an EDGAR filer when submitting paper format exhibits either under a hardship exemption under Regulation S–T Rules 201 and 202 [27] or as otherwise allowed by Regulation S–T. The information provided on a Form SE primarily identifies each paper format exhibit submitted. A Form SE filer must also submit the required number of copies of each paper format exhibit. The Commission expects the amendments to increase the collection of information burden of Form SE by causing a small number of additional respondents to file a Form SE. As described further in the Adopting Release, Rule 201's temporary hardship exemption from electronic filing will not be available to Section 16 reports and it is highly unlikely that Rule 202's continuing hardship exemption will be available, but filing date adjustments under Regulation S–T Rule 13(b) [28] will be available under the same circumstances a temporary hardship exemption would have been available.

Form TH is used by an EDGAR filer to give notice that it claims a temporary hardship exemption under Rule 201. A filer must submit the Form TH along with the required number of copies of the paper format securities document. The information provided on Form TH enables the Commission to determine whether the filer's circumstances justify the grant of a temporary hardship exemption. The Commission expected the proposed amendments to increase the collection of information burden of Form TH by causing a small number of additional respondents to file a Form TH. That expectation, however, was based on the assumption that the temporary hardship exemption would be available to section 16 reports. As noted above, however, the amendments, as adopted, make the temporary hardship exemption unavailable to section 16 reports. As a result, the amendments will not cause additional respondents to file a Form TH. The Commission has submitted additional documentation to OMB to reflect that the amendments will not affect the collection of information burden imposed by Form TH (which returns to 23 hours).

On May 22, 2003, OMB approved the revised collections of information imposed by Forms ID, SE and TH (OMB Control Nos. 3235–0328, 3235–0327 and 3235–0425, respectively). The amendments were adopted under the Securities Act, the Exchange Act, the Public Utility Act, the Trust Indenture Act, the Investment Company Act and the Sarbanes-Oxley Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission is providing this Notice to inform the public that the Commission has received OMB approval for these revised collections.

Dated: June 17, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15769 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[20] The Commission proposed the amendments in Release No. 33–8170 (Dec. 27, 2002) [67 FR 79466].

[21] 44 U.S.C. 3501 *et seq.*

[22] 17 CFR 239.63, 249.446, 259.602, 269.7 and 274.402.

[23] 17 CFR 239.64, 249.444, 259.603, 269.8 and 274.403.

[24] 17 CFR 239.65, 249.447, 259.604 and 269.10.

[25] 15 U.S.C. 78p(a) (as amended by the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'') [Pub. L. No. 107–204, 116 Stat. 745]).

[26] The purpose of eliminating Form ET is to eliminate the transmittal form for magnetic cartridge transmissions that no longer will be permitted due to the minimal number of filers that use magnetic cartridges as a transmission medium. Consistent with the proposal to eliminate Form ET, the Commission asked OMB to eliminate the collection of information requirements previously approved for the form.

[27] 17 CFR 232.202.

[28] 17 CFR 232.13(b).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Impac Mortgage Holdings, Inc., Common Stock, $.01 Par Value) File No. 1–14100

June 17, 2003.

Impac Mortgage Holdings, Inc., a Maryland corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Maryland, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

The Issuer states that it is taking such action because the Issuer believes that listing its Security on the New York Stock Exchange, Inc. (''NYSE'') will provide greater liquidity and visibility. The Issuer states that trading in its Security on the NYSE became effective on June 11, 2003.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before July 8, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–15711 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48038; File No. SR–CBOE–2003–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Amend Rule 17.2 of Its Disciplinary Rules Concerning the Initiation of Investigations of Possible Violations Within the Disciplinary Jurisdiction of the Exchange

June 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 on May 30, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 17.2 of its Disciplinary Rules concerning the initiation of investigations of possible violations within the disciplinary jurisdiction of the Exchange.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Chapter XVII—Discipline (Rules 17.1–17.50)

* * * * *

Rule 17.2 Complaint and Investigation

(a) Initiation of Investigation. The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon order of the Board, the Business Conduct Committee, the President or other Exchange officials designated by the President, *or whenever there is a reasonable basis for the Exchange to do so.* [or] *The Exchange shall also investigate possible violations within the disciplinary jurisdiction of the Exchange* upon receipt of a complaint, *written or oral,* alleging such violations [filed] *made* by a member or by any other person alleging injury as a result of such violations (the ''Complainant''), *provided such complaint*[. All complaints shall be in writing signed by the Complainant and shall] specif*ies*[y] in reasonable detail the facts constituting the violation[, including the specific statutes, by-laws, rules, interpretations or resolutions allegedly violated].

(b)–(d) No change.

*** * * Interpretations and Policies:**

.01–.02 No change.

.03 To assist the Exchange in investigating possible violations within its disciplinary jurisdiction, Complainants should sign written complaints or identify themselves when making oral complaints pursuant to paragraph (a) of this Rule, and also identify the specific statutes, by-laws, rules, interpretations or resolutions that allegedly were violated.

* * * * *

[3] *See* letter from J. Patrick Sexon, Assistant General Counsel, CBOE, to Sapna C. Patel, Attorney, Division of Market Regulation, Commission, dated May 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the CBOE: (1) stated that the Exchange's Board of Directors approved the proposed rule change on May 7, 2003; (2) represented that the Exchange's Regulatory Services Division maintains and will continue to maintain a log of all oral complaints that it receives alleging possible violations within the disciplinary jurisdiction of the Exchange; and (3) made a technical clarification to the proposed rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 17.2(a) describes the basis on which the Exchange initiates investigations of possible violations within the disciplinary jurisdiction of the Exchange. Specifically, paragraph (a) of Exchange Rule 17.2 states that the Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon order of the Board, the Business Conduct Committee (''BCC''), the President or other Exchange officials designated by the President. Exchange Rule 17.2(a) also provides that the Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon receipt of a complaint alleging such violations filed by a member or any other person alleging injury as a result of such violations. Exchange Rule 17.2(a) states that all complaints should be in writing signed by the complainant and shall specify in reasonable detail the facts constituting the violation, including the specific statutes, by-laws, rules, interpretations or resolutions allegedly violated.

The Exchange proposes to amend paragraph (a) of Exchange Rule 17.2 to clarify and make express in the rule the basis on which the Exchange represents

that it has historically initiated investigations of possible wrongdoing within its disciplinary jurisdiction.

First, the Exchange proposes to amend Exchange Rule 17.2(a) to make express what it represents is the Exchange's Regulatory Division's longstanding practice of initiating investigations of possible rule violations on its own whenever there is a reasonable basis to do so. For instance, among the reasons the Exchange's Regulatory Division may determine that there is a reasonable basis to initiate an investigation are: Results from the automated surveillance programs that the Regulatory Division operates that are designed to highlight particular types of misconduct, observations of the Regulatory Division's Trading Floor Liaison unit that has a consistent presence on the trading floor, regulatory referrals from Exchange committees or other self-regulatory organizations, and oral complaints from members or customers. The Exchange believes that the current language of Exchange Rule 17.2(a) could be read to suggest that the Exchange's Regulatory Division should only initiate investigations upon the order of the Board of Directors, the BCC, the President, or upon receipt of a written complaint. Although the CBOE represents that it has never interpreted Exchange Rule 17.2(a) in such a limited fashion, and believes such a reading would be inconsistent with the Exchange's obligations as a self-regulatory organization under the Act,[4] the Exchange believes amending Exchange Rule 17.2 is appropriate.

Second, the Exchange proposes to amend Exchange Rule 17.2(a) to provide that the Exchange shall investigate possible violations within its disciplinary jurisdiction upon receipt of a complaint, whether the complaint is written or oral, provided such complaint specifies in reasonable detail the facts constituting the alleged violation. The Exchange also proposes to add an interpretation to Exchange Rule 17.2 stating that, to assist the Exchange in investigating possible violations within its disciplinary jurisdiction, complainants should identify themselves when making a complaint, whether written or oral, and identify the specific statutes, by-laws, rules, interpretations or resolutions that allegedly have been violated. In addition, the Exchange represents that its Regulatory Services Division currently maintains, and will continue to maintain, a log of all oral complaints that it receives alleging possible violations within the disciplinary jurisdiction of the Exchange.[5]

The Exchange believes that this proposed change to Exchange Rule 17.2 is consistent with its longstanding practice of considering whether to investigate complaints, whether oral or written, and is consistent with its practice of requesting, but not requiring, that complainants identify themselves and identify the specific statutes, by-laws, rules, interpretations or resolutions that allegedly have been violated.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[6] in general, and specifically furthers the objectives of sections 6(b)(1),[7] 6(b)(5),[8] 6(b)(6),[9] and 6(b)(7)[10] of the Act, in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. It will help ensure that members and persons associated with members are appropriately disciplined when they violate those provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–15 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15774 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[4] For instance, the CBOE represents that the Act states that a self-regulatory organization (''SRO'') is required to be organized so that it is able to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the SRO's own rules (section 6(b)(1) of the Act), and further that an SRO's rules must be ''designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade,'' and in general ''to protect investors and the public interest'' (section 6(b)(5) of the Act).

[5] *See* Amendment No. 1, *supra* note .

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48008; File No. SR–DTC–2002–08]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Unitary Action Procedures

June 10, 2003.

On June 13, 2002, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change

(File No. SR–DTC–2002–08) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 6, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC's rule change will clarify the procedures under which DTC's nominee, Cede & Co., will exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is required to act with respect to 100% of the securities on deposit or not act at all. Such an event is known as a ''Unitary Action.''

When involved in a situation that requires a Unitary Action under applicable law, DTC will attempt to follow its normal procedures for actions that are not Unitary Actions. Specifically, for solicitations when an issuer has announced an annual or special shareholders meeting or consent solicitation and where a record date has been established, DTC will assign applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date, will issue an omnibus proxy, and will forward it to the issuer or trustee. DTC also will assist its participants in exercising other rights available to Cede & Co. as the recordholder of securities on deposit at DTC. Examples of the rights that participants may exercise through DTC are the right to dissent and seek an appraisal of stock, the right to inspect a stock ledger, and the right to accelerate a bond. Participants may seek DTC's assistance in exercising such rights on their own behalf or on behalf of their customers. DTC will act in these matters only upon written instructions from participants with securities credited in their DTC free accounts.

However, if, for example, a foreign bankruptcy court stated that it would accept votes for approval of a plan of bankruptcy from bondholders holding through DTC but only in the form of a 100% yes or no vote or not at all, DTC will attempt to assign its voting rights to its participants or otherwise act in accordance with its participants' instructions.

DTC will not be liable for any losses arising from actions it takes or fails to take in connection with Unitary Actions other than those losses that are directly caused by DTC's gross negligence or willful misconduct.

In Unitary Action situations, DTC may incur unusual expenses (*e.g.*, hiring outside counsel) that are specifically attributable to the securities that are subject to the Unitary Action. Under DTC Rule 20, DTC may charge each participant holding a position in a Unitary Action security such participant's pro rata share (based on the number of shares or the principal amount of bonds or notes) of DTC's expenses related to DTC's taking or not taking an action in connection with a Unitary Action.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed, among other things, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with DTC's obligations under section 17A(b)(3)(F) because it preserves DTC's participants' ability to exercise their individual rights in corporate actions while continuing to hold their positions in a book-entry environment in situations involving Unitary Actions. This clarification should also add more certainty to the allocation of voting rights and the costs involved in Unitary Action situations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A 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–DTC–2002–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15776 Filed 6–20–03; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46930 (Nov. 27, 2002); 67 FR 72713.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48035; File No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 14 and 15 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Short Sale Rule and Continued Suspension of the Primary Market Maker Standards Set Forth in NASD Rule 4612

June 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. The NASD subsequently filed several amendments to the proposed rule change. On June 11, 2003, the NASD filed Amendment No. 14 to the proposed rule change.[3] On June 16, 2003, the NASD filed Amendment No. 15 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Nasdaq is proposing to extend the pilot program of the NASD short sale rule from June 15, 2003, until December 15, 2003. Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker (''PMM'') standards currently set forth in NASD Rule 4162 also from June 15, 2003, until December 15, 2003. The text of the proposed rule change is below. Proposed new language is italicized; deletions are [bracketed].

NASD Rule 3350

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, NASD, to Kathy England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 10, 2003 (''Amendment No. 14'').

[4] *See* letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, NASD, to Kathy England, Assistant Director, Division, Commission, dated June 10, 2003 (''Amendment No. 15'').

(a)–(k) No Change.

(l) This section shall be in effect until *[December 15, 2003* [June 15, 2003]].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of the NASD's Short Sale Rule

Section 10(a) of the Act [5] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a–1 of the Act.[6] On June 29, 1994, the Commission approved the NASD's short sale rule (the ''Rule'') applicable to short sales [7] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[8] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until June 15, 2003.

The Rule employs a ''bid'' test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. The Rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security (including bids for exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up-bid'' or a ''down-bid.'' To effect a ''legal'' short sale on a down-bid, the short sale must be executed at a price at least $.01 above the current inside bid. The Rule is in effect from 9:30 a.m. until 4 p.m. each trading day.

To reduce the compliance burdens on its members, the Rule also incorporates seven exemptions contained in Rule 10a–1 of the Act,[9] and other exemptions that are relevant to trading on Nasdaq.[10] For example, in an effort to not constrain the legitimate hedging needs of options market makers, the Rule also contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

Background of the Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, NASD Rule 3350 provides an exemption for ''qualified'' market makers (*i.e.*, market makers that meet the PMM standards). NASD Rule 4612 provides that a member registered as a market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since the Rule has been in effect, Nasdaq has used three methods to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided the short sales were made in connection with bona fide market making activity (''the 20-day'' test). From February 1, 1996 until the February 14, 1997, the ''20-day'' test was replaced with a four-part quantitative test known as the PMM standards.[11]

On February 14, 1997, the PMM standards were waived for all NNM securities due to the impacts of the Commission's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[12] For example, among other impacts, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the ''102% Average Spread Standard.'' Since that time all Nasdaq Market Makers have been deemed to be PMMs.

In March 1998, Nasdaq proposed PMM standards that received substantially negative comments.[13] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop new PMM standards (''Subcommittee'') in August 1998. The Subcommittee met nine times and formulated new PMM standards. NASD/Nasdaq staff requested to meet with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. This meeting occurred on December 9, 1998. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference

[5] 15 U.S.C. 78j.

[6] 17 CFR 240.10a–1.

[7] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a ''short sale'' contained in Rule 3b-3 of the Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[8] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994), (SR-NASD–92–12), (''Short Sale Rule Approval Order'').

[9] 17 CFR 240.10a–1.

[10] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that Commission staff interpretations to Rule 10a–1 of the Act dealing with the liquidation of index arbitrage positions and an ''international equalizing exemption'' are equally applicable to the NASD's short sale rule.

[11] Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less that 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit or trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.* the ''P'' next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[12] *See* Securities Exchange Act Release No. 38294 (February 17, 1997), 62 FR 8289 (February 24, 1997), (SR–NASD–97–07).

[13] *See* Securities Exchange Act Release No. 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998), (SR–NASD–97–73).

call with members of the Commission staff to receive feedback on the PMM standards that Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff requested that Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's recommended revisions, and concluded that the Commission's modified standards produced unfavorable results. Nasdaq requested that the Commission comment on the outcome of this test ''as we intend to communicate your comments to the Subcommittee in an effort to resume the process of developing new standards.'' [14]

Nasdaq suspended development of PMM standards in late-1999 after the Commission signaled to the securities industry that it is considering fundamental changes to Rule 10a–1 of the Act,[15] changes that could impact the manner in which Nasdaq and the other markets regulate short sales. In October 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of a short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether. Nasdaq believed that it would be inappropriate for Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a–1 of the Act.[16] At the request of the Division, Nasdaq has resumed development of PMM standards and has been working with the Commission staff towards that goal.

Proposal to Extend the Short Sale Rule and Suspend the PMM Standards.

Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. When the Commission approved the NASD's short sale rule on a pilot basis, it made specific findings that the Rule was consistent with sections 11A,[17] 15A(b)(6),[18] 15A(b)(9),[19] and 15A(b)(11) [20] of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.'' [21] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.'' [22] The benefits that the Commission recognized when it first approved NASD Rule 3350 apply with equal force today.

Similarly, the concerns that caused the Commission to waive the PMM standards in February 1997 continue to exist today. Nasdaq and the Commission agreed to waive the PMM standards for three reasons that were discovered only after the Order Handling Rules were implemented.[23] Through late-1999, Nasdaq worked diligently to address those concerns to the Commission's satisfaction, including convening a special subcommittee on PMM issues, proposing two different sets of PMM standards, and being continuously available and responsive to Commission staff to discuss this issue. Despite these efforts, the Commission and Nasdaq were unable to establish satisfactory PMM standards. At the request of Commission staff, Nasdaq has begun developing PMM standards suitable to today's rapidly changing marketplace. Re-instating the PMM standards set forth in NASD Rule 4612 would be extremely disruptive to the market and harmful to investors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[24] in general and with section 15A(b)(6) of the Act,[25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–26 and should be submitted by July 14, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as a Pilot Program

After careful consideration, the Commission finds, for the reasons set forth below, that the extension of the Short Sale Rule Pilot until December 15, 2003, and the suspension of the existing PMM standards until December 15, 2003, are consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the extension is consistent

[14] *See* Letter, dated September 27, 1999 from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission.

[15] 17 CFR 240.10a–1.

[16] 17 CFR 240.10a–1.

[17] 15 U.S.C. 78k–1.

[18] 15 U.S.C. 78o–3.

[19] *Id.*

[20] *Id.*

[21] *See* Short Sale Rule Approval Order, *supra* note 8.

[22] *Id.*

[23] Implementation of the Order Handling Rules created the following three issues: (1) Many market makers voluntarily chose to display customer limit orders in their quotes although the Limit Order Display Rule did not yet require it; (2) SOES decrementation for all Nasdaq stocks significantly affected market makers' ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in NASD Rule 4612(g)(2)(B).

[24] 15 U.S.C. 78*o*–3.

[25] 15 U.S.C. 78*o*–3(6).

with section 15A(b)(6)[26] of the Act, which requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade.

The Commission finds that the continuation of the Short Sale Rule Pilot and the continued suspension of the PMM standards will maintain the status quo while the Commission is considering amending Rule 10a–1 of the Act.[27] This extension of the pilot and continued suspension of the PMM standards is subject to modification or revocation should the Commission amend Rule 10a–1 of the Act[28] in a manner as to deem the extension or suspension unnecessary or in conflict with any adopted amendments.[29]

Accordingly, the Commission finds good cause for approving the extension of the Short Sale Rule Pilot and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could disrupt the Nasdaq market and confuse market participants to reintroduce the previous PMM standards while new PMM standards are being developed, and while the Commission considers amending Rule 10a–1 of the Act.[30]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[31] that Amendment Nos. 14 and 15 to the proposed rule change, SR-NASD–98–26, which extends the NASD Short Sale Rule Pilot through December 15, 2003, and suspends the PMM standards through December 15, 2003, is approved on an accelerated basis.[32]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 03–15773 Filed 6–20–03; 8:45 am]

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[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 17 CFR 240.10a–1.

[28] *Id.*

[29] Absent an exemption, Rule 10a–1 under the Act would apply to Nasdaq on Commission approval of its exchange registration.

[30] 17 CFR 240.10a–1.

[31] 15 U.S.C. 78s(b)(2).

[32] In approving Amendment Nos. 14 and 15, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48042; File No. SR–NASD–2003–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a New Qualification Examination: General Securities Principal Sales Supervisor Module (Series 23)

June 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 5, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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

NASD proposes to establish the General Securities Principal Sales Supervisor Module (''Series 23'') examination program, and is filing with the Commission the selection specifications and study outline for the Series 23 examination.[6] NASD is proposing the Series 23 examination program in connection with a change to the New York Stock Exchange, Inc. (''NYSE'') qualification requirements whereby the NYSE recognized the NASD's General Securities Principal (''Series 24'') examination program as an acceptable qualification alternative to the General Securities Sales Supervisor (''Series 9/10'') examination program for supervisory persons whose duties do not include the supervision of options or municipal securities sales activity.[7] Accordingly, NASD is proposing to accept the Series 9/10 examination as an acceptable qualification alternative to the Series 24 examination for associated persons who are required to register and qualify as Series 24 principals with NASD, provided that such persons also pass the proposed Series 23 examination, which covers material from the Series 24 examination not otherwise covered under the Series 9/10 examination. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

A description of the Series 23 examination is included in the study outline that was attached to the proposed rule change. Additional information on the examination is included in the Series 23 selection specifications, which NASD omitted from this filing, but has submitted with a request for confidential treatment under separate cover to the Commission's Secretary pursuant to Rule 24b–2 under the Act.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 9, 2002, the SEC approved a proposed rule change to NYSE Rule 342 (''Offices—Approval, Supervision and Control'') that recognized NASD's Series 24 examination as an acceptable qualification alternative to the Series

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 5NASD provided the Commission with written notice of its intent to file the proposed rule change on May 28, 2003. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b4(f)(6)(iii).

[6] 6 Based upon instruction from Commission staff, NASD is submitting SR–NASD–2003–91 for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank, which is a subset of the existing Series 24 question bank, is available for Commission review.

[7] 7 *See* Securities Exchange Act Release No. 46631 (October 9, 2002), 67 FR 64187 (October 17, 2002) (SR–NYSE–2002–24)(approval order).

[8] 817 CFR 240.24b–2 (allowing the nondisclosure of information filed with the Commission and with any exchange).

9/10 examination for supervisory persons whose duties do not include the supervision of options or municipal securities sales activity.[9] In an effort to establish reciprocal qualification standards, NASD is proposing to accept the Series 9/10 examination in lieu of the Series 24 examination for associated persons who are required to register and qualify as Series 24 principals with NASD, provided that such persons pass the newly-developed Series 23 qualification examination in addition to passing the Series 9/10 examination.

Pursuant to section 15A(g)(3) of the Act,[10] which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed the Series 23 examination program to establish that persons associated with NASD members who have passed the Series 9/10 examination and who are seeking to register and qualify with NASD as Series 24 principals have attained specified levels of competence and knowledge.

The Series 23 examination is a limited qualification examination that covers those subject matters that are covered on the Series 24 examination, but not included on the Series 9/10 examination. The Series 23 examination program tests a candidate's knowledge of securities industry rules and regulations pertaining to the supervision of investment banking, securities markets and trading, as well as financial responsibility requirements. A committee of industry representatives that oversees the Series 24 examination program, together with NASD staff, compared the subject matters covered on the Series 9/10 and Series 24 examinations to determine the topics that should be extracted from the Series 24 examination to create the Series 23 examination program. The committee, including NASD staff, developed the selection specifications, study outline, and question bank for the Series 23 examination.

The Series 23 examination will be divided into five topical sections. The topical sections and the number of questions designated to each such section are as follows: Supervision of Investment Banking Activities (25); Supervision of Trading and Market Making Activities (29); Supervision of Brokerage Office Operations (16); Sales Supervision, General Supervision of Employees, Regulatory Framework of NASD (19); and Compliance with Financial Responsibility Rules (11). The selection specifications for the Series 23 examination, which NASD has omitted from this filing and has submitted with a request for confidential treatment under separate cover to the Commission's Secretary pursuant to Rule 24b–2 under the Act,[11] describe additional confidential information regarding the examination.

The Series 23 examination will be a 2½-hour, 100-question examination with 70% as the passing score.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6)[12] and 15A(g)(3) of the Act,[13] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–91 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–15775 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48029; File No. SR–PCX–2002–25]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Pacific Exchange, Inc., To Eliminate the Lead Market Maker Concentration Limit of 15% of the Issues Traded on the Exchange's Options Floor

June 13, 2003.

On April 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the concentration limit for the number of issues that a Lead Market Maker (''LMM'') on the Exchange may be allocated. Notice of the proposed rule change was published

[9] 9 *See* Securities Exchange Act Release No. 46631 (October 9, 2002), 67 FR 64187 (October 17, 2002) (SR–NYSE–2002–24) (approval order).

[10] 15 U.S.C. 78o–3(g)(3).

[11] 17 CFR 240.24b–2.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(g)(3).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for comment in the **Federal Register** on May 9, 2003.[3] No comments were received on the proposed rule change.

Current PCX Rule 6.82 requires the Options Allocations Committee (''OAC'') to allocate option issues to LMMs based on an overall evaluation of such factors as a candidate's adequacy of capital, operational capacity, support personnel, trading crowd evaluations and history of adherence to Exchange rules and securities laws. However, absent extraordinary circumstances, no LMM may be allocated more than 15% of the number of issues traded on the options floor.

The Exchange now proposes to eliminate this fixed concentration limit. Instead, PCX would add the number and quality of issues already allocated to an LMM to the list of factors considered by the OAC. Additionally, PCX would adopt a guideline requiring the OAC to consider the concentration of an LMM's issues if an event or proposal would cause the LMM to meet either of the following criteria: (i) The number of issues allocated to it (and any affiliated LMM) is 25% or more of the total number of issues traded on the PCX; or (ii) the volume in the issues allocated to it (and any affiliated LMM) is 50% or more of the total volume of the PCX or 25% or more of the total volume in equity option issues of the PCX. If an LMM met either of these criteria, the guideline would require the OAC to evaluate whether the event or proposal would result in an unacceptable level of concentration. If so, the OAC could exercise its discretion and take action to lower the resulting level of concentration or to deny the subject proposal. The OAC would also retain the discretion to review an LMM's level of concentration at any time, regardless of whether the above criteria are met.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission has previously noted that PCX's concentration limits serve the purpose of minimizing the disturbance to a fair and orderly market that might otherwise result from the failure of an LMM.[6] However, as the Commission has also noted, other exchanges do not impose specified mandatory limits on the number of options that may be allocated to specialists.[7] The Commission believes that the approach proposed by PCX is similar to one employed by the Chicago Board Options Exchange (''CBOE''). Like the proposed PCX Rule and Guidelines, CBOE Rule 8.84 and Regulatory Guideline 99–135 do not impose a mandatory cap on the number of issues that may be allocated to a Designated Primary Market-Maker (''DPM''). Instead, the CBOE guideline provides that a review with the relevant committee may be triggered when, *inter alia,* the number of classes allocated to a DPM is 25% or more of the total number of classes traded on CBOE. The Commission believes that it is permissible for the PCX to adopt a similar approach. The Commission further believes that the proposed rule changes should provide PCX with an appropriate degree of regulatory flexibility, and allow it to compete more effectively with other exchanges. At the same time, the proposal should preserve the Exchange's ability to minimize the risks associated with potential LMM failures.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–PCX–2002–25) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15712 Filed 6–20–03; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 47795 (May 5, 2003), 68 FR 25074.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* Securities Exchange Act Release No. 42583 (March 28, 2000), 65 FR 17689 (April 4, 2000).

[7] *Id.* at 17690; Chicago Board Options Exchange Rule 8.84, Regulatory Guideline 99–135; American Stock Exchange Rule 26, Interp. 03.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48028; File No. SR–PCX–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

June 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX 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 PCX is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed change is available at the PCX 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 PCX 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 PCX 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

Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per issue basis.[3] The PCX segregates the funds from this fee by trading post and makes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (PCX–2001–37).

the funds available to LMMs for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates. The PCX's marketing fee program applies only to option issues classified by the PCX as the Top 250 issues. The PCX defines a Top 250 issue as one of the 250 most actively traded option issues on a national basis. For each current month, the PCX's determination of whether an equity option ranks in the top 250 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the June trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business. Only the amount of the fee is being changed.

Basis

The PCX believes that the proposal is consistent with section 6(b) of the Act [4] and section 6(b)(4) of the Act [5] in particular in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b–4(f)(2) thereunder [7] because it changes the PCX fee schedule. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–26 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15713 Filed 6–20–03; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48031; File No. SR–PCX–2003–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

June 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 30, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges by modifying its Order Cancellation Fees. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Schedule of Fees and Charges for Exchange Services

PCX OPTIONS: TRADE-RELATED CHARGES

Transactions: No change.

Order Cancellation: $1.00 per MFI order canceled.

Except as provided herein, the fee [O]*only* applies to orders canceled through the MFI in any month where the total number of orders canceled through the MFI by the executing Clearing Member exceeds the total number of orders that same firm executed through the MFI in that same month. This fee does not apply to executing Clearing Members canceling less than 500 orders through the MFI in a month. *The MFI fee will also not apply to cancel requests on invalid orders (the option has already expired and the Exchange has purged it from its system); invalid symbols (a symbol that does not refer to a valid option traded on the Exchange); or invalid series (a series that is not recognized by or traded on the Exchange).*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Ticket Data Entry: No change.
On-Line Comparison: No change.
LMM Book Operation Credit: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has established an Order Cancellation Fee in order to address operational problems and costs resulting from the practice of market participants canceling orders immediately after they place such orders through the Exchange's Member Firm Interface (''MFI'').[3] While the fee was intended to temper activity among trading participants who immediately cancel orders without routing significant order flow to the Exchange, it was not intended to penalize Member Firms that, due to their systems formulas, must cancel orders that are deemed invalid and which they are not able to fill. Thus, if a Member Firm sends in an order that is not eligible for execution because it is an invalid order (the option has already expired and the Exchange has purged it from its system); has an invalid symbol (a symbol that does not refer to a valid option traded on the Exchange); or refers to an invalid series (a series that is not recognized or traded by the Exchange); such order will be rejected from the Exchange's system and the Member Firm will have to enter a cancel request in order to remove the ineligible order from its internal systems. These types of cancels are not the type of cancels that the Exchange's MFI Cancellation Fee was intended to, or should, redress. In order to ensure that this fee continues to mitigate excessive cancellations while not disadvantaging Member Firms that provide cancel requests for ineligible orders, the Exchange proposes to modify its MFI cancellation selection criteria to exclude cancels on invalid orders, invalid series or invalid symbols from the applicability of the MFI Cancellation Fee. The Exchange believes that this proposed modification to its Schedule of Fees continues to fulfill the stated purpose of the MFI Cancellation Fee.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder because it changes a fee imposed by the PCX. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–25 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15715 Filed 6–20–03; 8:45 am]

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[3] *See* Securities Act Release No. 45262 (January 9, 2002), 67 FR 2266 (January 16, 2002) (SR–PCX–2001–47).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* 15 U.S.C. 78(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48043; File No. SR–PCX–2003–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to its Auto-Ex Book Function Pilot Program

June 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 21, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 6, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J. Cho, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 5, 2003 (''Amendment No. 1''). In Amendment No. 1, PCX amended its proposal to request an extension of the pilot program discussed herein until June 30, 2004, rather than June 24, 2004 as stated in the original proposal, so that the pilot's expiration will coincide with the date on which the Exchange's ''PCX Plus'' system will be completely operative. *See infra* n. 6, and accompanying text.

change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its rules to extend the Automatic Execution System (''Auto-Ex'') Book Function Pilot Program to June 30, 2004. The text of the proposed rule change is available at the principal office of the PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 17, 2002, the Commission approved, on a one-year basis, the Exchange's proposal to amend Rule 6.87, which governs the operation of its Auto-Ex [4] Book Function.[5] The pilot program is currently set to expire on June 22, 2003.

The Auto-Ex Book Function of POETS permits orders in the Limit Order Book to be executed via the Auto-Ex system when those orders become marketable subject to certain procedures. The function may be used when one or more orders in the Limit Order Book become marketable, as indicated by a locked or crossed market being displayed on the trading floor. When this occurs, the Lead Market Maker may direct the Order Book Official to initiate the Auto-Ex Book Function, which will cause marketable orders in the Limit Order Book to be automatically executed against the accounts of Market Makers who are participating on the Auto-Ex system at the time.

The Exchange is requesting an additional extension of the pilot program to June 30, 2004, when the Exchange's new trading platform for options, ''PCX Plus'', will become completely operative. The added time permits the Exchange to phase in PCX Plus on an issue-by-issue basis.[6] As each issue is phased into PCX Plus, the Exchange will simultaneously phase out such issue from the Auto-Ex Book Function. PCX Plus will eventually replace the Auto-Ex Book Function in its entirety. Currently, the Auto-Ex Book Function is operating as intended and provides a service to both customers and members by facilitating the execution of orders in the Limit Order Book. Therefore, the Exchange believes that a one-year extension of the program is warranted.

2. Statutory Basis

PCX believes that this proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX–2003–15 and should be submitted by July 14, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[9] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] The Commission believes that extension of the pilot program until June 30, 2004, provides an appropriate period of time for the Exchange to continue its Auto-Ex Book Function while it phases in its new trading platform for options, PCX Plus, on an issue-by-issue basis. In this way, the Auto-Ex Book Function can continue uninterrupted for each options class until PCX Plus is operative for that option class. Once PCX Plus is fully operational, the Exchange no longer will need to operate its Auto-Ex system.[11]

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that this proposal would merely extend an existing pilot program to June

[4] Auto-Ex is the Automated Execution system feature of POETS for market or marketable limit orders. The Pacific Options Exchange Trading System (''POETS'') is an automated trading system comprised of an options order routing system, an automatic execution system (''Auto-Ex''), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface (''MFI''). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

[5] *See* Exchange Act Release No. 46082 (June 17, 2002), 67 FR 42307 (June 21, 2002).

[6] *See* Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus) (''PCX Plus Order'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* PCX Plus Order, *supra* n. 6.

30, 2004, while the Exchange phases in its new trading platform for options. The Commission believes that it is appropriate to grant accelerated approval to the proposal in order to ensure continuous operation of this feature of PCX's current framework for the automatic execution of options orders.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–PCX–2003–15) is hereby approved on an accelerated basis, as a pilot program scheduled to expire on June 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15770 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48034; File No. SR–Phlx–2003–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Technology Fee

June 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. 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 amend its schedule of dues, fees, and charges to increase its technology fee from $150 per month to $950 per month for Phlx members. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is 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

The Phlx proposes to amend its schedule of dues, fees, and charges to increase its technology fee from $150 per month to $950 per month for Phlx members. The technology fee is currently assessed on members as well as on foreign currency options participants who do not also hold legal title to a Phlx membership.[3] The current proposal will assess the $950 proposed technology fee on Phlx members. A foreign currency options participant who does not also hold legal title to a Phlx membership will continue to be assessed the current technology fee of $150 per month, and not the increased fee of $950 per month.

In addition, the Exchange intends to amend a footnote related to its technology fee, which appears on its schedule of dues, fees, and charges, to clarify that foreign currency options participants that hold legal title to an Exchange membership are assessed the technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant.[4] The Exchange intends to implement this fee effective June 1, 2003.[5]

The Phlx states that the technology fee was originally instituted to reflect the costs of needed upgrades to the operating systems on the Exchange's trading floors, system software modifications, year 2000 modifications, and hardware upgrades. Also, system development costs for new risk management systems, order handling rule revisions, specialized quote feeds, and new products were captured by this fee.[6] Now, in addition to its original purpose, the Exchange believes the revenue generated from the technology fee should provide for a source of general funds to be used, for example, in connection with other technology-related capital and expenses, such as the purchasing, leasing, and maintenance of equipment and software, programming costs, outside vendor charges, communications costs, and debt service for funds borrowed in relation to the foregoing.

The Exchange believes an increase in the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology to facilitate trading and remain competitive. In addition, the Exchange believes that assessing the $950 per month technology fee on members and the $150 per month technology fee on foreign currency options participants who do not hold legal title to a Phlx membership is equitable in that the additional revenue generated from the increased technology fee is intended to be mainly used to facilitate trading on the equity and options floors, and not the foreign currency options trading floor.

The purpose of amending the footnote that accompanies the technology fee entry on the fee schedule is to clarify that foreign currency options participants that hold legal title to a Phlx membership are assessed the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A foreign currency options participant who also holds legal title to a Phlx membership is only assessed the fee once—in his or her capacity as a Phlx member. For example, a foreign currency options participant who also holds legal title to a Phlx membership is currently assessed a total of $150 per month for the technology fee. Under this proposal, a total of $950 per month would be assessed for the technology fee. Equity Trading Permit holders/organizations are not assessed the technology fee. *See* Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR–Phlx–2002–10).

[4] The Phlx revised the footnote in its schedule of dues, fees, and charges from what it had originally proposed in this rule filing. The footnote relating to the technology fee will now state the following: ''Foreign currency options participants who also hold legal title to a Phlx membership are assessed the technology fee in their capacity as a Phlx member, for that membership, and not additionally in their capacity as a foreign currency options participant. ETP holders/organizations are not assessed the technology fee.'' Telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Mia C. Zur, Attorney, Division of Market Regulation (''Division''), Commission, on June 12, 2003.

[5] The technology fee had heretofore been eligible for a monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

[6] *See* Securities Exchange Act Release Nos. 45289 (January 16, 2002), 67 FR 3525 (January 24, 2002) (SR–Phlx–2001–117), and 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR–Phlx–97–09).

technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant. The Exchange believes this clarification should help to avoid member confusion relating to the application of the technology fee.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act [7] in general, and furthers the objectives of section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members, as all members (except foreign currency options participants who do not hold legal title to a Phlx membership) [9] will be subject to the increased fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

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 [10] and Rule 19b–4(f)(2) thereunder.[11] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] The Exchange does not believe that it is appropriate to apply the proposed fee increase to foreign currency options participants who do not also hold legal title to a Phlx membership because such participants are unlikely to benefit from the technology-related expenditures that the proposed fee increase is intended to address. The Exchange believes that the number of foreign currency option contracts currently traded on the Exchange is an insignificant part of the Exchange's overall options trading program.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–41 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15714 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48040; File No. SR–Phlx–2003–28]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Retroactively Apply Its Broker-Dealer Transaction Fee for Equity Option Transactions for the Period From April 1, 2003 to April 10, 2003

June 17, 2003.

On April 28, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to retroactively apply its broker-dealer transaction fee for equity option transactions for the period from April 1, 2003 to April 10, 2003. The proposed rule change was published for comment in the **Federal Register** on May 13, 2003.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act [4] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[5] which requires that the Exchange's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. The Commission believes that the proposed application of the lower broker-dealer transaction fee for block equity option transactions implemented on April 11, 2003 to transactions settling from April 1, 2003 to April 10, 2003 should establish reasonable execution costs for market participants during that period.

For this reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–2003–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15771 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47799 (May 6, 2003), 68 FR 25670.

[4] 15 U.S.C. 78f. In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48032; File No. SR–Phlx–2003–42]

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 Assessed on Registered Options Traders

June 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''Commission''). The proposed rule change is described in Items I, II and III below, which the Phlx has prepared. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The text of the proposed rule change is available at the Phlx and at the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its payment-for order flow fees imposed on the transactions of Phlx Registered Options Traders (''ROTs'') for the equity options currently ranked two through fifty.[4] The fees for the equity options ranked from two through fifty will decrease from $0.50 per contract to $0.40 per contract. The fee for the top-ranked equity option will remain at $1.00 and the fee for equity options ranked 51 through 120 will remain at $0.00. No other changes to the Phlx's payment for order flow program are being made at this time.[5]

The Phlx intends to implement the attached payment for order flow fees for trades settling June 1, 2003 through July 31, 2003.[6]

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

1. Purpose

The Phlx previously filed a proposed rule change with the Commission to reinstate its payment for order flow program.[7] Pursuant to the Phlx's current program, ROTs are assessed a payment for order flow fee on the 120 most actively traded equity options, on a per-contract, per-options issue basis, as set forth on the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.[8]

The purpose of the proposed rule change is to encourage additional volume in the most actively traded equity options ranked two through fifty by decreasing the payment for order flow fee assessed on ROTs from the current rate of $0.50 per contract to $0.40 per contract. The reduced fee, applicable to trades settling from June 1, 2003 through July 31, 2003, should promote additional liquidity in those options by reducing the ultimate costs incurred by the ROTs in connection with trading these options.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4) of the Act[10] in particular, 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 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

The Phlx neither solicited nor received written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 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. *See* Securities Exchange Act Release No. 47424 (February 28, 2003), 68 FR 11168 (March 7, 2003) (SR–Phlx–2003–04). For the payment for order flow fees imposed on trades settling on or after May 1, 2003 through July 31, 2003, the measuring period for the top 120 options was based on volume statistics from January, February and March 2003. *See* Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR–Phlx–2003–34).

[5] Therefore, the top 120 options currently in effect will remain the same through July 31, 2003. No recalculation of the top 120 options is being done at this time.

[6] The Exchange previously filed a proposed rule change to establish the payment for order flow fees for the time period May 1, 2003 through July 31, 2003. *See* Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR–Phlx–2003–34). This proposal seeks to amend the payment for order flow fees within this three-month cycle, specifically for transactions settling on June 1, 2003 through July 31, 2003. Thereafter, consistent with the Phlx's payment for order flow program, the Phlx will file with the Commission a proposed rule change to address any changes to its fee schedule for subsequent time periods.

[7] *See* Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75).

[8] 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.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2003–42 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15772 Filed 6–20–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 23, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.

No: 912.

Frequency: On occasion.

Description of Respondents: Applicants for SBA Financial Assistance or other program participation.

Responses: 55,000.

Annual Burden: 13,750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–15809 Filed 6–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P010]

State of Arkansas

As a result of the President's major disaster declaration for Public Assistance on June 6, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Chicot, Cleburne, Conway, Craighead, Cross, Independence, Jackson, Madison, Newton, Perry, Poinsett, St. Francis, Van Buren, White and Woodruff Counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring from May 2, 2003, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 5, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations without Credit Available Elsewhere	2.953
Non-Profit Organizations with Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P01011.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: June 16, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–15812 Filed 6–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3508, Amdt. #1]

Commonwealth of Kentucky

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 12 and June 13, 2003, the above numbered declaration is hereby amended to include Estill, Madison, Owsley and Perry Counties in the State of Kentucky as disaster areas due to damages caused by severe storms, flooding, mud and rock slides, and tornadoes occurring on May 4 through May 27, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Breathitt, Clark, Clay, Harlan, Jackson, Knott, Lee, Leslie, Letcher and Powell in the State of Kentucky may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 4, 2003, and for economic injury the deadline is March 3, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 16, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–15811 Filed 6–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9V83]

State of North Carolina

Caldwell and Watauga Counties and the contiguous counties of Alexander, Ashe, Avery, Burke, Catawba and Wilkes in the State of North Carolina; and Johnson County in the State of Tennessee constitute an economic injury disaster loan area as a result of the closure of a section of U.S. Highway

321 from April 10 to May 9, 2003 due to floodwaters. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on March 15, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.189 percent. The number assigned for economic injury for this disaster is 9V8300 for North Carolina; and 9V8400 for Tennessee.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: June 13, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–15810 Filed 6–20–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 4385]

Notice of Availability of Alternative Fueled Vehicle (AFV) Report for Fiscal Year 2002

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State, Bureau of Administration, is issuing this notice in order to comply with the Energy Policy Act of 1992 and 42 U.S.C. 13218(b).

The purpose of this notice is to announce the public availability of the Department of State's Fiscal Year 2002 report at the following Web site: *http://www.state.gov/m/a/c8503.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding reports on the AFV report web site should be addressed to the Domestic Fleet Management and Operations Division (A/OPR/GSM/FMO) [Attn: Barry Shpil], 2201 C Street NW. (Room B258), Washington, DC 20520, phone 202–647–3628.

Dated: June 16, 2003.

Vincent J. Chaverini,

Deputy Assistant Secretary, Office of Operations, Department of State.

[FR Doc. 03–15782 Filed 6–20–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 13, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15390.

Date Filed: June 10, 2003.

Parties: Members of the International Air Transport Association.

Subject: CAC/31/Meet/005/03 dated 13 May 2003, Expedited Resolution 801r, Intended effective date: 1 July 2003.

Docket Number: OST–2003–15391.

Date Filed: June 10, 2003.

Parties: Members of the International Air Transport Association.

Subject: CAC/31/Meet/006/03 dated 30 May 2003, Finally Adopted Resolutions r1–r8, Minutes—CAC/31/Meet/004/03 dated 8 May 2003, Intended effective date: 1 October 2003.

Docket Number: OST–2003–15416.

Date Filed: June 13, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 303, PTC2 EUR–ME 0165 dated 17 June 2003, PTC2 EUR–AFR 0179 dated 17 June 2003, TC2 Europe-Middle East-Africa, Special Passenger Amending Resolution 010q, from Algeria to Middle East, Africa, Intended effective date: 1 July 2003.

Docket Number: OST–2003–15417.

Date Filed: June 13, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 306, PTC COMP 1060 dated 13 June 2003, General Increase Resolution 002i, between USA/US Territories and Austria, Chile, Czech Republic, Finland, France (including French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Reunion, Saint Pierre and Miquelon), Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland, Intended effective date: 1 July 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–15784 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 13, 2003.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier

Permits were filed under subpart b (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–15423.

Date Filed: June 13, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 7, 2003.

Description: Application of Alitalia-Linee Aeree Italiane-S.p.A., pursuant to 49 U.S.C. 41301, 14 CFR part 211 and subpart B, requesting an amendment to its foreign air carrier permit to engage in scheduled foreign air transportation between any point or points behind Italy, and any point or points in Italy, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights. Alitalia further requests, the Department amend its permit to authorize Alitalia to engage in charter foreign air transportation in accordance with, and with all the rights available to Alitalia under, the Open Skies Agreement.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–15785 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Cool Tours, Inc. d/b/a San Juan Aviation for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–6–23), Docket OST–02–13937.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Cool Tours, Inc. d/b/a San Juan Aviation is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier and issue to it a Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than July 7, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–02–13937 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: June 17, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–15783 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Registration Status

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration's (FAA) electronic Aircraft Registration System will be augmented to reflect the observed status of an aircraft's certificate of registration.

EFFECTIVE DATE: June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter Binkley, Manager, Aircraft Registration Branch (AFS–750), Mike Monroney Aeronautical Center, Federal Aviation Administration (AFS–750), Post Office Box 25504, Oklahoma City, OK 73125. Telephone (405) 954–3131.

SUPPLEMENTARY INFORMATION: Section 47.41(a) of the Federal Aviation Regulations (14 CFR part 47) enumerates circumstances under which a certificate of aircraft registration becomes ineffective. The most commonly observed event is receipt of information indicating the aircraft ownership has changed. The change of aircraft ownership renders the certificate of registration ineffective for operations (see 14 CFR 91.203(a)(2)). The FAA believes it is in the interest of national security, safety, and accuracy that the Aircraft Registration System reflect the observed status of an aircraft's registration.

On the effective date stated herein, aircraft records containing information that would render a certificate of registration ineffective if true, will be changed to reflect a status of ''In Question''.

Such status is informational in nature and should not be construed as a legal determination that the certificate of registration is ineffective.

Issued in Oklahoma City, OK on June 13, 2003.

Mark Lash,

Manager, Civil Aviation Registry.

[FR Doc. 03–15673 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15268]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 36 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before July 23, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2003–15268 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room Pl–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: 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 the Department of Transportation'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.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 36 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Gene E. Adams

Mr. Adams, 64, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/70 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''It is my professional opinion that Mr. Adams has adequate vision to operate a commercial vehicle.'' Mr. Adams reported that he has driven straight trucks for 46 years, accumulating 138,000 miles, and tractor-trailer combinations for 23 years, accumulating 2.5 million miles. He holds a Class AMV CDL from Alabama. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. Morris R. Beebe

Mr. Beebe, 36, has a damaged retina in his right eye due to injury at age 6. His visual acuity in the right eye is 20/80 and in the left, 20/20. Following an examination in 2002, his optometrist certified, ''It is my belief that Morris has sufficient vision and visual field perception in both eyes to be able to operate with a CDL license.'' Mr. Beebe reported that he has driven straight trucks for 4 months, accumulating 38,000 miles, and tractor-trailer combinations for 2 years 8 months, accumulating 350,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

3. William V. Beekler

Mr. Beekler, 59, had a branch artery occlusion in his right eye in 1993. His visual acuity in the right eye is hand motions and in the left, 20/20 with correction. His optometrist examined him in 2003 and certified, ''In my opinion, Mr. Beekler has sufficient visual function required to operate a commercial vehicle.'' Mr. Beekler submitted that he has driven straight trucks and tractor-trailer combinations for 42 years, accumulating 840,000 miles in the former and 4.2 million miles in the latter. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

4. Jerry W. Branning

Mr. Branning, 58, lost his left eye due to trauma in 1983. His visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, ''In my opinion Mr. Branning has sufficient vision to exercise the privileges and responsibilities of operating a commercial vehicle.'' Mr. Branning reported that he has driven straight trucks for 28 years, accumulating 4.8 million miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

5. Dennis R. Burda

Mr. Burda, 55, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''It is our judgment that Mr. Burda's vision is good enough to operate a commercial vehicle with no restrictions day or night.'' Mr. Burda submitted that he has driven straight trucks for 37 years, accumulating 742,000 miles, and tractor-trailer combinations for 5 years, accumulating 101,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. James A. Busbin, Jr.

Mr Busbin, 48, has an enlarged blind spot in his right eye resulting from an injury at age 4. His best-corrected visual acuity in the right eye is 20/50 and in the left, 20/16. Following an examination in 2003, his optometrist certified, ''In my opinion, this individual has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Busbin reported that he has driven straight trucks for 3 years, accumulating 150,000 miles. He holds a Class DM driver's license from Alabama. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

7. Domenic J. Carassai

Mr. Carassai, 44, has amblyopia in his right eye. His visual acuity in the right eye is 20/70 and in the left, 20/20. His ophthalmologist examined him in 2002 and stated, ''In our opinion, Mr. Carassai's vision is good enough to operate a commercial vehicle.'' Mr. Carassai reported that he has driven straight trucks for 15 years, accumulating 360,000 miles. He holds a Class A CDL from New Jersey. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

8. Theodore W. Cozat

Mr. Cozat, 60, lost his right eye at age 10 due to a congenital birth defect. His visual acuity in the left eye is 20/20. Following an examination in 2003, his optometrist certified, ''In my medical opinion he has the vision to operate a commercial vehicle safely, as he has done so, for the past 29 years with a reportedly clean driving record.'' Mr. Cozat reported that he has driven tractor-trailer combinations for 9 years, accumulating 900,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. Todd L. Dewey

Mr. Dewey, 35, has had optic nerve hypoplasia in his right eye for 4 years. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/30. Following an examination in 2002, his optometrist certified, ''Based on the above findings, Mr. Dewey appears to have sufficient vision to perform the driving tasks associated with driving a commercial motor vehicle.'' Mr. Dewey reported that he has driven straight trucks for 14 years, accumulating 345,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

10. John F. Dougherty

Mr. Dougherty, 59, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/20. Following an examination in 2003, his optometrist stated, ''Mr. Dougherty, due to his congenital refractive amblyopia does have reduced acuity and peripheral vision. Binocular vision quality is also reduced due to the amblyopia. These

reductions are however not new for Mr. Dougherty. Given his awareness of them and his otherwise excellent visual findings, I feel he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dougherty reported that he has driven straight trucks for 8 years, accumulating 356,000 miles. He holds a Class C driver's license from Pennsylvania. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. Fred W. Duran

Mr. Duran, 49, has decreased vision in his left eye due to injury at the age of 9. His visual acuity in the right eye is 20/15 and in the left, 20/100. His ophthalmologist examined him in 2002 and stated, ''I certify that in my opinion, Fred Duran has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Duran reported that he has driven straight trucks for 2 years, accumulating 25,000 miles, and tractor-trailer combinations for 26 years, accumulating 975,000 miles. He holds a Class A CDL from Mississippi. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

12. Paul J. Edwards, Sr.

Mr. Edwards, 65, developed a serous detachment of the macula in his left eye in 1977. His best-corrected visual acuity in the right eye is 20/25 and in the left, counting fingers. His ophthalmologist examined him in 2002 and certified, ''I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Edwards reported that he has driven straight trucks and tractor-trailer combinations for 20 years, accumulating 100,000 miles in the former and 1.8 million miles in the latter. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows one accident and two convictions for moving violations in a CMV. The moving violations were ''failure to obey highway sign'' and exceeding the speed limit by 17 mph. The accident occurred when another driver changed lanes, striking Mr. Edward's vehicle. The other driver was charged with ''improper lane change.'' Mr. Edwards was not cited.

13. William R. Evridge

Mr. Evridge, 38, has optic atrophy of the left eye resulting from trauma at age 9. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his optometrist certified, ''It is my opinion that Mr. Evridge has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Evridge reported that he has driven straight trucks for 3 years, accumulating 30,000 miles, and tractor-trailer combinations for 22 years, accumulating 1.3 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

14. Kenneth J. Fisk

Mr. Fisk, 42, has a cataract in his right eye due to injury at age 7. His best-corrected visual acuity is 20/60 in the right eye and 20/20 in the left. Following an examination in 2003, his ophthalmologist certified, ''Given present medical findings in patient's 20-year history of commercial licensure without accident, I would feel the patient has sufficient vision to perform his career tasks.'' Mr. Fisk reported that he has driven straight trucks for 3 years, accumulating 225,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.5 million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no accidents and two convictions for moving violations—exceeding the speed limit by 10 mph and ''impeding traffic''—in a CMV.

15. Leslie W. Good

Mr. Good, 49, has congenital optic nerve hypoplasia in his left eye. His best-corrected visual acuity in the right eye is counting fingers and in the left, 20/15. Following an examination in 2002, his optometrist certified, ''His vision is adequate for safe operation of a commercial vehicle.'' Mr. Good reported that he has driven straight trucks for 8 years, accumulating 61,000 miles, and tractor-trailer combinations for 12 years, accumulating 342,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

16. Michael E. Grens

Mr. Grens, 56, has reduced vision in his right eye due to trauma in 1979. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/15. Following an examination in 2002, his optometrist certified, ''It appears that Michael Grens has sufficient vision with both eyes to perform the driving tasks required to operate a commercial vehicle.'' Mr. Grens submitted that he has driven straight trucks for 25 years, accumulating 1.9 million miles, tractor-trailer combinations for 8 years, accumulating 800,000 miles, and buses for 3 years, accumulating 15,000 miles. He holds a Class A CDL from Illinois. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

17. Rodney P. Hains

Mr. Hains, 42, has had macular scarring in his left eye since 1999. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. His ophthalmologist examined him in 2003 and certified, ''It is my opinion that you have sufficient vision to safely operate a commercial vehicle.'' Mr. Hains reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.8 million miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

18. Bruce E. Hemmer

Mr. Hemmer, 42, has had a corneal scar in his left eye since birth. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/200. Following an examination in 2002, his ophthalmologist stated, ''In my medical opinion, it is safe for you to drive a commercial vehicle.'' Mr. Hemmer submitted that he has driven straight trucks and tractor-trailer combinations for 20 years, accumulating 1.0 million miles in the former and 1.6 million miles in the latter. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

19. Steven P. Holden

Mr. Holden, 33, lost his left eye due to trauma at age 9. His visual acuity in the right eye is 20/15. Following an examination in 2003, his optometrist certified, ''I do believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Holden reported that he has driven straight trucks and tractor-trailer combinations for 11 years, accumulating 165,000 miles in the former and 1.9 million miles in the latter. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

20. Russell R. Inlow

Mr. Inlow, 57, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2003, his optometrist certified, ''In my medical opinion, Mr. Inlow has

sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Inlow reported that he has driven straight trucks for 10 years, accumulating 650,000 miles. He holds a Class E driver's license from Missouri. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

21. Christopher G. Jarvela

Mr. Jarvela, 35, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/200. His optometrist examined him in 2003 and stated, ''It is my conclusion based on his visual acuity and his field of vision, that Mr. Jarvela has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Jarvela reported that he has driven tractor-trailer combinations for 10 years, accumulating 400,000 miles. He holds a Class CA CDL from Michigan. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

22. Henry Joiner

Mr. Joiner, 53, has counting fingers vision in his left eye due to a congenital cataract. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2003, his ophthalmologist certified, ''Mr. Joiner has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Joiner reported that he has driven straight trucks and tractor-trailer combinations for 20 years, accumulating 300,000 miles in the former, and 500,000 miles in the latter. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

23. Darrell D. Kropf

Mr. Kropf, 28, has amblyopia in his left eye. The visual acuity in his right eye is 20/15 and in the left, 20/400. His optometrist examined him in 2003 and certified, ''In my opinion, Mr. Kropf is capable of driving commercial vehicles with the use of outside mirrors.'' Mr. Kropf submitted that he has driven tractor-trailer combinations for 4 years, accumulating 300,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—''failure to obey stop sign''—in a CMV.

24. Brad L. Mathna

Mr. Mathna, 45, lost his left eye due to an injury that occurred in 1981. His visual acuity in the right eye is 20/15. Following an examination in 2002, his optometrist certified, ''In my opinion, Mr. Mathna is able to operate a commercial vehicle at this time and has sufficient vision to perform the driving tasks required.'' Mr. Mathna reported that he has driven tractor-trailer combinations for 27 years, accumulating 2.2 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

25. William G. McClam

Mr. McClam, 45, has had a history of injury to his left eye since 1971. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his ophthalmologist certified, ''It is my professional opinion Mr. McClam has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle.'' Mr. McClam reported that he has driven tractor-trailer combinations for 24 years, accumulating 1.7 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 9 mph.

26. Vincent P. Miller

Mr. Miller, 42, is blind in his right eye due to an injury 17 years ago. His best-corrected visual acuity in the left eye is 20/20. His optometrist examined him in 2003 and certified, ''In my professional opinion, Mr. Miller has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Miller reported that he has driven straight trucks for 7 years, accumulating 52,000 miles, and tractor-trailer combinations for 6 years, accumulating 135,000 miles. He holds a Class A CDL from California. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

27. Warren J. Nyland

Mr. Nyland, 57, had a retinal detachment in his left eye at the age of 13. His best-corrected visual acuity in the right eye is 20/15 and in the left, light perception. Following an examination in 2002, his optometrist certified, ''It is my medical opinion that Mr. Nyland has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nyland submitted that he has driven straight trucks for 38 years, accumulating 570,000 miles, and tractor-trailer combinations for 15 years, accumulating 75,000 miles. He holds a Class A CDL from Michigan. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

28. Dennis M. Prevas

Mr. Prevas, 46, had a stroke in his left eye in 1983. His visual acuity in the right eye is 20/16 and in the left, hand motions. Following an examination in 2002, his optometrist certified, ''I feel Mr. Prevas has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Prevas reported that he has driven tractor-trailer combinations for 18 years, accumulating 630,000 miles. He holds a Class AM CDL from Iowa. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—''following too closely''—in a CMV.

29. Terry B. Pritchett

Mr. Pritchett, 55, lost his right eye due to injury at age 11. His visual acuity in the left eye is 20/20 with correction. Following an examination in 2002, his optometrist certified, ''In my medical opinion, Terry Pritchett has sufficient vision to perform all tasks necessary for a commercial driver.'' Mr. Pritchett reported that he has driven straight trucks for 25 years, accumulating 650,000 miles. He holds a Class B CDL from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

30. Greg L. Riles

Mr. Riles, 52, has counting fingers vision in his right eye due to an injury in 1956. His best-corrected visual acuity in the left eye is 20/15. Following an examination in 2003, his optometrist certified, ''At this time I would certify in my medical opinion that Mr. Riles has more than sufficient vision to perform the driving tasks required to operate a commercial vehicle in a safe manner.'' Mr. Riles reported that he has driven straight trucks for 30 years, accumulating 36,000 miles, and tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 14 mph.

31. Dwayne L. Sandlin

Mr. Sandlin, 43, incurred a macular scar in his left eye due to histoplasmosis in 1996. His best-corrected visual acuity in the right eye is 20/20 and in the left,

20/200. Following an examination in 2002, his ophthalmologist certified, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sandlin reported that he has driven straight trucks for 15 years, accumulating 157,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

32. Jon D. Schwengel

Mr. Schwengel, 60, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/100. Following an examination in 2003, his optometrist certified, ''He is visually capable of handling driving tasks. I would trust him fully with any multiple axle vehicle.'' Mr. Schwengel reported that he has driven tractor-trailer combinations for 10 years, accumulating 800,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

33. Steven R. Smith

Mr. Smith, 45, has had a serous maculopathy in his right eye since 1988. His best-corrected visual acuity in the right eye is counting fingers and in the left, 20/20. Following an examination in 2003, his ophthalmologist stated, ''In my medical opinion, Mr. Smith has visual acuity sufficient to perform driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 18 years, accumulating 198,000 miles, tractor-trailer combinations for 14 years, accumulating 1.5 million miles, and buses for 1 year, accumulating 57,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

34. Calvin D. Tomlinson

Mr. Tomlinson, 43, experienced a retinal detachment in his right eye in 1974. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. His optometrist examined him in 2003 and certified, ''I believe Mr. Tomlinson would have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Tomlinson submitted that he has driven straight trucks for 14 years, accumulating 840,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no accidents and two convictions for speeding in a CMV. Mr. Tomlinson exceeded the speed limit by 17 mph in one instance and 11 mph in the other.

35. Mona J. van Krieken

Ms. van Krieken, 45, lost her right eye due to an accident 20 years ago. Her best-corrected visual acuity in the left eye is 20/20. An ophthalmologist examined her in 2002 and certified, ''In my opinion, she has sufficient vision to perform driving tasks as required by an operator of a commercial vehicle.'' Ms. van Krieken reported that she has driven straight trucks for 5 years, accumulating 32,000 miles, and tractor-trailer combinations for 11 years, accumulating 275,000 miles. She holds a Class A CDL from Oregon. Her driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

36. Paul S. Yocum

Mr. Yocum, 38, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his ophthalmologist certified, ''In my medical opinion, Mr. Yocum has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Yocum reported that he has driven straight trucks for 7 years, accumulating 56,000 miles. He holds a chauffeur's license from Indiana. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: June 17, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–15696 Filed 6–20–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34360]

Sierra Railroad Company-Corporate Family Transaction Exemption—Yolo Shortline Railroad Company

Sierra Railroad Company (SRC)[1] and Yolo Shortline Railroad Company (YSL), both Class III carriers, have jointly filed a verified notice of exemption for approval of a proposed intercorporate transaction by which SRC's common carrier rights and obligations will be transferred to its subsidiary YSL. As a result of the transaction, the operations of SRC and YSL will be combined within YSL and SRC will be a noncarrier entity in control of YSL.

The transaction is expected to be consummated by June 30, 2003.

The purpose of the transaction is to allow SRC and YSL to combine their resources, to expand their business opportunities, and to develop other railroad and transportation related businesses.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance

[1] This filing is related to STB Finance Docket No. 34351, *Sierra Railroad Company-Acquisition of Control Exemption-Yolo Shortline Railroad Company,* in which SRC and YSL jointly filed a verified notice of exemption on May 12, 2003, for SRC to acquire control of YSL through stock purchase of YSL's parent, Midland Railroad Enterprises Corporation. This notice was served and published on June 11, 2003.

Docket No. 34360 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael G. Hart, 220 Sierra Avenue, Oakdale, CA 95361 and David Magaw, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 13, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–15779 Filed 6–20–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 2003 to be assured of consideration.

Departmental Offices/OASIA/Office of International Affairs

OMB Number: 1505–0121.

Form Number: None.

Type of Review: Extension.

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

Description: Treasury disseminates to other agencies that are members of the Committee on Foreign Investment in the United States information collected under the regulations from parties involved in a foreign acquisition of a U.S. company in order to do a national security analysis of the acquisition.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Respondent: 60 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,600 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–15743 Filed 6–20–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 10, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0771.

Regulation Project Number: EE–63–88 Final and Temporary, IA–140–86 Temporary, and REG–209785–95 Final.

Type of Review: Extension.

Title: EE–63–88 Final and Temporary Regulations: Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; *IA–140–86 Temporary:* Fringe Benefits; Listed Property; and *REG–209785–95 Final:* Substantiation of Business Expenses.

Description: EE–63–88: This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits. *IA–140–86:* This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d). This regulation also provides guidance on the taxation of fringe benefits and clarifies the types of records that are generally necessary to substantiate any deduction or credit for listed property. *REG–209785–95:* This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property are required to maintain certain records, including receipts, for expenses of $75 or more. The regulation amends existing regulations by raising the receipt threshold from $25 to $75.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 28,582,150.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 37,922,688 hours.

OMB Number: 1545–1014.

Form Number: IRS Form 1066.

Type of Review: Revision.

Title: Form 1066: U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return; *Schedule Q (Form 1066):* Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

Description: Form 1066 and Schedule Q (Form 1066) are used by real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 4,917.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	32 hr., 3 min	6 hr., 27 min.
Learning about the law or the form	8 hr., 51 min	1 hr., 40 min.
Preparing the form	12 hr., 33 min	1 hr., 52 min.
Copying, assembling, and sending the form to the IRS.		

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 758,989 hours.

OMB Number: 1545–1035.

Form Number: IRS Form 8611.

Type of Review: Revision.

Title: Recapture of Low-Income Housing Credits.

Description: Internal Revenue Code (IRC) section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 hr., 39 min.

Learning about the law or the form—1 hr., 0 min.

Preparing and sending the form to the IRS—1 hr., 10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 10,841 hours.

OMB Number: 1545–1480.

Regulation Project Number: REG–107047–00 Final.

Type of Review: Extension.

Title: Hedging Transactions.

Description: The information is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 127,100.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 20 minutes.

Frequency of Response: Other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 171,050 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–15744 Filed 6–20–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 2003.

The Department of Treasury the has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: IRS Taxpayer Advocate Service Benchmark Survey, Focus Group and Telephone Interview.

Description: In September 2002, the Taxpayer Advocate Service (TAS) completed an extensive one-year research program that identified its target audience far more definitively. The research program showed that the actual target was much broader and included a wide mix of different life circumstances—ranging from Affluent Families and Empty Nesters at the higher end of the income scale, to the Stable Middle Class in the center, to the Surviving Spouses, Struggling Young Families, and Unmarried Poor at the lower end of the income scale. The research also showed that Small Business Owners are an important element of the target audience, while Non-English Speaking Taxpayers are not as important as had been believed (with the latter segment being no more prevalent in the TAS target audience than in the Total Taxpayer audience). TAS is planning communications to the Underserveds, with a focus on four key segments of the Underserved audience—Surviving Spouses, Struggling Young Families, Unmarried Poor, and Small Business Owners. It is necessary to conduct a marketing research effort to guide development of new communications and track their impact, while continuing the tracking of the target audience that is a part of the overall research strategy of TAS.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,180.

Estimated Burden Hours Per Respondent: 5 hours, 26 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 6,422 hours.

OMB Number: 1545–1820.

Revenue Procedure Number: Revenue Procedure 2003–33.

Type of Review: Extension.

Title: Section 9100 Relief for 338 Elections.

Description: Pursuant to § 301.9100–3 of the Procedure and Administration Regulations, this procedure grants certain taxpayers an extension of time to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management

and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–15745 Filed 6–20–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 120
Monday, June 23, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB57

Land Uses; Revenue-Producing Visitor Services in Alaska

Correction

In rule 03–14630 beginning on page 35115 in the issue of Wednesday, June 11, 2003 make the following correction:

On page 35115, the agency titled ''Department of the Interior'' should read, '' Department of Agriculture''.

[FR Doc. C3–14630 Filed 6–20–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

Correction

In notice document 03–14815 beginning on page 35203 in the issue of Thursday, June 12, 2003, make the following correction:

On page 35204, in the first column, above the heading ''**System name:**'' add the following heading:

''DGC 21''.

[FR Doc. C3–14815 Filed 6–20–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Pick-Sloan Missouri Basin Program-Eastern Division

Correction

In notice document 03–14949 beginning on page 35402 in the issue of Friday, June 13, 2003, make the following correction:

On page 35403, in the second column, under the heading **ADDRESSES**, in the 11th line, ''*Default.html*'' should read, ''*Default.htm''.*

[FR Doc. C3–14949 Filed 6–20–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM81; Notice No. 25-03-04-SC]

Special Conditions: Boeing Model 777 Series Airplanes; Revision to Special Conditions 25-ANM-84

Correction

In proposed rule document 03–14992 beginning on page 35335 in the issue of Friday, June 13, 2003 make the following correction:

On page 35344, starting in the first column, paragraphs (e)(6) and (e)(7) should be presented in italics as set forth below:

PART 25—[CORRECTED]

(6) Engine Demonstration Test. One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment except for any configuration differences necessary to accommodate test instrumentation and test stand interfaces with the engine nacelle package. At completion of the engine demonstration test, the engine and airplane nacelle test hardware must undergo a complete teardown inspection. This inspection must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdown. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns, power loss, or inability to control engine thrust. Any potential sources of engine inflight shutdown identified must be corrected in accordance with paragraph (g)(2).

(7) *Airplane Demonstration Test. In addition to the function and reliability testing required by 14 CFR 21.35(b)(2), for each engine type to be certificated with the airplane, one or more airplanes must complete flight testing which demonstrates that the aircraft, its components, and equipment, are capable of and function properly during long range operations and airplane diversions, including engine-inoperative diversions.*

(i) The flight conditions must expose the airplane to representative operational variations based on the airplane—s system and equipment design and the intended use of the airplane including:

(A) Engine inoperative maximum length diversions to demonstrate the airplane and propulsion system—s capability to safely conduct a diversion.

(B) Non-normal conditions to demonstrate the airplane—s capability to safely divert under worst case probable system failure conditions.

(C) Simulated airline operations including normal cruise altitudes, step climbs, and maximum expected flight durations out of and into a variety of departure and arrival airports.

(D) Diversions to worldwide airports representative of those intended as operational alternates.

(E) Repeated exposure to humid and inclement weather on the ground followed by long-range operation at normal cruise altitude.

(ii) The flight testing must validate expected airplane flying qualities and performance considering engine failure, electrical power losses, etc. The testing must demonstrate the adequacy of remaining airplane systems and performance and flightcrew ability to deal with an emergency considering remaining flight deck information following expected failure conditions.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant—s flight test program.

(iv) The test airplane(s) must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At completion of the airplane demonstration test, the test engines and engine-mounted equipment must undergo a complete external on-wing visual inspection. The engines must also undergo a complete internal visual inspection. These inspections must be conducted in a manner to identify abnormal conditions that could become potential sources of engine inflight shutdowns. An analysis of any abnormal conditions found must consider the possible consequences of similar occurrences in service to determine if they may become sources of engine inflight shutdowns. Any potential sources of engine inflight shutdown that are identified must be corrected in accordance with paragraph (g)(2).

[FR Doc. C3–14992 Filed 6–20–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL17

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program

Correction

In rule document 03–14282 beginning on page 34319 in the issue of Monday, June 9, 2003, make the following corrections:

§21.3131 [Corrected]

1. On page 34321, in §21.3131, in the first table, under the column titled, ''Monthly rate'', the sixth line should read, ''608.00''.

2. On the same page, in the same section, in the same table, under the same column, the seventh line should be blank.

3. On the same page, in the same section, in the second table, under the column titled ''Monthly rate'', the sixth line should read, ''670.00''.

§21.3333 [Corrected]

4. On page 34322, in § 21.3333(a)(2), in the second column, in the second line, ''December 31, 2002'' should read, ''December 31, 2001''

§21.7136 [Corrected]

5. On page 34324, in §21.7136(c)(7), in the first column, in the table, in the column titled ''Monthly rate'', in the second line, ''402.00'' should read, ''402.60''.

[FR Doc. C3–14282 Filed 6–20–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 23, 2003

Part II

Department of State

Office of Protocol; Gifts to Federal Employees From Foreign Sources Reported to Employing Agencies in Calendar Year 2002; Notice

DEPARTMENT OF STATE

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2002

[Public Notice 4380]

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2002 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 stat. 865).

Dated: June 5, 2003.

Grant S. Green, Jr.,

Under Secretary for Management; Department of State.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Box: 7½″ x 5″ x 1½″ silver box, engraved with Greek crest and ''C. Simitis'' on lid. Rec'd—January 11, 2002. Est. Value—$400. Archives Foreign. Photo album: 12½″ x 12″ brown vinyl album with currency displayed (Euro dollars and Greek drachmas). Rec'd—January 11, 2002. Est. Value—$854. Archives Foreign. Komboloi: string of amber beads with tassel and silver charm engraved ''GWB'' on one side and ''No 43'' on reverse. Paperback book: ''The Komboloi and Its History (5th Edition),'' by Aris Evangelinos. Rec'd—January 11, 2002. Est. Value—$50. Archives Foreign. Greek Bible: sterling silver cover with gold overlay embossed with design of Jesus on the cross and eight small stones. Rec'd—January 11, 2002. Est. Value—$400. Archives Foreign.	His Excellency Constantine Simitis, Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessories: sterling silver and amber pen stand with silver border and outline of building; including a silver pen. Rec'd—January 14, 2002. Est. Value—$450. Archives Foreign. Leatherbound book: ''New York,'' by Jerzy Habdas. Rec'd—January 14, 2002. Est. Value—$40. Archives Foreign.	His Excellency Leszek Miller, Prime Minister of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Softcover books (16): multi-volume set of the works of Turkish poet Mevlana Celaleddin; translated by Nevit O. Ergin. Leatherbound reproduction of the ''Holy Koran'', hand-lettered by Ahmed Karahisari in the sixteenth century; held in a leather case. Rec'd—January 16, 2002. Est. Value—$990. Archives Foreign. Vase: 11″ stoneware vase with metal overlay and boat and cloud motif. Rec'd—January 16, 2002. Est. Value—$120. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: 11″ x 11″ ''Over the Horizon,'' by Azuolas Vaitukaitis; gold-plated copper plaque etched with fields, with amber stone representing the sun; held in a black presentation case with plaque engraved to President George W. Bush. Rec'd—January 17, 2002. Est. Value—$600. Archives Foreign.	His Excellency Valdas Adamkus, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Rug: 116″ x 84″ fringed wool and silk Afghan rug with multicolored pattern on gold background. Rec'd—January 28, 2002. Est. Value—$4000. Archives Foreign. Plaque: 11″ x 11″ resin plaque with image of the damaged World Trade Center towers and Afghan Buddhist statues, engraved ''World Terrorists Are Destroying Civilization'' and ''From the People of Afghanistan to the People of the United States Partners in a Common Struggle.'' Rec'd—January 28, 2002. Est. Value—$150. Archives Foreign.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 17″ x 12″ x 9″ metal sculpture of four people in a troika. Rec'd—February 4, 2002. Est. Value—$450. Archives Foreign.	His Excellency Mikhail Kasyanov, Chairman of the Government of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Rug: 83″ x 56″ multi-colored Oriental rug, primarily in blue. Rec'd—February 13, 2002. Est. Value—$2800. Archives Foreign.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Medallion: 2½″ gold medallion engraved with cherry blossoms and the front facade of the Japanese Diet building on one side, and Mount Fuji on the reverse; held in a blue velvet case. Rec'd—February 18, 2002. Est. Value—$50. Archives Foreign. Hardcover book: ''The National Diet of Japan.'' Rec'd—February 18, 2002. Est. Value—$90. Archives Foreign. Box: 12½″ x 2″ black lacquer box with tree branch painted on lid, and interior lined in blue velvet. Rec'd—February 18, 2002. Est. Value, $275. Archives Foreign.	The Honorable Yutaka Inoue, President of the House of Councillors.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Chunma-ch'ong Gold Crown (replica): 5th–6th century Silla Dynasty, National Treasure #188. Rec'd—February 19, 2002. Est. Value—$350. Archives Foreign.	His Excellency Kim Dae-jung, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Hardcover book: ''30 Years of Sino-US Relations,'' by Xiyuan Publishing House, China Intercontinental Press; inscribed by donor, and presented in gold-colored book box. Rec'd—February 21, 2002. Est. Value—$550. Archives Foreign. Sculpture: 12″ x 16″ x 4″ ''Ma Ta Fei Yan (Horse Galloping on the Flying Swallow)'', a 24K gold-plated horse with stand, presented in wooden box. Rec'd—February 21, 2002. Est. Value—$300. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 27″ carving of numerous connected figures, made from a single piece of ebony. Rec'd—February 26, 2002. Est. Value—$1200. Archives Foreign.	His Excellency Joaquim Alberto Chissano, President of the Republic of Mozambique.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 28″ wooden carving of a male figure carrying a knife and balancing a vessel on his head; held in a red presentation case. Rec'd—February 26, 2002. Est. Value—$1375. Archieves Foreign. Consumables (42) 250g bags of Cafe Ginga coffee from Angola. Rec'd—February 26, 2002. Est. Value—$336. Handled pursuant to Secret Service policy. Hardcover book: ''Angola: The Future Begins Now,'' published by the government of Angola. Rec'd—February 26, 2002. Est. Value—$70. Archives Foreign. Artwork: two tribal paintings on canvas; one (41″ x 33″) depicts four dancing figures and one (34″ x 27″) depicts traditional tribal musical instruments. Rec'd—February 26, 2002. Est. Value—$1350. Archives Foreign.	His Excellency Jose Eduardo dos Santos, President of the Republic of Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Box: 7″ x 7″ x 1¾″ sterling silver box lined in blue velvet and engraved in Arabic on top; held in blue velvet presentation case. Rec'd—March 5, 2002. Est. Value—$500. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: traditional Uzbeck attire consisting of a multi-colored silk scarf (49″ x 49″), a collapsible 6″ black leather hat with white design, and a navy blue velvet robe with elaborate gold embroidery. Rec'd—March 12, 2002. Est. Value—$750. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Tea set: brass tea set with platter, tea pot, and 6 small cups, all elaborately engraved; held in a burled walnut case (17¼″ x 13¾″ x 7″) with red velvet lining. Rec'd—March 12, 2002. Est. Value—$200. Archives Foreign.		
President	Bowl: 12″ Tipperary Crystal bowl, engraved with a St. Patrick's Day message from Prime Minister Ahern on behalf of the Irish people. Rec'd—March 13, 2002. Est. Value—$321. Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: six bottles of 1990 Chateau La Lagune Haut-Medoc wine. Rec'd—March 22, 2002. Est. Value—$372. Handled pursuant to Secret Service policy.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vase: Olmeca vase of sterling silver with geometric design. Rec'd—March 22, 2002. Est. Value—$300. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Stirrups: pair of wooden stirrups (9″ x 9″ x 7″) with elaborate silver detail. Rec'd—March 23, 2002. Est. Value—$500. Archives Foreign. Eagle: elaborately wrought silver eagle (18″ x 15″) with wings spread; held in a blue velvet presentation case. Rec'd—March 23, 2002. Est. Value—$2000. Archives Foreign. Stone: 11″ x 13″ x 2″ green stone, resembling marble and smooth on two sides with a silver plate engraved ''Walking Together Towards Peace Alejandro Toledo President of Peru, March 23, 2002. Rec'd—March 23, 2002.'' Est. Value—$250. Archives Foreign.	His Excellency Alejandro Toledo Manrique, President of the Republic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Statue: 18″ white porcelain elephant. Rec'd—April 12, 2002. Est. Value—$400. Archives Foreign.	The Honorable Dr. Edmund Stoiber, Minister-President of the Free State of Bavaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Glassware: four pieces of Iittala glass designed by Alvar Aalto, including 6″ and 4¾″ vases, a 3″ bowl, and a 14″ platter. Rec'd—April 16, 2002. Est. Value—$690. Archives Foreign.	Her Excellency Tarja Halonen, President of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Humidor: 12½″ x 5¾″ x 9¼″ polished wood humidor with street scene painted on lid. Rec'd—April 17, 2002. Est. Value—$350. Archives Foreign. Consumables: assorted pieces of tropical and dried fruit. Rec'd—April 17, 2002. Est. Value—$25. Handled pursuant to Secret Service policy.	His Excellency Rafiq al-Hariri, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Dagger: 17″ knife made of 18K gold with diamonds and rubies on ivory hilt; gold scabbard is elaborately detailed with diamonds and rubies. Rec'd—April 23, 2002. Est. Value—$20000. Transferred to the Department of the Interior. Artwork: 28½″ x 41″ painting of seven figures on horseback; matted and held in a 37″ x 50″ gilt frame. Rec'd—April 23, 2002. Est. Value—$100. Archives Foreign.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Icon: 5½″ x 7½″ painted wooden image of St. George slaying the dragon; held in a red velvet case. Rec'd—April 23, 2002. Est. Value—$300. Archives Foreign. Hardcover book: ''Treasures of Christian Art in Bulgaria,'' edited by Valentino Pace. Rec'd—April 23, 2002. Est. Value—$50. Archives Foreign.	His Excellency Simeon Saxe-Coburg-Gotha, Prime Minister of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Dagger: 10″ knife, with finely detailed 18K gold hilt and scabbard decorated with small diamonds; held in a green leather case with the Saudi Arabian coat of arms on lid. Rec'd—April 25, 2002. Est. Value—$3500. Archives Foreign.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vase: 11″ onion-shaped vase with blue and purple glaze and wooden stand; held in a silk-covered presentation case. Rec'd—May 1, 2002. Est. Value—$350. Archives Foreign.	His Excellency Hu Jintao, Vice President of the People's Republic of china.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Saddle: leather saddle with sheepskin cover and accompanying bridle, harness and stirrups. Rec'd—May 2, 2002. Est. Value—$1250. Archives Foreign. Hardcover book: ''Caballos en Espana,'' by J.A. Gabriel, et al. Rec'd—May 2, 2002. Est. Value—$50. Archives Foreign.	His Excellency Jose Maria Aznar, President of the Government of Spain and Mrs. Aznar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Vessel: 6″ silver cup with elaborate detailing and four colored stones on stem. Rec'd—May 7, 2002. Est. Value—$350. Archives Foreign.	His Excellency Sher Bahadur Deuba, Prime Minister of Nepal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Box: 11″ x 6¼″ x 2″ silver box lined with burled wood, with Jordanian seal and signature etched on lid; held in a red leather case. Rec'd—May 8, 2002. Est. Value—$1,000. Archives Foreign.	Their Majesties King Abdullah II, and Queen Rania al Abdullah.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Rice bowl: 7½″ traditional silver ''Bekas Nasi'' (rice container) with lid and elaborate gold detailing; held in a green leather presentation case. Rec'd—May 14, 2002. Est. Value—$750. Archives Foreign. Large bouquet of Malaysian Orchids. Rec'd—May 14, 2002. Est. Value—$600. Handled pursuant to Secret Service policy.	His Excellency YAB Dato Seri Dr. Mahathir bin Mohamad, Prime Minister of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Sword: ''The Knight's Saber of Peace'', a 34″ stainless steel sword; held in a wooden presentation case. Rec'd—May 17, 2002. Est. Value—$500. Archives Foreign.	His Excellency Janez Drnovsek, Prime Minister of the Republic of Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Stone: 13″ x 8″ piece of the Berlin Wall with multi-colored graffiti on one side; mounted in a clear plexiglass case. Rec'd—May 22, 2002. Est. Value—$400. Archives Foreign.	His Excellency Mr. Johannes Rau, President of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Pen: green and black Pelikan fountain pen with gold tone trim. Rec'd—May 22, 2002. Est. Value—$555. Archives Foreign. Consumable: 50ml bottle of royal blue Pelikan ink. Rec'd—May 22, 2002. Est. Value—$4. Handled pursuant to Secret Service Policy.	His Excellency Gerhard Schroeder, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 13½″ x 19″ engraving by LeMire of the Marquis de Lafayette at the end of the Virginia campaign of the American Revolution in 1781, dedicated to George Washington; matted and held in a 21½″ x 28″ silver tone frame. Rec'd—May 26, 2002. Est. Value—$450. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watch: stainless steel Cartier ''Roadster'', held in a red leather box. Rec'd—May 27, 2002. Est. Value—$3950. Archives Foreign. Statute: 31½″ alabaster sculpture of four figures, titled ''Allegory of the Triumph''. Rec'd—May, 27, 2002. Est. Value—$30000. Archives Foreign. Box: 5½″ x 92¾″ burled wood box with five time pieces set in lid, showing the time in Moscow, New York, London, Rome and Tokyo; interior is lined in brown velvet and embossed ''Vertice NATO–RUSSIA ROMA 28–5–2002.'' Rec'd—May 27, 2002. Est. Value—$200. Archives Foreign. Consumables: two tins containing 8.8 oz bags of ''e Tricaffe'' coffee. Rec'd—May 27, 2002. Est. Value—$14. Handled pursuant to Secret Service policy.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Box: 5½″ x 3½″ × 1¼″ silver box with donor's signature engraved on lid; held in a green watered silk presentation case. Rec'd—May 27, 2002. Est. Value—$350. Archives Foreign.	His Excellency Carlo Azeglio Ciampi, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Painting: 25″ x 21″ watercolor of the bell tower of Sainte Mere Eglise in a blue and gold tone frame. Rec'd—May 27, 2002. Est. Value—$300. Archives Foreign.	The Honorable Marc Lefevre, General Counsellor and Mayor of Sainte Mere Eglise.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Statue: 6½″ coral sculpture of the Blessed Virgin and Child; mounted on a wooden base and held in a blue velvet presentation case. Rec'd—May 28, 2002. Est. Value—$1500. Archives Foreign.	His Holiness, John Paul II	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Pen: limited edition (43/50) ''Stars and Stripes'' Mont blanc pen inset with rubies and diamonds in an American flag pattern Rec—May 31, 2002. Est. Value—$18000. Archives Foreign.	Lieutenant General Shaykh Mohammad bin Zayid al-Nuhayyan, Chief of Staff of the Armed Forces of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Knife: replica Army Ranger knife forged from metal of a WWII-era U.S. Jeep, mounted in sheath wrapped in locally-recovered barbed wire and sand from D-Day beaches, engraved ''In Memory of American's Soldiers offert a Monsieur George W. Bush President des Etats Unis d'Amerique. A Sainte Mere Eglise le 26 Mai 2002'' on goldtone plaque. Rec'd—June 3, 2002. Est. Value—$325. Archives Foreign.	The Honorable Max Avenel, Mayor of Agon-Countainville.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: 32½″ x 32½″ red and blue silk scarf in military motif commemorating the 200th anniversary of L'Ecole Speciale Militaire, Saint Cyr, 1802–2002; displayed in 36″ x 36″ blue rubberized frame with small brass plate engraved ''La Promotion 'du Bicentenaire de Saint-Cyr' au President des Etats-Unis d'Amerique.'' Rec'd—June 6, 2002. Est. Value—$350. Archives Foreign.	Student Delegation, L'Ecole Speciale Militaire de Saint-Cyr.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Rugs (2): 56″ x 83″ Egyptian rugs designed as portraits of President George W. Bush, and 74″ brass rods for hanging. Rec'd—June 7, 2002. Est. Value—$1000. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Ax: 37½″ decorative wood and metal long-handled ax with rural Slovak scenes engraved in blade. Rec'd—June 7, 2002. Est. Value—$125. Archives Foreign.	His Excellency Rudolf Schuster, President of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Vase: 20″ blue glass vase with 24K detailing and appliqued flowers; American and Slovak flags crossed above ''Prezidentovi Spojenych Statov Americkych Georgovi W. Bushovi venuje Rudolf Schuster prezident Slovenskej republiky 7. juna 2002.'' Rec'd—June 7, 2002. Est. Value—$200. Archives Foreign. Accessories (2): 8½″ black wool hat with silver 10-chain band around crown and elastic chin strap; 42″ light brown belt (4½″ wide) with geometric floral design and gold tone detailing, including engraved clasps. Rec'd—June 7, 2002. Est. Value—$200. Archives Foreign. Coin (.5 oz): 1″ gold coin with image and signature of President Schuster on one side and building on the reverse; held in a red leather box. Rec'd—June 7, 2002. Est. Value—$175. Archives Foreign. Household accessory: 39″ x 20″ white linen table runner edged in lace. Rec'd—June 7, 2002. Est. Valule—$100. Archives Foreign.		
President	Pen rest: 8″ x 4″ marble base with wooden pen rest. Rec'd—June 26, 2002. Est. Value—$20. Archives Foreign. Wine: three 375 ml. bottles of ''Canadian Icewine, Summerhill (2002), Paradis Ranch (2002), and Trius (1997)'' in wooden box. Rec'd—June 26, 2002. Est. Value—$120. Handled pursuant to Secret Service policy. Marble statue: 21″ x 9″ Serpentine stone carving of Narwhale handcarved by Takealook Temela, a Canadian Inuit artist. Ceramic Plate: 16″ plate painted with mountain landscapes and floral images, by Don Wells. Rec'd—June 26, 2002. Est. Value—$1850. Archives Foreign. Framed document: Kananaskis Summit declaration signed by all leaders and framed in a 20″ x 26½″ silver tone frame. Rec'd—June 26, 2006. Est. Value—$150. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
President	Sculpture: ''Beating the Odds,'' by Linda Stewart, a 16″ bronze sculpture of horse and cowboy on a wooden base. Rec'd—July 1, 2002. Est. Value—$3500. Archives Foreign.	The Honorable Dave Bronconnier, Mayor of Calgary.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Cowboy hat: white Stetson hat with small peacock feather and white tie in black carrying case with presentation plaque engraved ''Presented to President George W. Bush by Mayor Dave Bronconnier on behalf of The City of Calgary, Alberta, Canada June 26–27, 2002''. Rec'd—July 1, 2002. Est. Value—$65. Archives Foreign.		
President	Chapan: 53″ green- and yellow-striped Afghan robe, with red, white and black trim. Rec'd—July 1, 2002. Est. Value—$350. Archives Foreign.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
President	Men's watch: silver Hublot Automatic MDM Geneve watch, with black rubber band and black face. Rec'd—July 5, 2002. Est. Value—$2200. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
President	Consumables: assorted Godiva chocolates, Perugina chocolates, Perugina cookies, and nonpareils. Rec'd—July 11, 2002. Est. Value—$1248. Handled pursuant to Secret Service policy. Fishing equipment: 82 lures and hooks in a two-level 16″ x 10½″ plastic tackle box; Mepps ''Basser Kit'' of 6 lures; Mepps ''Trophy Series'' kit of 6 lures; 78 piece selection of sinkers; 5 Spro heavy swivels; Rapala ProGuide fishing clipper; Rapala ProGuide 15 lb. digital scale; and an orange Lindy fish handling glove. Rec'd—July 11, 2002. Est. Value—$449. Archives Foreign. Large arrangement of flowers. Rec'd—July 11, 2002. Est. Value—$350. Handled pursuant to Secret Service policy. Fish bowl: 17″ x 20″ painted ceramic fish bowl. Rec'd—July 11, 2002. Est. Value—$600. Archives Foreign. Miscellaneous decorative boxes (7) and a 28″ x 24″ x 13″ woven basket with handles. Rec'd—July 11, 2002. Est. Value—$171. Archives Foreign. Paperback book: ''Baits, Rigs & Tackle,'' by Vic Dunaway. Hats (2, size S/M): one blue and one tan Speedo fishing hat. Rec'd—July 11, 2002. Est. Value—$52. Archives Foreign. Fishing bait: 2 oz. jar of Uncle Josh salmon eggs. Rec'd—July 11, 2002. Est. Value—$3. Handled pursuant to Secret Service policy.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Tableware: 7″ glass pitcher and 6″ glasses (6) decorated with silver and 1½″ amber stones; held in a blue presentation case. Rec'd—July 17, 2002. Est. Value—$1150. Archives Foreign. CD: ''Tribute to USA,'' by the Adam Mickiewicz University Academic Choir. Paperback book: ''Stop Terrorism,'' by donor. Rec'd—July 17, 2002. Est. Value—$30. Archives Foreign.	His Excellency Aleksander Kwasniewski, The President of the Republic of Poland and Mrs. Kwasniewska.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins (3): Dominican Republic 1 peso, 100 peso, and 500 peso coins in a green velvet box with the country's shield embossed on lid. Rec'd—July 23, 2002. Est. Value—$375. Archives Foreign.	His Excellency Hipolito Mejia, President of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Belt: black Tumi leather belt with silver buckle painted with the American flag and an eagle; held in a leather box. Rec'd—August 28, 2002. Est. Value—$295. Archives Foreign.	His Royal Highness Prince Bandar bin Sultan, Ambassador of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Bag: 10½″ x 5½″ black leather Tanner Krolle toiletries bag with ''G.W.B.'' embossed in gold on the top. Rec'd—September 7, 2002. Est. Value—$351. Archives Foreign.	The Right Honorable Tony Blair, M.P.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Pen: black Mont Blanc fountain pen with ''H.E. G.W. Bush'' engraved on cap; held in a black presentation box. Rec'd—September 9, 2002. Est. Value—$375. Archives Foreign. Ink: Mont Blanc black ink refill (50 ml.). Rec'd—September 9, 2002. Est. Value—$9. Handled pursuant to Secret Service policy.	Mr. Thabo Mbeki, President of the Republic of South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Reg: 59½″ x 78″ red Afghan rug with fringed ends. Rec'd—September 10, 2002. Est. Value—$1400. Archives Foreign.	His Excellency Ishaq Shahryar, Ambassador of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Bowl: 6″ sterling silver bowl with scalloped edges and blue beads inset around the rim; held in a green velvet presentation case. Rec'd—September 12, 2002. Est. Value—$350. Archives Foreign.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Watch: Patek Philippe Calatrava Travel Time wristwatch with black leather band and gold face; held in a leather-lined polished wooden box. Rec'd—September 14, 2002. Est. Value—$14500. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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	Photograph: 7¾″ x 9¾″ color photo of President George W. Bush, Prime Minister Berlusconi and President Putin at the NATO—Russia Council meeting in Rome in May 2002; held in a 11″ x 13″ silver frame. Rec'd—September 14, 2002. Est. Value—$450. Archives Foreign.		
President	Vase: 12¼″ Moser crystal vase with short stem supporting flared twelve-sided urn with horse motif etched into the glass. Rec'd—September 18, 2002. Est. Value—$500. Archives Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Cuff links: ½″ gold cuff links with red stones. Rec'd—September 25, 2002. Est. Value—$250. Archives Foreign.	His Excellency Hugo Guiliani Cury, Ambassador of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coffee service: elaborately detailed 10″ silver coffee urn with six matching 3½″ cups and an 11″ platter; held in a presentation case. Rec'd—October 12, 2002. Est. Value—$500. Archives Foreign.	His Excellency The President of the Russian Federation and Mrs. Putina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Porcelain: ''Good Fortune'' pattern porcelain service (for 8) with 146 total pieces; held in three red and gold fabric-covered presentation cases. Rec'd—October 25, 2002. Est. Value—$1800. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 17″ x 17¾″ giclee print of a painting of the desert and ocean by Susana Diaz-Rivera; matted and held in a 24¾″ x 25½″ wooden frame. Rec'd—October 27, 2002. Est. Value—$450. Archives Foreign.	The Honorable Leonel Cota Montano, Governor of Baja California Sur.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: ''Nocturn Figure,'' a 6″ x 7″ limited edition (14/30) print by Jose Luis Cuevas. Rec'd—October 27, 2002. Est. Value—$1500. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Leatherbound book: ''Beirut the wars of destruction and the perspectives of reconstruction'' with hologram on cover and inscribed by donor; held in a 18″ x 14″ navy leather presentation case. Rec'd—November 7, 2002. Est. Value—$400. Archives Foreign.	His Excellency Rafiq al-Hariri, Prime Minister of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Leatherbound book: ''Kossuth Lajos 1802–2002,'' by Gyorgy Szabad; held in a burgundy print presentation box. Rec'd—November 8, 2002. Est. Value—$75. Archives Foreign.	His Excellency The Prime Minister of the Republic of Hungary and Mrs. Medgyessy.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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	Coin: 4″ silver coin engraved ''Szt. Istvan 969–1038'' on front and ''Ezereves Magyarorszag'' on reverse; held in a 6″ x 6″ wooden presentation box. Rec'd—November 8, 2002. Est. Value—$200. Archives Foreign.		
President	Decanter: 10″ amber colored Bohemian crystal decanter and stopper with six matching shot glasses, all painted with rural scenes; held in a blue velvet presentation case. Rec'd—November 21, 2002. Est. Value—$280. Archives Foreign.	His Excellency The Prime Minister of the Czech Republic and Mrs. Spidlova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Coin: 1¼″ pure silver coin commemorating the NATO Summit in Prague, November 21–22, 2002. Rec'd—November 21, 2002. Est. Value—$15. Archives Foreign.		
President	Artwork: ''Fair Wind Over the Baltics,'' an 8¼″ amber statue, by Algirdas Mikutis, depicting a boat on a brass base; held in a green presentation case. Rec'd—November 22, 2002. Est. Value—$325. Archives Foreign.	His Excellency Valdas Adamkus, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Award: The Order of Vytautas the Great medal and sash awarded to President George W. Bush, November 23, 2002, and proclamation bestowing award; both held in white leather cases. Rec'd—November 22, 2002. Est. Value—$280. Archives Foreign.		
President	Hardcover books (7): clothbound set of donor's writings (in Czech); held in a matching case inscribed to President George W. Bush on top. Rec'd—November 22, 2002. Est. Value—$300. Archives Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Miscellaneous items from Prague Summit: blue canvas tote printed with NATO logo and ''Sommet de Prague Summit 21–22 Nov. 2002'' in white on front; and blue ballpoint pen with Summit logo in silver. Rec'd—November 22, 2002. Est. Value—$25. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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	Paperback books (2): ''NATO, Europe, and the Security of Democracy: Selected Speeches, Articles, and Interviews 1990–2002,'' by donor and signed, and ''Prazsky Chodec,'' by Jiri Vsetecka. Hardcover books (2): ''Catalogue of the Czech Defence Industry 2001–2002,'' produced by the Association of the Defence Industry of the Czech Republic, and ''The Czech Contribution to Peace and War in Europe: From the Hussite Wars to NATO Membership,'' published by the Czech government and held in a blue fabric book sleeve. Rec'd—November 22, 2002. Est. Value—$70. Archives Foreign.		
President	Artwork: 15¼″ x 19¾″ painting on wood of St. George. Rec'd—November 23, 2002. Est. Value—$250. Archives Foreign. Artwork: 13″ x 16¾″ caricature rendered in pastels of President Bush with a hunting rifle, holding a rabbit with the face of Saddam Hussein; matted and held in a 16″ x 20″ gold tone frame and presented in a blue leather case. Rec'd—November 23, 2002. Est. Value—$500. Archives Foreign. Hardcover books (3): ''Romania at the Moment of Truth,'' by donor and inscribed; ''Brancusi,'' by Radu Varia; and ''Romania,'' by Petre Baron and held in a velvet case with ''Romania'' embossed in gold. Rec'd—November 23, 2002. Est. Value—$163. Archives Foreign. Accessories (2): beaded shoulder bag and straw hat in the traditional style of the Maremures region of Romania; bag has black braiding around edges and hat has two large green stones in gold tone settings on front. Rec'd—November 23, 2002. Est. Value—$60. Archives Foreign. Award: 32″ gold tone ''Star of Romania'' chain with 2¼″ medallion awarded to President George W. Bush November 23, 2002, and proclamation (in Romanian) bestowing award; both held in burgundy leather cases. Rec'd—November 23, 2002. Est. Value—$150. Archives Foreign.	His Excellency Ion Iliescu, President of Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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President	Artwork: 28″ x 19¼″ painting of three elephants; held in a 35″ x 26″ wooden frame. Rec'd—December 5, 2002. Est. Value—$2000. Archives Foreign.	His Excellency Daniel T. Arap Moi, President of the Republic of Kenya.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Kettle: 11″ silver ''Kiri'' with handle and intricate designs etched in the silver; held in a glass display case. Rec'd—December 16, 2002. Est. Value—$3500. Archives Foreign. Models: replicas of the ceremonial ''Kasur Namat'' (8½″ x 8½″ cushion and mat) and ''Dian Empat'' (four 5″ silver candlesticks) used during coronation, wedding, and other royal ceremonies; held in a glass display case. Rec'd—December 16, 2002. Est. Value—$150 Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hardcover books (3): ''Imperial Taste: 700 Years of Culinary Culture,'' produced by the Ministry of Culture; ''Civilizations Under the Clouds of Anatolia,'' by Gurol Sozen; and ''Turkey: An Endless Poem,'' by Zeynel Yesilay. Rec'd—January 16, 2002. Est. Value–$225. Archives Foreign. Bowl: 12″ glass bowl (254/2000) with metal overlay and painted boats and clouds. Rec'd—January 16, 2002. Est Value—$110. Archives Foreign. Scarf: 13″ x 32″ silk scarf with design inspired by Roman mosaic from Antioch, Turkey. Silver pieces: hand mirror and trinket box with floral motif. Rec'd—January 16, 2002. Est. Value—$188. Archives Foreign.	His Excellency The Prime Minister of the Republic of Turkey and Mrs. Ecevit.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: 18K gold earrings with five diamond-shaped clear stones. Rec'd—February 15, 2002. Est. Value—$175. Archives Foreign. Fabric: 43″ x 158″ apricot-colored silk with seed pearls and floral pattern embroidered in green and pink. Rec'd—February 15, 2002. Est. Value—$700. Archives Foreign.	Mrs. Sehba Musharraf, First Lady of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Doll: 16″ Kyugetsu doll in traditional Japanese dress on a black lacquer stand; with a glass display case. Rec'd—February 18, 2002. Est. Value—$400. Archives Foreign.	The Honorable Yutaka Inoue, President of the House of Councillors.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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First Lady	Paperback books (7): ''100 Chinese Gods,'' ''100 Buddhas in Chinese Buddhism,'' ''100 Celebrated Chinese Women,'' ''Legend of the Moon Maiden,'' ''Dragon Tales,'' ''Chinese Astrology,'' and ''Madam White Snake,'' all produced by AsiaPac Books and held in a fabric-covered box. Rec'd—February 28, 2002. Est. Value—$95. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China and Madame Wang Yeping.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household accessories: two Swedish glass goblets with brass accents, made by Orrefors. Rec'd—March 1, 2002. Est. Value—$350. Archives Foreign.	Her Majesty Queen Silvia	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Rug: 51½″ × 70″ fringed silk rug with a geometric pattern of flowers in green, red and blue. Rec'd—March 4, 2002. Est. Value—$2400. Archives Foreign.	Mrs. Suzanne Mubarak	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Quilt: 70″ × 88″ handmade quilt embroidered ''From Mrs. Jewel H. Taylor, First Lady Rep. of Liberia, To Mrs. Laura Bush, First Lady U.S.A., Our Children First'' on white background with 8 doves on border and hands holding up a baby under rays of sunlight. Rec'd—March 11, 2002. Est. Value—$1000. Archives Foreign.	Mrs. Jewel H. Howard-Taylor, The First Lady of the Republic of Liberia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: traditional Uzbek attire consisting of a gold hat with pink sequins and a gold tassel, black velvet slippers with gold embroidery, and a maroon velvet robe with gold and white embroidery in a floral pattern and matching pants. Rec'd—March 12, 2002. Est. Value—$450. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Box: 8″ × 7″ silver box with woven fabric under glass on lid, and interior lined with cedar. Rec'd—March 23, 2002. Est. Value—$350. Archives Foreign.	Mrs. Eliane Karp, First Lady of the Republic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Statue: 16½″ carved ivory statue of a female figure carrying two children and a basket on her head; on a round wooden base. Rec'd—April 16, 2002. Est. Value—$2500. Transferred to the Department of the Interior.	Mrs. Ana Paula dos Santos, Office of the President of the Republic of Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Purse: 4¾″ silver filigree clutch purse with cubic zirconias on clasp; held in a black leather case with royal seal on lid. Rec'd—April 23, 2002. Est. Value—$250. Archives Foreign.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Consumables: five bottles of cologne ''Santal Rare,'' ''Ambre Special,'' ''Jasmin,'' ''Rose Maroc,'' and ''Fraicheur de Fruits''; held in a green leather case with gold detail. Rec'd—April 23, 2002. Est. Value—$475. Archives Foreign.		
First Lady	Jewelry: silver tone jewelry set consisting of a necklace, earrings, ring, bracelet, choker and belt. Rec'd—April 25, 2002. Est. Value—$150. Archives Foreign.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Clothing: traditional Saudi attire of a black and burgundy robe with matching 70″ shawl and a black caftan with elaborate gold embroidery and multi-colored sequins. Rec'd—April 25, 2002. Est. Value—$250. Archives Foreign.		
First Lady	Fabric: 20″ × 4″ Chinese silk yardage, in black with red flowers. Rec'd—May 1, 2002. Est. Value—$350. Archives Foreign.	Madame Liu Yongqing, Office of the Vice President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Vessel: 4″ silver cup with elaborately etched detailing. Rec'd—May 7, 2002. Est. Value—$350. Archives Foreign.	Dr. Arzu Deuba, Prime Minister's Residence.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Photograph: 19½″ × 16″ print of a mountain gorilla; matted and held in a 28″ × 24″ green wooden frame. Rec'd—May 15, 2002. Est. Value—$225. Archives Foreign.	Mrs. Janet K. Museveni, Office of the President of the Republic of Uganda.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Carvings (5): one pair of carved wooden elephant bookends (9½″); one pair of carved wooden giraffe candle holders (19½″); and one carved wooden bowl (12″) with depictions of various wildlife on the inside. Rec'd—May 15, 2002. Est. Value—$790. Archives Foreign.		
First Lady	Dish: 9″ Herend porcelain clam shell dish, painted with black and green floral design; held in a green velvet case. Rec'd—May 16, 2002. Est. Value—$555. Archives Foreign.	His Excellency The President of the Republic of Hungary and Mrs. Madl.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Video: ''George Bush.'' Rec'd—May 16, 2002. Est. Value—$5. Archives Foreign.		
	Hardcover books (2): ''The Parliament House of Hungary,'' by Jozsef Sisa and ''Hungarian Helicon,'' by Watson Kirkconnell. Rec'd—May 16, 2002. Est. Value—$45. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Album: 10″ x 14″ navy blue leather photo album stamped with Hungarian crest on cover; photographs document visit by former President George H.W. Bush to Hungary in November 2001. Rec'd—May 16, 2002. Est. Value—$150. Archives Foreign. Book: ''Embers,'' by Sandor Marai. Rec'd—May 16, 2002. Est. Value—$21. Archives Foreign. Paperback book: ''A Nemzet Konyvtarabol.'' Rec'd—May 16, 2002. Est. Value—$20. Archives Foreign.		
First Lady	Bowl: 6″ open-cut Herend porcelain lidded bowl, painted with flowers and fruit; held in a red velvet presentation case. Rec'd—May 16, 2002. Est. Value—$670. Archives Foreign.	His Excellency Viktor Orban, Prime Minister of the Republic of Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Vase: 25″ glass vase of contemporary design with blue, yellow, and purple spheres around center. Rec'd—May 20, 2002. Est. Value—$350. Archives Foreign. Artwork: 23″ x 27″ portrait on canvas of Mrs. Bush by Zubov; held in a blue wooden frame. Rec'd—May 20, 2002. Est. Value—$400. Archives Foreign. Hardcover book: ''Praga Caput Regni,'' by Jaroslav Guth and Jaroslav Seifert. Rec'd—May 20, 2002. Est. Value—$26. Archives Foreign. Handbag: black beaded evening bag in a blue presentation case. Rec'd—May 20, 2002. Est. Value—$120. Archives Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessories: 54″ x 54″ black silk chiffon scarf with white trim and beaded seashell pattern in one corner; and 13″ x 4″ black leather ''Gold Pfeil'' handbag with silver tone trim. Rec'd—May 22, 2002. Est. Value—$689. Archives Foreign.	His Excellency Gerhard Schroeder, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: 3″ oval painting of Jesus inside a gold tone Faberge-style egg with multi-colored enamel detailing; egg is suspended over a blue marble pedestal with inlaid cross on front. Rec'd—May 24, 2002. Est. Value—$350. Archives Foreign.	Mrs. Ludmila Aleksandrovna Putina.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Tea service: Tiffany & Co. silver tea set, including 14″ platter, 5½″ pot, 3″ creamer, and 4½″ sugar bowl decorated with blue and white enamel; Faberge-style egg with similar motif also included. Rec'd—May 24, 2002. Est. Value—$6050. Archives Foreign.		
	Album: white vinyl photo album with gold embossing, chronicling Mrs. Bush's and Mrs. Putina's visit to a Russian museum and school. Rec'd—May 24, 2002. Est. Value—$30. Archives Foreign.		
First Lady	Handbag: 12″ navy blue Christian Dior ''saddle bag'' purse. Rec'd—May 26, 2002. Est. Value—$590. Archives Foreign.	Mrs. Bernadette Chirac	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Tableware: wooden salad set, consisting of 5½″ bowls (12), 16½″ serving bowl and two serving utensils. Rec'd—June 13, 2002. Est. Value—$350. Archives Foreign.	His Excellency Abel Pacheco de la Espriella, President of the Republic of Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Brooch: 2½″ stick pin brooch with diamond. Rec'd—June 26, 2002. Est. value—$550. Archives Foreign.	The Honorable Dave Bronconnier, Mayor of Calgary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: traditional Afghan attire of multi-colored and heavily embroidered pants, tunic and scarf. Rec'd—July 16, 2002. Est. value—$800. Archives Foreign.	Dr. Zimat Karzai, Office of the President of the Afghan Transitional administration.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hardcover books (2): ''Bronze Sculpture,'' by Magdalena Abakanowicz, and ''Magdalena Abakanowicz,'' by Barbara Rose. Rec'd—July 24, 2002. Est. value—$100. Archives Foreign.	Mrs. Jolanta Kwasniewska	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Sugar bowl: 4″ sterling silver sugar bowl with round green stone on top and six silver and green sugar spoons; held in a wooden and glass case. Rec'd—July 24, 2002. Est. value—$450. Archives Foreign.		
First Lady	Shawl; 86″ x43″ beige wool shawl with multi-colored embroidered trim. Rec'd—September 12, 2002. Est. value—$500. Archives Foreign.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: 14″ white gold Damiani necklace with grey pearls and a cluster of diamonds. Rec'd—September 14, 2002. Est. value—$2250. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Plate: 13½″ Moser glass plate with filigreed gold edge. Rec'd—September 18, 2002. Est. value—$800. Archives Foreign.	His Excellency The President of the Czech Republic and Mrs. Havlova.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Jewelry: 18″ gold tone necklace with three square cut amber stones in center and a pair of ½″ matching earrings. Rec'd—September 25, 2002. Est. value—$500. Archives Foreign.	His Excellency Hugo Guiliani Cury, Ambassador of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Table linens: 8 white linen napkins (15″ x 15″) embroidered in one corner with a flower and birds; and a 58′ x 92″ matching tablecloth. Rec'd—September 25, 2002. Est. value—$350. Archives Foreign.	Mrs. Lalao Ravalomanana, Office of the President of the Republic of Madagascar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hardcover books (2): ''Concepts and Theories of His Majesty the King on Development'' and ''King Bhumibol: Strength of the Land,'' both published by the Thai government. Paperback book: ''The Support Foundation and Handicrafts,'' published by donor's organization. Rec'd—October 9, 2002. Est. value—$115. Archives Foreign.	Her Majesty Queen Sirikit of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Purse: 6″ handbag made of woven grasses with a gold handle and clasp studded with diamonds; held in a purple silk presentation case. Rec'd—October 9, 2002. Est. value—$10,000. Archives Foreign.		
First Lady	Table linens: 6 white linen napkins (11″ x 11″) with lace edging shot through with bronze thread and a matching 93″ x 56″ tablecloth. Rec'd—October 12, 2002. Est. value—$300. Archives Foreign.	Mrs. Ludmila Aleksandrovna Putina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Shawl: 35″ x 84″ pink cashmere shawl with fringed ends. Rec'd—October 25, 2002. Est. value—$239. Archives Foreign.	Madame Wang Yeping	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hardcover books (12): ''A Dream of Red Mansions (3 volumes),'' by Tsao Hsueh-Chin and Kao Hgo; ''Journey to the West (3 volumes),'' by Wu Cheng'en; ''Outlaws of the Marsh (3) volumes),'' by Shi Nai'an and Luo Guanzhongi; and ''Three Kingdoms (3 volumes),'' by Luo Guanzhong. Rec'd—October 25, 2002. Est. value—$244. Archives Foreign.		
First Lady	Accessories: 52″ x 11″ natural silk scarf and matching 10½″ x 10½″ handkerchief, both with black and white handprinted designs of flowers and dots. Rec'd—November 22, 2002. Est. Value—$110. Archives Foreign.	Mrs. Dagmar Havlova, First Lady of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessory: 8½″ black beaded clutch-style evening bag. Rec'd—November 22, 2002. Est. Value—$120. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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	Consumable: 10.5 oz. bottle of Bulgari ''cologne au the vert (green tea).'' Rec'd—November 22, 2002. Est. Value—$225. Handled pursuant to Secret Service policy. Silver and green Bulgari atomizer. Rec'd—November 22, 2002. Est. Value—$70. Archives Foreign. Artwork: 4½ x 3¼ ceramic tile decorated with fruit design. Rec'd—November 22, 2002. Est. Value—$10. Archives Foreign.		
First Lady	Leatherbound book: hand-written religious manuscript on parchment in Geez, a Semitic Ethiopian language; inscribed by donor and held in a silk presentation case. Rec'd—December 5, 2002. Est. Value—$450. Archives Foreign.	His Excellency Meles Zenawi, Prime Minister of the Federal Democratic Republic of Ethiopia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Home accessories: 11″ x 4″ glass candle plate; 4¼″ x 4¼″ wooden and stone coasters (6) with nautical theme; 6 navy blue and beige placemats with sea shell decorations; 6 navy blue cloth napkins with sea shell decorations; 6 blue and orange ceramic cups with nautical theme; and 4″ x 6″ stoneware picture frames (2) imprinted with outlines of sea life. Rec'd—January 15, 2002. Est. Value—$671. Archives Foreign. Candles: three square, scented candles. Rec'd—January 15, 2002. Est. Value—$30. Handled pursuant to Secret Service policy. Chest: 22″ x 15¾″ x 10½″ wooden chest with glass lid containing various nautical items including shells, star fish, and smooth pebbles. Rec'd—January 15, 2002. Est. Value—$60. Archives Foreign. Hardcover book: ''The Little Book of Aqaba'' set on glass display with glass magnifying bar and painted ceramic tile. Rec'd—January 15, 2002. Est. Value—$65. Archives Foreign.	Their Majesties King Abdullah II, and Queen Rania al Abdullah.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Artwork (2): stitched portraits of President Bush (18″ x 22″) and Mrs. Bush (18″ x 21″); held in green velvet boxes. Rec'd—March 12, 2002. Est. Value—$200. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Sculptures (2): contemporary design in glass and metal. Rec'd—March 22, 2002. Est. Value—$25. Archives Foreign.	His Excellency Vicente Fox Quesada, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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First Family	Scarves (5): 54″ x 12″ scarves, two brown made from Vicuna wool, one grey made from baby llama wool, one ivory made from royal alpaca, and one taupe made from guanaco wool; held in two wooden cases. Rec'd—March 23, 2002. Est. Value—$500. Archives Foreign.	His Excellency Alejandro Toledo Manrique, President of the Repubic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Artwork: 23″ x 15″ embroidered image of the First Family, double matted and held in a 34½″ x 26″ brown wooden frame. Rec'd—April 4, 2002. Est. Value—$1500. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Tea service: six 3½″ blue and gold painted teacups, six saucers, 8″ pitcher, 5″ covered sugar bowl, 4″ cream pitcher, 6″ pastry plates (6), and 8½″ round serving plate. Rec'd—May 25, 2002. Est. Vajue—$449. Archives Foreign.	The Honorable Vladimir Anatolyevich Yakovlev, Governor of St. Petersburg.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Artwork: 41½″ x 29½″ oil on canvas painting (c. 1891–93) of a Native American buffalo hunt, by C.M. Russell; held in a 48″ x 37″ gilt frame with small plaque at bottom. Rec'd—August 28, 2002. Est. Value—$1,000,000. Archives Foreign. Framed letter: March 4, 1942 letter from Helen Tredwell Harrison, whose father was original owner of ''The Buffalo Hunt,'' by C.M. Russell, to a gallery in Dallas, TX, detailing the circumstances of her father's possession of the painting; matted and held in a 25″ x 20¼″ wooden frame. Rec'd—August 28, 2002. Est. Value—$300. Archives Foreign.	His Royal Highness Prince Bandar bin Sultan, Ambassador of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Household accessory: 4½″ Herend bowl handpainted with blue, orange, pink, yellow, purple and green flowers with gold trim; held in a 6½″ x 5½″ blue velvet presentation box. Rec'd—November 8, 2002. Est. Value—$535. Archives Foreign.	His Excellency The Prime Minister of the Republic of Hungary and Mrs. Medgyessy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Glassware: Moser glass decanter (11″) with stopper and six matching glasses. Rec'd—November 22, 2002. Est. Value—$1000. Archives Foreign. Consumable: 70cl bottle of Jan Becher Becherovka Carlsbad liqueur. Rec'd—November 22, 2002. Est. Value—$54. Handled pursuant to Secret Service policy.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Daughters—Jenna and Barbara.	Artwork: 14″ x 18½″ painting with a three dimensional abstract figural of a bird in the center, by Romanian artist Luciana Tamas. Rec'd—November 22, 2002. Est. Value—$1500. Archives Foreign. Accessories (2): 36½″ and 40″ black velvet belts with intricate beaded floral motifs. Rec'd—November 22, 2002. Est. Value—$30. Archives Foreign. Artwork: 9½″ colorful three dimensional sculpture resembling a teapot, by Romanian artist Luciana Tamas. Rec'd—November 22, 2002. Est. Value—$1000. Archives Foreign.	His Excellency Ion Iliescu, President of Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Barbara Bush	Pitcher: 9½″ Turkish glass pitcher with blue and white swirl design. Silver pieces: 6″ hand mirror and 2″ trinket box with floral motif. Handkerchief: hand-stitched white handkerchief with small yellow flowers around the edge. Rec'd—January 16, 2002. Est. Value—$225. Archives Foreign.	His Excellency The Prime Minister of the Republic of Turkey and Mrs. Ecevit.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Barbara Bush	Fabric: Five yards of silk with intricate red design on a black background. Rec'd—February 28, 2002. Est. Value—$500. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China and Madame Wang Yeping.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Barbara Bush	Clothing: Traditional Uzbek attire consisting of a gold hat with colored sequins and a gold tassel, black velvet slippers with gold embroidery, royal blue velvet pants with gold trim, and a royal blue velvet robe with white and gold embroidery in a floral pattern. Rec'd—March 12, 2002. Est. Value—$350. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Jenna Bush	Pitcher: 9½″ Turkish glass pitcher with white swirl design and cork. Silver pieces: 6″ hand mirror and 2″ trinket box with floral motif. Handkerchief: hand-stitched white handkerchief with small pink flowers around the edge. Rec'd—January 16, 2002. Est. Value—$237. Archives Foreign.	His Excellency The Prime Minister of the Republic of Turkey and Mrs. Ecevit.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Daughter Jenna Bush	Fabric: Five yards of silk with intricate red design on a black background. Rec'd—February 28, 2002. Est. Value—$500. Archives Foreign.	His Excellency Jiang Zemin, President of the People's Republic of China and Madame Wang Yeping.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Daughter Jenna Bush	Clothing: Traditional Uzbek attire consisting of a gold hat with colored sequins and a gold tassel, black velvet slippers with gold embroidery, royal blue velvet pants with gold trim, and a royal blue velvet robe with white and gold embroidery in a floral pattern. Rec'd—March 12, 2002. Est. Value—$350. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brooks, Karen B., Director for Asian Affairs, National Security Council.	Wall hanging: 23″ x 23″ traditional Zodiac design depicting the Year of the Horse in gold, brown, green and blue stitched cord and metallic sequins on black velvet. Rec'd—May 15, 2002. Est. Value—$350. Government Property.	Police Colonel Hkam Awng, Joint Secretary of the Central Committee for Drug Abuse Control, Ministry of Home Affairs of the Union of Burma.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brooks, Karen B., Director for Asian Affairs, National Security Council.	Clothing: 16½″ x 68″ orange silk scarf embroidered with traditional pattern in rust, celedon, black and pale yellow. Rec'd—December 20, 2002. Est. Value—$600. Government Property.	His Excellency Phanthong Phommahaxay, Ambassador of the Lao People's Democratic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Bryza, Matthew J., Director, European and Eurasian Affairs, National Security Council.	Flatware set: silver flatware service for six; presented in a 13½″ x 13½″ wooden case. Rec'd—July 15, 2002. Est. Value—$650. Government Property.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Watch: Cartier men's stainless steel ''Tank Francaise Steel'' watch with automatic date; held in a red leather presentation case. Rec'd—May 28, 2002. Est. Value—$2900. Government Property.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elliott, Ruth E., Special Assistant for Scheduling and Advance, National Security Council.	Rug; 5′ x 6.8′ hand crafted rug from Morocco of the ''Rabat'' design with medallion open-field red, cream and multi-color border (red, yellow, blue, green, black, and terra cotta). Rec'd—April 24, 2002. Est. Value—$600. Transferred to General Services Administration.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Falkenrath, Richard A, Special Assistant to the President and Senior Director for Policy and Plans, Office of Homeland Security.	Binoculars: black Swarovski Habicht 10 x 40 binoculars with wide angle. Rec'd—July 17, 2002. Est. Value—$722. Government Property.	His Excellency Ernst Strasser, Federal Minister for the Interior of the Republic of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Fenton, Cathy, Special Assistant to the President and White House Social Secretary.	Rug: 10′ x 6.8′ hand crafted Oriental rug of the ''Rabat'' design. Rec'd—May 8, 2002. Est. Value—$1200. Government Property.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frazer, Jendayi, Special Assistant to the President and Senior Director for African Affairs, National Security Council.	Artwork: 18″ x 24″ oil painting on canvas board of African women seated against a wall, by Robe Kavanja; held in a 21¼″ x 27¼″ wooden frame. Rec'd—December 20, 2002. Est. Value—$650. Government Property.	Ms. Rebecca Nabutola, Permanent Secretary, Ministry of Foreign Affairs and International Cooperation.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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Fried, Dankel, Special Assistant to the President and Senior Director for European and Eurasian Affairs, National Security Council.	Clothing: traditional Uzbek attire consisting of a multi-colored silk scarf (49″ x 49″), a collapsible 6″ black hat with white design, and a navy blue velvet robe with elaborate gold embroidery. Rec'd—March 13, 2002. Est. Value—$350. Archives, Staff Gift.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Fried, Daniel, Special Assistant to the President and Senior Director for European and Eurasian Affairs, National Security Council.	Watch: Bulgari stainless steel ''Rettangolo'' watch; held in a black leather presentation box. Rec'd—May 28, 2002. Est. Value—$3000. Government Property.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hughes, Karen, Assistant to the President and Counselor to the President.	Bowl: 8½″ x 10½″ white porcelain Kongliche Porzellan-Manufaktur Berlin oval vegetable dish, with gold band trim and handpainted floral and butterfly design. Rec'd—May 22, 2002. Est. Value—$315. Archives, Staff Gift.	His Excellency Mr. Johannes Rau, President of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Moriarty, James F., Special Assistant to the President and Senior Director for Asian Affairs, National Security Council.	Desk clock: 1½″ square silver trim clock face set in blue lucite square (3⅛″), with four pearls in silver squares accenting the four corners of clock face, etched silver crest on top of lucite square; quartz movement; mounted on 1¼″ x 3½″ silver base; reverse of clock engraved ''Office of the Prime Minister, Tokyo''. Rec'd—October 12, 2002. Est. Value—$555. Government Property.	His Excellency Yasuo Fukuda, Chief Cabinet Secretary of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Scarf: 76″ x 22½″ olive green silk embroidered with gold thread and 2″ fringe. Rec'd—January 12, 2002. Est. Value—$350. Archives, Staff Gift.	His Excellency Abdus Samad Azad, Minister of Foreign Affairs of the People's Republic of Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condeleezza, Assistant to the President for National Security Affairs.	Tea pot: 12″ silver tea pot with engraved designs. Rec'd—January 14, 2002. Est. Value—$1000. Archives, Staff Gift.	His Highness Sheikh Sulman bin Hamad bin Isa Al-Khalifa, Crown Prince of the State of Bahrain and Head of the Bahrain Defense Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Plate: 9¼″ silver plate engraved ''Presented by Nguyen Tan Dung, Deputy Prime Minister Socialist Republic of Vietnam'', with a black lacquer stand. Rec'd—January 14, 2002. Est. Value—$300. Archives, Staff Gift.	His Excellency, Nguyen Tan Dung, Deputy Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Crystal rock with light wood stand from Madagascar, presented in a hand woven basket with yellow embroidery. Rec'd—January 14, 2002. Est. Value—$714. Archives, Staff Gift.	His Excellency, Didier Ratsiraka, President of the Republic of Madagascar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry set (4 pieces); silver necklace, earrings, ring and bracelet with coral stones. Rec'd—January 14, 2002. Est. Value—$750. Archives, Staff Gift.	His Excellency, Ali Abduallah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Clothing: traditional Uzbek attire consisting of a gold hat with colored sequins and a gold tassel, and a blue velvet robe with gold and white embroidery in a floral pattern. Rec'd—March 13, 2002. Est. Value—$300. Archives, Staff Gift. Flatware set: 22K silver flatware service for six; presented in a 13½″ x 13½″ wooden case. Rec'd—March 13, 2002. Est. Value—$650. Archives, Staff Gift.	His Excellency, Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry 1″ 18K white gold American flag lapel pin, inset with sapphires, diamonds and rubies. Rec'd—May 27, 2002. Est. Value—$1,000. Government Property.	His Excellency, Carlo Azeglio Ciampi, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Hardback book: ''The Russian Museum,'' a compilation of paintings found within the Russian Museum. Rec'd—May 31, 2002. Est. Value—$28. Government Property. Hardback book: ''The Tretyakov Gallery,'' a compilation of paintings found at the Tretyakov Gallery. Rec'd—May 31, 2002. Est. Value—$28. Government Property. Hardback book: ''Nizhny Novgorod Region,'' with a history of, and various scenes throughout the region. Rec'd—May 31, 2002. Est. Value—$27. Government Property. Hardback book: ''Folk Handicrafts of the Nizhny Novgorod Region,'' featuring crafts of local citizens. Rec'd—May 31, 2002. Est. Value—$18. Government Property. Hardback book: ''Inaugural Addresses of the Presidents of the United States,'' printed in Russian. Rec'd—May 31, 2002. Est. Value—$20. Government Property. CDs (2): ''The Best of Henry Mancini.'' Rec'd—May 31, 2002. Est. Value—$29. Government Property. CDs: ''Romances,'' by Alexander Podbolotov. Rec'd—May 31, 2002. Est. Value—$28. Government Property. CDs: ''Nue,'' by Lara Fabian (in French). Rec'd—May 31, 2002. Est. Value—$26. Government Property.	Mr. Vladmir B. Rushaylo, Secretary of Russian Security Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Hardcover coffee table book: ''Treasures of the Kremlin'' (approximate title, printed in Russian), held in red cloth sleeve. Rec'd—May 31, 2002. Est. Value—$30. Government Property.		
	Hardcover coffee table book: ''Hermitage Paintings'' (approximate title, printed in Russian), by Kolin Eysler. Rec'd—May 31, 2002. Est. Value—$55. Government Property.		
	Hardcover book: ''Scientific Problem of National Security of the Russian Federation: Volume 3,'' (approximate title, printed in Russian), by the Security Council of the Russian Federation. Rec'd—May 31, 2002. Est. Value—$20. Government Property.		
	Hardcover book: ''The Special Services of the USA'' (approximate title, printed in Russian). Rec'd—May 31, 2002. Est. Value—$20. Government Property.		
	Hardcover book: ''Contemporary International Relations,'' (approximate title, printed in Russian), by Mgimo. Rec'd—May 31, 2002. Est. Value—$20. Government Property.		
	Hardcover book: ''The History of Russia's International Relations and Foreign Policy 1648–2000,'' (approximate title, printed in Russian), by A.S. Protopopov, V.M. Kuzmenko, and N.C. Yelmaniva. Rec'd—May 31, 2002. Est. Value—$20. Government Property.		
	CDs (5): ''The Carnival of Love,'' ''Besame Mucho,'' ''Tango,'' ''With Love to You,'' and ''The Best of Rio-Rita'' by V. Kovtun (approximate titles, printed in Russian). Rec'd—May 31, 2002. Est. Value—$40. Government Property.		
	CD: ''Promise of Love,'' (approximate title, printed in Russian), by Mikael Tariverdiyov. Rec'd—May 31, 2002. Est. Value—$8. Government Property.		
	CD: ''Great Composers: Masterpiece of the Musical Art of Russia,'' (approximate title, printed in Russian). Rec'd—May 31, 2002. Est. Value—$8. Government Property.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Textiles: 27″ x 83″ fringed traditional silk and wool cloth; handwoven in light blue, white, tan, peach and yellow threads. Rec'd—June 6, 2002. Est. Value—$350. Government Property.	His Excellency Ivica Racan, Prime Minister of the Republic of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Clothing: traditional Saudi attire (abaya) of a black and burgundy robe with matching 70″ shawl and a black caftan with elaborate gold embroidery and multi-colored sequins. Rec'd—June 25, 2002. Est. Value—$250. Archives, Staff Gift. Jewelry: sterling silver jewelry set consisting of a necklace, earrings, ring with black stone, bracelet, choker and belt. Rec'd—June 25, 2002. Est. Value—$150. Archives, Staff Gift.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Rug: 73″ x 44″ Turcoman hand knotted rug; made of wool on warp and silk on weft with 2½″ silk fringe. Rec'd—June 26, 2002. Est. Value—$2200. Government Property.	His Excellency Mr. Yonus Qanooni, Minister of Interior of the Interim Administration of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry: 1″ x 1½″ amber ''Joyas Criollas'' pin with 14K twisted gold setting. Rec'd—July 23, 2002. Est. Value—$300. Government Property.	His Excellency Hipolito Mejia, President of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Art: two contemporary brass sculptures (7½″) mounted on 4″ circular wooden bases. Each sculpture has two stylized figures of a man and a woman linked arm in arm. Rec'd—August 5, 2002. Est. Value—$190. Government Property. Art: 21½″ x 13″ framed copper relief overpainted with an image of a woman stirring a mortar; signed ''02 . . . Lotonga''. Rec'd—August 5, 2002. Est. Value—$210. Government Property.	His Excellency Augustin Katumba Mwanke, Minister of the Presidency of the Democratic Republic of the Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Candelabrum: 14″ x 13¾″ three candle, sterling silver hallmarked candelabrum, convertible to single candlestick, with top nob; held in a blue velvet presentation box. Rec'd—September 30, 2002. Est. Value—$500. Government Property.	His Excellency Mohamed Hussein Tantaway, Minister of Defense and Military Production of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Accessories: 36″ square, silk Hermes scarf with ''Aloha'' images of parrots, Hawaiian women, palm trees and ocean, in orange, yellow, blue and green tones with a terra cotta tone border. Rec'd—October 17, 2002. Est. Value—$250. Government Property.	Her Excellency Michele Alliot-Marie, Minister of Defense and War Veterans of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Desk accessory: Pichard-Balme paperweight of enameled French flag and standard; obverse has inset of Ministry of Defense gold tone insignia and four symbols in corners of flag; ''Ministre de la Defense'' and smaller insignias inset on reverse. Rec'd—October 17, 2002. Est. Value—$45. Government Property.		
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Hardcover books (2): ''Brancusi,'' by Radu Varia, 2nd printing 2002, Rizzoli International; ''Romania,'' by Petre Baron, presented in a red velvet box. Rec'd—November 23, 2002. Est. Value—$135. Government Property. Artwork: 11″ x 14″ single matted oil pastel caricature of Dr. Rice by Stefan Popa titled ''Condoleezza Rice (SUA) Praga 21–22 Noiembrie 20020'', held in a 16″ x 20″ frame; presented in navy blue portfolio box. Rec'd—November 23, 2002. Est. Value—$500. Government Property. Desk accessory: 34″ x 9″ x 11″ wooden model ship with banners ''NATO builds Tomorrow's Security Ark''. Rec'd—November 23, 2002. Est. Value—$175. Government Property.	His Excellency Ion Iliescu, President of Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Household accessory: 6″ x 3½″ round sterling silver compote with silver handles, with raised diagonal design in four quadrants; from the Museum of Cycladic Art. Rec'd—November 26, 2002. Est. Value—$350. Government Property.	His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Desk accessory: hinged 4⅝″ x 1½″ silver filligree box of intricate design studded with numerous small silver beads worked into design; 3″ square raised on top. Rec'd—December 31, 2002. Est. Value—$300. Government Property.	His Excellency Igor Ivanov, Minister for Foreign Affairs of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ridge, Thomas J., Assistant to the President for Homeland Security.	Paperback book: ''Catalogo del Fondo Reservado de la Biblioteca.'' Rec'd—March 15, 2002. Est. Value—$75. Government Property. Hardcover book: ''Patrimonio Artistico de la Procuraduria General de la Republica.'' Rec'd—March 15, 2002. Est. Value—$125. Government Property. Platter: 10″ x 12″ silver platter engraved ''Procuraduria General De La Republica.'' Rec'd—March 15, 2002. Est. Value—$100. Government Property.	The Honorable David Rafael Marcedo de la Concha, Attorney General of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
114168/BOYER_C, Vice President	Oil Painting on canvas of the Statute of Liberty, titled Liberty, in the Impressionist style by Georgian artist Tamaz Khutsishvili (2001), measures 30″ by 36″, with 3 inch gilt frame, Rec'd—October 1, 2001. Est. Value—$1800. Archives Foreign.	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
115304/MURRAY_M, Vice President.	Silver cigarette box, approximately 7¾″ by 4⅛″, with scene engraved on lid of Plazzo Dell'Ecc . . . Prencipe Chigi in Plazza Colonna, Venice. Rec'd—October 22, 2001. Est. Value—$550. Archives Foreign.	His Excellency, Gianfranco Fini, Deputy Prime Minister of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
114191/MURRAY_M, Vice President.	Leaded crystal liquor serving set consisting of a decanter with stopper, six serving glasses and six cloth napkins. Rec'd—January 15, 2002. Est. Value—$550. Archives Foreign.	His Excellency, Bulent Ecevit, Prime Minister The Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
115410/MURRAY_M, Vice President.	Afghani rug, navy background with rust colored designs. Silk and wool. Measures 118″ by 84″, Rec'd—January 28, 2002. Est. Value—$4000. Archives Foreign.	His Excellency, Hamid Karzai, President of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
114992/BOYER_C, Vice President	Sculpture by Israeli artist, Miriam Hirszowicz, of a small silver dove sitting on a frosted glass stele, mounted on a piece of frosted glass. Measures 6″ high by 5″ wide. Rec'd—February 6, 2002. Est. Value—$290. Archives Foreign.	His Excellency, Benjamin Ben-Eliezer, Minister of Defense for Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
115138/MURRAY_M, Vice President.	Silver palm tree approximately 8″ high and 5″ in width on plastic base, inscription reads ''Presented by H.H. Shaikh Salman Bin Hamad Al-Kalifa, Crown Prince & Commander-in-Chief Bahrain Defence Force.'' Rec'd—February 11, 2002. Est. Value—$450. Archives Foreign.	His Highness, Sheikh Salman Bin Hamad Al-Khalifa, Crown Prince and Commander in Chief of the Bahrain Defence Force.	Non-acceptance would cause embarrassment to donor and U.S. Government.
115145/MURRAY_M, Vice President.	Pakastani carpet, ca. 2000, in new condition, very good quality, elongated center Arabesque medallion, cotton warp and weft, all wool pile. Taupe medallion with navy blue field. Measures 48″ by 76″ Rec'd—February 13, 2002. Est. Value—$1800. Archives Foreign.	His Excellency, Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
115445/MURRAY_M, Vice President.	Ebony sculpture of seated African man, measures 22″ high. Rec'd—February 28, 2002. Est. Value—$1375. Archives Foreign. Tapestry painting of African woman on mottled red and black velvet, signed Pululu 02. Rec'd—February 28, 2002. Est. Value—$500. Archives Foreign.	His Excellency. Jose Eduardo dos Santos, President of the Republic of Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Hard cover book—Angola O Futuro Comeca Agora, with two CDs in book pocket. Similar coffee table books on Barnes and Noble sell for $50. Estimated value for two CDs is $20. Rec'd—February 28, 2002. Est. Valule—$70. Archives Foreign. Forty 250 gram packages (10 Kilos) of Cafe Ginga roasted coffee beans from Angola priced at $8 per package. Rec'd—February 28, 2002. Est. Value—$320. Handled pursuant to Secret Service Policy.		
115528/BOYER_C Vice President	Sterling silver rectangular box lined in blue velvet, in blue velvet presentation case. Lid of box is inscribed in Arabic. Measures 8″ by 4.5″. Rec'd—March 4, 2002. Est. Value—$550. Archives Foreign.	His Excellency, Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
117574/BOYER_C, Vice President	Bronze resin bust of Winston Churchill. A Marcus Replica—exact reproduction of hand sculpted model. Made in England for the Cabinet War Rooms Museum. Museum is partially government funded. Rec'd—March 10, 2002. Est. Value—$291. Transferred to the General Services Administration.	Mr. Philip Reed, Director, Cabinet War Rooms Museum, London.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116622/BOYER_C, Vice President	Large ceremonial robe of navy blue velvet with gold and multi-colored embroidery, multi-colored silk scarf, and small black hand sewn hat. Rec'd—March 11, 2002. Est. Value—$350. Archives Foreign. Sterling silver flatware service for six in presentation case with Uzbekistan seal. Flatware is Continental style. Rec'd—March 11, 2002. Est. Value—$850. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116466/BOYER_C, Vice President	Sterling silver notepad. Measures 4″ by 6″ with the Jordanian crest and a lithograph of the Monastery at Petra. Rec'd—March 12, 2002. Est. Value—$225. Archives Foreign.	His Majesty, King Abdullah II bin al Hussein, of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116510/BOYER_C, Vice President	Gold vermeil sculpture of a palm tree with three antelopes grazing beneath it, on a wooden base covered with freshwater pearls. One of the antelopes was broken in shipping. Rec'd—March 16, 2002. Est. Value—$1500. Archives Foreign.	His Majesty, Sheikh Hamad bin Essa Al Khalifa, King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
119371/BOYER_C, Vice President	Painted red Arabic chest, hinged lid with brass latch, 2 drawers, elaborate brass decoration on lid and sides. Measures 14″ by 25″ by 13″, Rec'd—March 16, 2002. Est. Value—$400. Archives Foreign. Four UAE gold coins in protective plastic cases ($300 each) Rec'd—March 16, 2002. Est. Value—$1200. Archives Foreign. Woven wool horse blanket, measures 30″ by 104″ ($35) Two black, red and green woven horse leads with silver thread, measure 1″ by 28″, with matching small tasseled pieces, measuring 1″ by 8″, ($200) Pink and purple yarn lead with tassel, 3″ by 36″, for decoration, no monetary value. Red and white woven lead with silver thread, 1″ by 34″, no monetary value, Rec'd—March 16, 2002. Est. Value—$235. Archives Foreign. Framed 8″ silver dagger with elaborate engraving; in a wood-framed double matted shadow box, measures 12″ by 15″, Rec'd—March 16, 2002. Est. Value—$125. Transferred to the General Services Administration. Wooden wall hanging with brass latch and other brass detailing, measures 10″ by 20″, Rec'd—March 16, 2002. Est. Value—$175. Archives Foreign.	His Highness, Shaykh Zayid bin Sultan Al Nahayyan, President of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116474/BOYER_C, Vice President	Traditional Saudi men's clothing in green leather box: two long white cotton shirts, complete headdress, leather sandals, prayer beads, and brown tunic with gold epaulets. Rec'd—March 16, 2002. Est. Value—$250. Archives Foreign. Clock topped with Sterling silver horse trimmed in gold vermeil, on a malachite base. Rec'd—March 16, 2002. Est. Value—$7500. Archives Foreign. Christian Dior Cosmetics for men—''Fahrenheit'' fragrance; toilette water spray, after shave lotion, deodorant, soap, after shave splash. Rec'd—March 16, 2002. Est. Value—$177. Handled pursuant to Secret Service Policy.	His Majesty, Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
116508/BOYER_C, Vice President	Large gold vermeil and Sterling silver sailboat on burled wooden base. Given to the VP on his Middle East trip. Gift is a duplicate of a previous gift by same donor. Rec'd—March 17, 2002. Est. Value—$2500. Archives Foreign.	His Highness, Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116511/BOYER_C, Vice President	Aynsley bone china urn, with handpainted scenes of the Gulf War, and the inscription ''Liberation of Kuwait'', Rec'd—March 18, 2002. Est. Value—$350. Archives Foreign. Book: Kuwait Photographs & Memories by Mona Jabir Al-Abdullah Al-Jabir Al-Sabah, Rec'd—March 18, 2002. Est. Value—$65. Archives Foreign.	His Highness Shaykh Saad al-Abdullah Al-Salim Al Sabah, Crown Prince and Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116242/BOYER_C, Vice President	Silver covered cup, 3 inches in diameter, .900 silver. Rec'd—March 19, 2002. Est. Value—$150. Transferred to the General Services Administration. Silver plate inscribed with the Prime Minister's name and a Turkish flag, wooden plate stand. .900 silver. Rec'd—March 19, 2002. Est. Value—$200. Archives Foreign.	His Excellency, Bulent Ecevit, Prime Minister, The Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116565/BOYER_C, Vice President	Handmade Khutaya porcelain decorative bowl with cover. White background with royal blue and gold trim and small colored flowers around the edge and bottom. 12″ in diameter. Presented in a blue velvet box. Rec'd—March 19, 2002. Est. Value—$700. Archives Foreign.	General Huseyin Kivrikoglu, Commander of the Turkish Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116404/BOYER_C, Vice President	Small Sterling silver sculpture depicting the walled old city of Jerusalem. Measures 2.5 inches in diameter. In plexiglass case, lined in blue velvet, with inscription to the Vice President. Rec'd—March 19, 2002, Est. Value—$500 Archives Foreign. Handpainted linen table runner with wheat design by Israeli artist, Anat Mayer. Measures 27″ by 13″, Rec'd—March 19, 2002. Est. Value—$150. Archives Foreign.	The Honorable, Ariel Sharon, Prime Minister of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
117090/BOYER_C, Vice President and Mrs. Cheney.	Bouquet of roses in ceramic vase. Rec'd—March 30, 2002. Est. Value—$300. Handled pursuant to Secret Service Policy.	His Royal Highness, Prince Bandar Bin Sultan Bin Abdulaziz, and Her Royal Highness, Princess Haifa Al Faisal, Embassy of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
119207/BOYER_C, Vice President	Reproduction of a Faberge egg. Red enamel egg on an attached pedestal. Made of 18K gold, with a total of 10.5 carats of diamonds. The center of the egg is rimmed with a floral garland; at the center of each flower is a .5 carat diamond. The top of the egg twists off to reveal a gold basket with gold flowers and three small eggs made of jasper. A band of small diamonds rims the dome of the egg. Rec'd—May 1, 2002. Est. Value—$17500. Archives Foreign.	His Excellency, Igor Yusufov, Minister of Energy of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
119822/BOYER_C, Vice President	Gold vermeil disk with a scene from Bahrain, on a metal stand with inscription to the VP. Measures 4″ in diameter. Rec'd—May 8, 2002. Est. Value—$500. Archives Foreign.	His Excellency, Shaykh Khalifa Bin Salman Al Khalifa, Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
119455/MURRAY_M, Vice President.	Ceramic, lidded vase in white, green, black and red, in a snakestitch design with gold overlay, 12″ tall. Rec'd—May 24, 2002. Est. Value—$2000. Archives Foreign.	His Majesty, Mohammad VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
119917/BOYER_C, Vice President	Afghani carpet in colors of navy, salmon, green, cream, and maroon. Measures 72″ x 44.5″, Rec'd—May 30, 2002. Est. Value—$660. Archives Foreign.	His Excellency Yonus Qanooni, Minister of Interior, Interim Administration of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
119824/BOYER_C, Vice President	Gold vermeil eagle sculpture on malachite base decorated with gold flowers with semi-precious stones at the center. Rec'd—June 3, 2002. Est. Value—$3500. Archives Foreign.	His Royal Highness. Abdallah Bin Abd Al-Aziz, Al Saud, Crown Prince, First Deputy Prime Minister, and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
119461/MURRAY_M, Vice President.	Sterling silver hexagonal jewelry box with hinged cover and blue velvet interior. Engraved design on exterior of the box. Rec'd—June 6, 2002. Est. Value—$450. Archives Foreign.	His Excellency, Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
120248/MURRAY_M, Vice President.	Ceramic marriage dolls titled, ''A Lasting Marriage,'' by Chen Hui-Yen Sculpture Studio, Taiwan. Measure 6.5″ high. Male and Female porcelain dolls with miniature lamps, shoes and a gong. Rec'd—June 25, 2002. Est. Value—$300. Archives Foreign.	The Honorable Fredrick Chien, President of Control Yuan of the Republic, Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
12037/BOYER_C, Vice President ..	18 K gold reproduction of a Roman coin, with copy of donor's acceptance speech and program dated 5/30/02. Inscription on back of coin reads, ''Senato Della Repvbblica'' Rec'd—June 25, 2002. Est. Value—$400. Archives Foreign.	Senator Marcello Pera, President of the Italian Senate.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
121673/BOYER_C, Vice President	Six Sterling silver shot glasses with buffalo motif, in wooden presentation box with Sterling silver ornamentation. Rec'd—July 17, 2002. Est. Value—$850. Archives Foreign.	His Excellency, Aleksander Kwasniewski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
124348/BOYER_C, Vice President	Handwoven silk rug from Uzbekistan in Turkamen style and design, but bright red and unusual. Highly collectible. Measures 47″ X 63″, Rec'd—September 16, 2002. Est. Value—$900. Archives Foreign.	His Excellency, Abdulaziz Komilov, Minister of Foreign Affairs of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
127931/BOYER_C, Vice President	Tooled leather chest board in Kyrgyz design, with a leather carrier. Wooden chess pieces depict the epic ''Manas,'' with dark-stained hats on one side and clear varnish hats on the opposition. Measures 18″ by 18″, Rec'd—September 24, 2002. Est. Value—$409. Archives Foreign.	His Excellency, Askar Akaev, President of the Kyrgyz Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
125948/BOYER_C, Vice President	Sterling silver plate engraved with a scene of King RamsesII riding his chariot. Measures 12″ in diameter. Rec'd—September 25, 2002. Est. Value—$500. Archives Foreign.	Field Marshal Hussein Tantawi, Commander-in-Chief of the Armed Forces, Embassy of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Hand knotted silk Egyptian rug. Silk foundation and fringe. The ground is set with four panels of individual foliate designs. Major border with red ground; outer plain blue border. In green velvet box. Measures 12″ x 29″, Rec'd—September 25, 2002. Est. Value—$525. Archives Foreign.		
126198/BOYER_C, Vice President	Mosiac Russian Icon of unidentified saint, in 18K gold frame with sapphires and rubies from Thailand and Sri Lanka inset in the frame. Frame has a jasper backing. Measures 7″ by 4.25″ by .5″. Rec'd—October 3, 2002. Est. Value—$9500. Archives Foreign.	His Excellency, Igor Yusufov, Minister of Energy of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
127985/BOYER_C, Vice President	Wool and alpaca textile (axsu) woven on a pre-Columbian loom by Bolivan artisan, Leonarda Churqui. Measures 26″ by 36″; mounted on black wool with wooden hanging rods. Features columns of red/black and pink/navy in native designs. Rec'd—November 14, 2002. Est. Value—$1000. Archives Foreign.	His Excellency, Gonzalo Sanchez De Lozada, President of the Republic of Bolivia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
129322/BOYER_C, Vice President and Mrs. Cheney.	Tiffany ''Brittania'' crystal compote. Measures 5.75 inches high and 10 inches in diameter. Rec'd—December 12, 2002. Est. Value—$195. Vice President retained.	His Excellency, Salem Abdullah Al-Jaber Al-Sabah and Mrs. Rima R. Al-Sabah, Embassy of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
116764/BOYER_C, Vice President and Mrs. Cheney.	Inlaid mother-of-pearl background with nativity scene in bas relief and the word ''Bethlehem 2000'', Rec'd—March 19, 2003. Est. Value—$2000. Archives Foreign.	Yasser Arafat, Chairman of Palestinian Authority, Palestine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
128536/BOYER_C, Vice President	Red and white Hsiao Fang Pottery vase, 12″ high, with dragon motif, on a rosewood base. In silk covered presentation box. Rec'd—09/17/02. Est. Value—$450. Archives Foreign.	The Honorable Lien Chan, Chairman, Kuomintang Party, Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
115528/BOYER_C, Mrs. Cheney ..	All silk Egyptian carpet, measures 40″ x 58″, having geometrical center medallion containing seven diamonds, new ca. 2000, very good quality and coloration. Rec'd—March 4, 2002. Est. Value—$1800. Archives Foreign.	His Excellency, Mohamed Hosny Mubarak, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116466/BOYER_C, Mrs. Cheney ..	Multi-color wool rug, handwoven by the Bedouin women of Jabal Bani Hamida for the Jordan River Foundation, a group dedicated to helping Jordanian women form microbusinesses making traditional crafts. Measures 80″ by 60″, Rec'd—March 12, 2002. Est. Value—$150. Archives Foreign.	His Majesty, King Abdullah II bin al Hussein, of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116338/BOYER_C, Mrs. Cheney ..	Necklace, bracelet, earrings, ring in swirled pattern. White gold with 46.99 carets of diamonds and 51.08 carets of rubies. Manufactured by Mouawad. Given to Mrs. Cheney on March 2002 Middle East trip by Her Highness Hussa Al Shalon, wife of the Crown Prince. Rec'd—March 16, 2002. Est. Value—$40000. Archives Foreign.	His Royal Highness, Abdallah Bin Abd Al-Aziz, Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116510/BOYER_C, Mrs. Cheney ..	Sterling silver commemorative coin set (8 coins), valued at $125. One 22k gold commemorative coin, valued at $315. Given to Mrs. Cheney by Sheikha Hala Bint Daij Al-Khalifa on the Middle East trip. Rec'd—March 16, 2002. Est. Value—$440. Archives Foreign.	His Majesty, Sheikh Hamad bin Essa Al Khalifa, King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
134571/BOYER_C, Mrs. Cheney ..	Samsonite metal suitcase given to Mrs. Cheney by Sheika Fatima Bent Mubarak al Kethi, wife of the President. Rec'd—March 16, 2002. Est. Value—$476. Archives Foreign. Royal blue silk long dress in a caftan style, embroidered with gold thread and beading. Given to Mrs. Cheney by Sheika Fatima Bent Mubarak al Kethi, wife of the President. Rec'd—March 16, 2002. Est. Value—$200. Archives Foreign.	His Highness, Shaykh Zayid bin Sultan Al Nahayyan, President of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Three piece black dress ensemble of brocade and lame. Given to Mrs. Cheney by Sheika Fatima Bent Mubarak al Kethi, wife of the President. Rec'd—March 16, 2002. Est. Value—$200. Archives Foreign. Green silk long dress in the caftan style decorated with scrolled and trailing flowers and leaves. Given to Mrs. Cheney by Sheika Fatima Bent Mubarak al Kethi, wife of the President. Rec'd—March 16, 2002. Est. Value—$150. Archives Foreign. Two piece dress in lightweight orange and white floral design silk-like fabric. Given to Mrs. Cheney by Sheika Fatima Bent Mubarak al Kethi, wife of the President. Rec'd—March 16, 2002. Est. Value—$75. Archives Foreign.		
119371/BOYER_C Mrs. Cheney	Large Arabic stained wooden chest, hinged lid with brass latch, 5 drawers, elaborate brass decoration on lid and sides, measures 19″ by 45″ by 19″. Rec'd—March 16, 2002. Est. Value—$900. Archives Foreign. Hardcover books: Phoenix Rising: The United Arab Emirates, Past, Present & Future by Werner Forman (cover price $95) and UAE in Focus: A Photographic History of the United Arab Emirates ($51), Rec'd—March 16, 2002. Est. Value—$146. Archives Foreign. 21 K gold jewelry, necklace and earrings with synthetic emeralds and rubies and pearls, Rec'd—March 16, 2002. Est. Value—$4000. Archives Foreign. Six inch silver engraved dagger in a wood-framed double matted shadow box, measures 12″ by 14″, Rec'd—March 16, 2002. Est. Value—$150. Archives Foreign. Transferred to the General Services Administration. Four yards cotton dress material with silver braid at the neckline ($100), Black silk outer robe with jet beads, matching scarf ($100) Yellow satin dress with mauve chiffon overlay, jeweled bodice ($100), Girl's dress, purple with embroidered flowers, size 6–8, with silver braid at the neckline ($75), Rec'd—March 16, 2002. Est. Value—$375. Archives Foreign.	His Highness, Shaykh Zayid bin Sultan Al Nahayyan, President of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Gold plastic gahwa, 16″ high ($25) Woven wool horse blanket, measures 18″ by 104″ ($35), Rec'd—March 16, 2002. Est. Value—$60. Archives Foreign.		
	Photograph of the Royal Family in a Christofle silver frame. Frame was broken in transit from the Middle East. Given to Mrs. Cheney by Sheika Fatima Bent Mubarak al Kethi. Rec'd—March 16, 2002. Est. Value—$450. Archives Foreign.		
116474/BOYER_C, Mrs. Cheney	Abaya and veils in black silk, with gold trim. Textiles valued at $250. Ornate jewelry made of thinly fashioned silver: Large necklace, belt, bracelet, earrings with black stone, ring with black stone, small necklace. Jewelry valued at $150. Rec'd—March 16, 2002. Est. Value—$400. Archives Foreign.	His Majesty, Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques and King of Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Christian Dior cosmetics for women-''J'Adore'' fragrance; perfume, body lotion, soap, deodorant, bath gel. Rec'd—March 16, 2002. Est. Value—$176. Handled pursuant to Secret Service Policy.		
118658/BOYER_C, Mrs. Cheney ..	Necklace, bracelet, earrings, and ring in antelope motif, white gold with 22 heart-shaped garnet stones of a total weight of 24.08 carets. Designed by Issa Al-Ghanem exclusively for Al Wajba Palace. In a burgundy colored ostrich leather box. Given to Mrs. Cheney by Her Highness Sheikha Mozah bint Nasser Al-Missned, second wife of the Amir. Rec'd—March 17, 2002. Est. Value—$3500. Archives Foreign.	His Highness, Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
117577/BOYER_C, Mrs. Cheney ..	Limited edition, handcrafted and hand blown perfume bottle, made exclusively for Shfellah Center for Children with Special Needs. It has a Shlellah dower stopper, Sterling silver and gold plated. Made by Thomas Goode of London. Given to Mrs. Cheney by Her Highness Sheikha Mozah bint Nasser Al-Missned, second wife of the Amir. Rec'd—March 17, 2002. Est. Value—$400. Archives Foreign.	High Highness, Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116511/BOYER_C, Mrs. Cheney ..	Bracelet of 22K gold with two rows of medium size freshwater pearls. Rec'd—March 18, 2002. Est. Value—$550. Transferred to the General Services Administration.	High Highness, Shaykh Saad al-Abdullah Al-Salim Al Sabah, Crown Prince and Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
116582/BOYER_C, Mrs. Cheney ..	Miniature mbayyat three drawer box encrusted with 22K gold. Given to Mrs. Cheney by Her Highness Shaykha Latifeh Fahad Al Sabah. Measures 10″ x 5″ x 6″ Rec'd—March 18, 2002. Est. Value—$2500. Archives Foreign. Woman's ring, in 24K gold, with polished turquoise stone. given to Mrs. Cheney by Her Highness Shaykha Latifeh Fahad Al Sabah. Rec'd—March 18, 2002. Est. Value—$300. Archives Foreign.	Shaykh Saad al-Abdullah Al-Salim Al Sabah, Crown Prince and Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
121673/BOYER_C, Mrs. Cheney ..	Silver pendant necklace with large Baltic amber stone, in flowing Art Nouveau design, with hinged Sterling silver tulus attached. Given to Mrs. Cheney by Jolanta Kwasniewski, wife of the President. Rec'd—July 17, 2002. Est. Value—$250. Archives Foreign.	His Excellency Aleksander Kwasniewski President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
125948/BOYER_C, Mrs. Cheney ..	Jewelry set: white gold and small diamond necklace, bracelet, ring and earrings. Rec'd—September 25, 2002. Est. Value—$2500. Archives Foreign.	Field Marshal Hussein Tantawi, Commander-in-Chief of the Armed Forces, Embassy of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116338/BOYER_C, Vice President Staff.	Concord stainless steel women's Saratoga bracelet watch, with quartz movement, calendar, and water resistance. Given to Mary Matalin at the Crown Prince's dinner in Jeddah, Saudi Arabia. Rec'd—March 16, 2002. Est. Value—$1450. Archives Foreign. Stainless steel Concord Sportivo men's bracelet watch with chronograph dial, quartz movement. Given to Lewis Libby at Crown Prince's dinner in Jeddah. Rec'd—March 16, 2002. Est. Value—$1790. Archives Foreign. Stainless steel Concord Sportivo men's bracelet watch with chronograph dial, quartz movement. Given to Eric Edelman at Crown Prince's dinner in Jeddah. Rec'd—March 16, 2002. Est. Value—$1790. Archives Foreign. Stainless steel Concord Sportivo men's bracelet watch with chronograph dial, quartz movement. Given to John Hannah at Crown Prince's dinner in Jeddah. Rec'd—March 16, 2002. Est. Value—$1790. Archives Foreign.	His Royal Highness, Abdallah Bin Abd Al-Aziz, Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
119371/BOYER_C, Vice President Staff.	Small Arabic stained wooden chest, hinged lid with brass latch, 3 drawers, elaborate brass decoration on lid and sides, measures 14″ by 30″ by 16″ ($150) Book: UAE Yearbook 2000–2001 ($14) Brass gahwa, 15″ high ($25) Framed silver 6 inch engraved dagger, in wood-framed double-matted shadow box, 12″ by 14″ ($150) Four yards cotton dress material with silver braid at neckline ($100) Woven horse blanket, 30″ by 70″ ($35) Given to Lea Berman. Rec'd—March 16, 2002. Est. Value—$474. Archives Foreign. Small Arabic stained wooden chest, hinged lid with brass latch, 3 drawers, elaborate brass decoration on lid and sides, measures 14″ by 30″ by 16″ ($150) Book: UAE Yearbook 2000–2001 ($14) Brass gahwa, 15″ high ($25) Framed silver 6 inch engraved dagger, in wood-framed, double-matted shadow box, 12″ by 14″ (150) Four yards cotton dress material with silver braid at neckline ($100) Woven horse blanket, 30″ by 70″ ($35) given to Laura Chadwick. Rec'd—March 16, 2002. Est. Value—$474. Archives Foreign.	His Highness Shaykh Zayid bin Sultan Al Nahayyan, President of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116474/BOYER_C, Vice President Staff.	Black silk abaya, with rhinestones and gold lace. Given to Mary Matalin. Rec'd—March 16, 2002. Est. Value—$250. Personally retained by staff member. Seven boxes of Saudi traditional men's clothing were given to members of the VP's delegation to the Middle East. Two long white cotton shirts, complete headress, leather sandals, and prayer beads in green leather case. Each gift was valued at $250 by James Keshsishian. One box was sent to State Department Office of Protocol for Ambassador Burns; another box was sent to the President's gift unit for General Wayne Downing. The remaining five boxes were intended for members of the Vice President's personal staff. Rec'd—March 16, 2002. Est. Value—$1750. Archives Foreign.	His Majesty, Fahd Bin Abd Al-Aziz Al Saud, Custodian of the Two Holy Mosques and King of Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
116511/BOYER_C, Vice President Staff.	Women's 22k gold bracelet with two rows of small cultured egg-shaped freshwater pearls. For Lea Berman. Rec'd—March 18, 2002. Est. Value—$450. Transferred to the General Services Administration. Seven boxes of Saudi traditional men's clothing were given to members of the VP's delegation to the Middle East. Two long white cotton shirts, complete headress, leather sandals, and prayer beads in green leather case. Each gift was valued at $250 by James Keshsishian. One box was sent to State Department Office of Protocol for Ambassador Burns; another box was sent to the President's gift unit for General Wayne Downing. The remaining five boxes were intended for members of the Vice President's personal staff. Rec'd—March 16, 2002. Est. Value—$1750. Archives Foreign.	His Highness Shaykh Saad al-Abdullah Al-Salim Al Sabah, Crown Prince and Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
116511/BOYER_C, Vice President Staff.	Women's 22k gold bracelet with two rows of small cultured egg-shaped freshwater pearls. For Lea Berman. Rec'd—March 18, 2002. Est. Value—$450. Transferred to the General Services Administration. Women's 22k gold bracelet with two rows of small cultured egg-shaped freshwater pearls. For Laura Chadwick. Rec'd—March 18, 2002. Est. Value—$450. Transferred to the General Services Administration.	His Highness Shaykh Saad al-Abdullah Al-Salim Al Sabah, Crown Prince and Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
129322/BOYER_C, Vice President Staff.	Tiffany ''Metropolis'' crystal bud vase. Measures 10 inches high. Given to Lewis Libby. Rec'd—December 12, 2002. Est. Value—$110. Archives Foreign. Tiffany crystal bowl. Measures 4 inches high and 5 inches in diameter. Given to Eric Edelman. Rec'd—December 12, 2002. Est. Value—$100. Archives Foreign. Tiffany crystal bowl. Measures 4 inches high and 5 inches in diameter. Given to John Hannah. Rec'd—December 12, 2002. Est. Value—$100. Archives Foreign. Tiffany crystal bowl. Measures 4 inches high and 5 inches in diameter. Given to Dr. Tom Parker. Rec'd—December 12, 2002. Est. Value—$100. Archives Foreign.	His Excellency Salem Abdullah Al-Jaber Al-Sabah & Mrs. Rima R. Al-Sabah, Embassy of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES SENATE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Max Baucus, U.S. Senator	Ceramic Plate with 24 Karat gold trim. June 11, 2002—Est. Value—More than $100. Deposited with Secretary of the Senate.	Prince Bandar Bin Sultan, Embassy of Saudi Arabia.	Non-acceptance would cause donor embarrassment.
Joseph Biden, U.S. Senator	Needlepoint picture of a bowl and flowers. April 23, 2002—Est. Value—Over $100. Deposited with the Secretary of the Senate.	Do Van Tai, Chairman of the Foreign Committee of the National Assembly of Vietnam.	Non-acceptance would cause donor embarrassment.
Sam Brownback, U.S. Senator	Souvenir Set of Coins. March 15, 2002—Est. Value—Over $100. Deposited with the Secretary of the Senate.	President Islam A. Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Sam Brownback, U.S. Senator	Silver Flatware set for six. March 15, 2002—Est. Value—$500–700. Deposited with the Secretary of the Senate.	President Islam A. Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Hillary Rodham Clinton, U.S. Senator.	Hermes Scarf. March 3, 2002—Est. Value—$275. Deposited with the Secretary of the Senate.	Jean Claude Juncher, Prime Minister of Luxembourg.	Non-acceptance would cause donor embarrassment.
Susan Collins, U.S. Senator	Set of 12 Commemorative Uzbekistan silver coins in wood presentation box. January 6, 2002. Est. Value—$200. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Tom Daschle, U.S. Senator	Wooden Chalice with gold outlines. February 11, 2002—Est. Value—$300. Deposited with the Secretary of the Senate.	Amir of Qatar Hamad Bin Khalifa Al-Thani.	Non-acceptance would cause donor embarrassment.
Tom Daschle, U.S. Senator	Sterling Silverware. January 19, 2002—Est. Value—$500–700. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Tom Daschle, U.S. Senator	4′x6′ Red Silk and Wool Rug. February 11, 2002—Est. Value—$300. Displayed in SH–509.	Chairman Karzai of Afghanstan	Non-acceptance would cause donor embarrassment.
John Edwards, U.S. Senator	Set of 12 Sterling Silver Coins. January 6, 2002—Est. Value—$200. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Diane Feinstein, U.S. Senator	Wicker Basket containing cookies, nuts, candies, cheeses, crackers and other edibles. December 12, 2002—Est. Value—$200. Donated to Charity, House of Ruth, Washington, DC.	Bader Omar Al-Dafa, Ambassador of Qatar.	Non-acceptance would cause donor embarrassment.
Chuck Hagel, U.S. Senator	Set of 12 Sterling Silver Souvenir Coins. January 6, 2002—Est. Value—$200. Displayed in SR–246.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Edward Kennedy, U.S. Senator	Hanging tiled wall mosaic. August 1, 2001—Est. Value—$1500. Displayed in SR–319.	President Bouteflika of Algeria	Non-acceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Six piece, 22 karat Place setting. July 22, 2003—Est. Value—Over $100. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Joe Lieberman, U.S. Senator	Sterling Silver Decorative Jar. January 4, 2002—Est. Value—$250. Deposited with the Secretary of the Senate.	Prime Minister of Ecevet of Turkey.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Joe Lieberman, U.S. Senator	Sterling Silverware. January 6, 2002—Est. Value—$500–700. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Joe Lieberman, U.S. Senator	Set of 12 Sterling Silver Coins. January 6, 2002—Est. Value—$200. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
John McCain, U.S. Senator	Set of 12 Sterling Silver Coins. January 3, 2002—Est. Value—$200. Displayed in SR–241.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Bill Nelson, U.S. Senator	Set of 12 Sterling Silver Coins. January 6, 2002—Est. Value—$200. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Bill Nelson, U.S. Senator	Rug. April 14, 2001—Est. Value—Over $100. Displayed in SH–716.	President of Algeria, H.E. Abdelaziz Bouteflika.	Non-acceptance would cause donor embarrassment.
Bill Nelson, U.S. Senator	Rug. July 12, 2001—Est. Value—Over $100. Displayed in SH–716.	President of Azerbaijan Heyder Aliyev.	Non-acceptance would cause donor embarrassment.
Jack Reed, U.S. Senator	Set of 12 Sterling Silver coins. January 6, 2002—Est. Value—$200. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
Richard Shelby, U.S. Senator	Portrait of Ethiopian Monk. August 19, 2002—Est. Value—Over $100. Deposited with the Secretary of the Senate.	Prime Minister Meles Zenawi of Ethiopia.	Non-acceptance would cause donor embarrassment.
Arlen Specter, U.S. Senator	Portrait of Ethiopian Monk. August 19, 2002—Est. Value—Over $100. Deposited with Secretary of the Senate.	Prime Minister Meles Zenawi of Ethiopia.	Non-acceptance would cause donor embarrassment.
Fred Thompson, U.S. Senator	Set of 12 Sterling Silver Coins. January 6, 2002—Est. Value—$200. Deposited with Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.
John Warner, U.S. Senator	Sterling Silverware, Service for Six. July 22, 2002—Est. Value—$400. Deposited with the Secretary of the Senate.	President Islam Karimov of Uzbekistan.	Non-acceptance would cause donor embarrassment.

AGENCY: UNITED STATES SENATE

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joe Biden, U.S. Senator	Transportation by air from Islamabad, Pakistan to Kabul Afghanistan, January 10, 2002.	World Food Program, A United Nations Agency.	Official travel to Afghanistan. No commercial air travel available; no U.S. military aircraft available.
Joe Biden, U.S. Senator	One night lodging and meals, December 6–7, 2002.	Kurdish Regional Government	Official travel to Northern Iraq. Security and diplomatic considerations required acceptance.
Joe Biden, U.S. Senator	One night lodging and meals, December 8, 2002.	Government of Saudi Arabia	Official travel to meet U.S. troops and Saudi officials. Refusal to accept would have caused diplomatic embarrassment to United States Government.
Jonah Blank, Professional Staff Member, Committee on Foreign Relations.	Transportation by air from Islamabad, Pakistan to Kabul Afghanistan, January 10, 2002.	World Food Program, A United Nations Agency.	Official travel to Afghanistan. No commercial air travel available; no U.S. military aircraft available.

AGENCY: UNITED STATES SENATE—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Jonah Blank, Professional Staff Member, Committee on Foreign Relations.	Transportation within Pakistan via Helicopter to military installations, including lodging and meals, August 29–30, 2002.	Government of Pakistan	Official visit to view posts on the line of Control. No commercial transportation was available to these sites.
Antony Blinken, Staff Member, Committee on Foreign Relations.	One night lodging and meals, December 6–7, 2002.	Kurdish Regional Government	Official travel to Northern Iraq. Security and diplomatic considerations required acceptance.
Antony Blinken, Staff Member, Committee on Foreign Relations.	One night lodging and meals, December 8, 2002.	Government of Saudi Arabia	Official travel to meet U.S. Troops and Saudi officials. Refusal to accept would have caused diplomatic embarrassment to the United States Government.
Jean Carnahan, U.S. Senator	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Susan Collins, U.S. Senator	Transporation within Pakistan; islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Joni Crosley, Legislative Assistant to Senator George Voinovich.	Transportation within Brussels, Belgium via ground transportation, lodging and some meals, January 7–12, 2002.	The Atlantic Council	Travel to Meet with NATO and European Union Officials, as well as U.S. personnel overseas.
Joni Crosley, Legislative Assistant to Senator George Voinovich.	Transportation within the Republic of China, including lodging and meals, August 19–25, 2002.	Chinese Association of Industry and Commerce.	Travel to examine US–ROC foreign policy, trade, and security issues. As well as ROC–PRC and US–PRC relations.
Fred Downey, Office of Senator Joe Lieberman.	Transporation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Mark Esper, Professional Staff Member, Committee on Foreign Relations.	Transporation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Chuck Hagel, U.S. Senator	Transporation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Chuck Hagel, U.S. Senator	One night lodging and meals, December 6–7, 2002.	Kurdish Regional Government	Official travel to Northern Iraq. Security and diplomatic considerations required acceptance.
Chuck Hagel, U.S. Senator	One night lodging and meals, December 8, 2002.	Government of Saudi Arabia	Official travel to meet U.S. Troops and Saudi officials. Refusal to accept would have caused diplomatic embarrassment to the United States Government.
Julia Hart, Office of Inter-Parliamentary Services.	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Liz King, Office of Senator Jack Reed.	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Norm Kurz, Communications Director of Senator Joe Biden.	Transportation by air from Islamabad, Pakistan to Kabul Afghanistan, January 10, 2002.	World Food Program, United Nations Agency.	Official travel to Afghanistan. No commercial air travel available; no U.S. miliary aircraft available.
Miles Lackey, Office of Senator John Edwards.	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Carolyn Leddy, Staff Member, Committee on Foreign Relations.	Transporation to and from Arianespace launch facilities within French Guiana, August 26–29.	Centre National d'Etordes Spatiales (CNES), Government of France.	Fact finding trip related to Arianespace commercial space launch facilities and CNES space activity in French Guiana.
Joe Lieberman, U.S. Senator	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
John McCain, U.S. Senator	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.

AGENCY: UNITED STATES SENATE—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Patricia McNeary, Republican Staff Director, Committee on Foreign Relations.	Transportation within Norway, August 11–17, 2002.	Government of Norway	Attend Arctic Parliamentary Conference, and to visit sites related to nuclear waste clean up.
Bill Nelson, U.S. Senator	Transportaion within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Aric Newhouse, Legislative Director to Senator George Voinovich.	Transportaion within Brussels, Belgium via ground transportation, lodging and some meals, January 7–12, 2002.	The Atlantic Council	Travel to Meet with NATO and European Union Officials, as well as U.S. personnel overseas.
Aric Newhouse, Legislative Director to Senator George Voinovich.	Transportaion within the Republic of China, including lodging and meals, August 19–25, 2002.	Chinese Association of Industry and Commerce.	Travel to examine US–ROC foreign policy, trade, and security issues. As well as ROC–PRC and US–PRC relations.
Andrew Parasiliti, Foreign Policy Advisor, Office of Senator Chuck Hagel.	Transportaion within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Andrew Parasiliti, Foreign Policy Advisor, Office of Senator Chuck Hagel.	One night lodging and meals, December 6–7, 2002.	Kurdish Regional Government	Official travel to Northern Iraq. Security and diplomatic considerations required acceptance.
Andrew Parasiliti, Foreign Policy Advisor, Office of Senator Chuck Hagel.	One night lodging and meals, December 8, 2002.	Government of Saudi Arabia	Official travel to meet U.S. Troops and Saudi officials. Refusal to accept would have caused diplomatic embarrassment to the United States Government.
Jack Reed, U.S. Senator	Transportaion within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Puneet Talwar, Professional Staff Member, Committee on Foreign Relations.	Transportation by air from Islamabad, Pakistan to Kabul Afghanistan, January 10, 2002.	World Food Program, United Nations Agency.	Official travel to Afghanistan. No commercial air travel available; no U.S. miliary aircraft available.
Puneet Talwar, Professional Staff Member, Committee on Foreign Relations.	Government of Saudi Arabia provided lodging in guest quarters as well as two meals, August 10–11, 2002.	Government of Saudi Arabia	Non-acceptance would have caused diplomatic embarrassment to the United States government.
Puneet Talwar, Professional Staff Member, Committee on Foreign Relations.	Six nights lodging and meals, October 24–29, 2002.	Kurdish Regional Government	Official travel to Northern Iraq. Security and diplomatic considerations required acceptance.
Puneet Talwar, Professional Staff Member, Committee on Foreign Relations.	One night lodging and meals, December 6–7, 2002.	Kurdish Regional Government	Official travel to Northern Iraq. Security and diplomatic considerations required acceptance.
Puneet Talwar, Professional Staff Member, Committee on Foreign Relations.	One night lodging and meals, December 8, 2002.	Government of Saudi Arabia	Official travel to meet U.S. Troops and Saudi officials. Refusal to accept would have caused diplomatic embarrassment to the United States Government,
Fred Thompson, U.S. Senator	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
Dan Twining, Office of Senator John McCain.	Transportation within Pakistan; Islamabad to Khyber Pass and return, January 8, 2002.	Government of Pakistan	No commercial flights available; non-acceptance would cause embarrassment.
George Voinovich, U.S. Senator	Transportation within the Republic of China, including lodging and meals, August 19–25, 2002.	Chinese Association of Industry and Commerce.	Travel to examine US–ROC foreign policy, trade, and security issues. As well as ROC–PRC and US–PRC relations.
George Voinovich, U.S. Senator	Transportation within Brussels, Belgium via ground transportation, lodging and some meals, January 7–12, 2002.	The Atlantic Council	Travel to meet with NATO and European Union Officials, as well as U.S. personnel overseas.
Peter Zimmerman, Chief Scientist, Committee on Foreign Relations.	Government helicopter from Longyearbyen to Ny Aalesund, Svalbard, Norway including lunch, August 13, 2002.	Government of Norway	Official travel to view arctic research station. No commercial transportation was available to sites.

AGENCY: UNITED STATES SENATE—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Peter Zimmerman, Chief Scientist, Committee on Foreign Relations.	Transportation by Zodiac boat to view solar powered remote lighthouse built by Norway as prototype for replacing radioactive isotope powered lighthouse in Russia, August 14, 2002.	Government of Norway	Official travel to view arctic environmental risk areas. No commercial transporation was available to these sites.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mike McIntrye, Member of Congress.	Bokhara rug. Received August 2002. Value—$350.00. On display in Rep. McIntrye's district office in Wilmington, North Carolina.	Hamid Karzi, President, Government of Afghanistan.	Non-acceptance would have caused embarrassment to donor.
Bob Stump, Member of Congress	Silver plated coffee server, brass trim, long handle and spout; oriental design. Received March 12, 2002. Value—$400.00. Displayed in Rep. Stump's office in 2002 and delivered to the Clerk's office prior to Rep. Stump's departure from office.	His Highness Sheikh Hamad Bin Khalifa A-Thani, The Emir of the State of Qatar.	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Cass Ballenger, Member of Congress.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Jessica H. Baumgarten, Subcommittee on the Western Hemisphere.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Patrick T. ''Ted'' Brennan, Subcommittee on the Western Hemisphere.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Linda Danforth, Rep. Adam Smith	Lodging and meals in Wuxi, meals in Shanghai, bus transportation, Sept. 4–Sept. 10, 2002.	Governments of Beijing, Wuxi, and Shanghai, Peoples' Republic of China.	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Elton Gallegly, Member of Congress.	Lodging, meals and land transportation in Ecuador for Member and spouse, January 17–20, 2002.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Kirsti T. Garlock, House International Relations Comm.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Caleb McCarry, Subcommittee on the Western Hemisphere.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
John P. Mackey, International Relations Committee.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Collin C. Peterson, Member of Congress.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).
Paul L. Oostburg Sanz, International Relations Committee.	2 night stay aboard M/V Galapagos Explorer II and all meals aboard ship, January 16–18, 2002, for fisheries study and discussions with government officials.	Government of Ecuador	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).

AGENCY: DEPARTMENT OF STATE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
T.H. Colin L. Powell, Secretary of State.	Bust 10″ and plaque 13½ H (framed), polychromed carved stone, together with a videotape. Rec'd—9/5/02. Est. Value—$400.00. Pending transfer to the General Services Administration.	H.E. Jean Ping, Minister of State for Foreign Affairs, Cooperation and Francophonie Affairs of the Gabonese Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Ice pail, 4⅞″ H x 6″ diameter across, two lug handles with pendant rings, 900 silver, by Romana, Colombia, 8 ozs T. Rec'd—12/4/02. Est. Value—$425.00. Pending transfer to the General Services Administration.	H.E. Carolina Barco, Minister of Foreign Relations of the Republic of Colombia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Vase, 6″ H, sterling silver, copy of an ancient Greek design, 6 ozs T. Rec'd—11/21/02. Est. Value—$300.00. Pending transfer to the General Services Administration.	H.E. George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
T.H. Colin L. Powell, Secretary of State.	Vase, 6½″ H, Moser faceted crystal of tapering form, Czech Republic, late 20th/early 21st century. Rec'd—11/21/02. Est. Value—$400.00. Pending transfer to the General Services Administration.	H.E. Cyril Svoboda, Minister of Foreign Affairs of the Czech Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Briefcase, black leather, Mexico, together with a Sheaffer ballpoint pen. Rec'd—10/24/02. Est. Value—$3,500.00. Pending transfer to the General Services Administration.	H.E. Jorge Castaneda, Secretary of Foreign Relations of Mexico.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Coin, 1⅜″ diameter, gold proof, Bahamas commemorative 1973–1998, $250 face value, 47.5g, limited edition #126/250. Rec'd—2/7/02. Est. Value—$500.00. Pending transfer to the General Services Administration.	H.E. Hubert A. Ingraham, Prime Minister of the Commonwealth of the Bahamas.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Antique Glass Bowl. Rec'd—5/1/02. Est. Value—$400.00. Pending transfer to the General Services Administration.	Lt. General Shaul Mofaz, Chief of General Staff, Government of Israel.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Cigarette Box, 6″ L, sterling silver inlaid with pieces of chilean lapis lazuli, engraved with dedication, 13 oz. Rec'd—1/28/02. Est. Value—$300.00. Pending transfer to the General Services Administration.	H.E. Maria Soledad Alvear Valenquela, Minister of Foreign Relations of the Republic of Chile.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Floor screen, 68½″ x 17¼″ each of four panels, carved and pierced teakwood. Rec'd—1/1602. Est. Value—$750.00. Pending transfer to the General Services Administration.	H.E. Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Cigarette box, 7″ L rectangular, silver, lid with repousse decoration, wood lined, Thailand, 14 ozs T. Rec'd—10/9/02. Est. Value—$400.00. Pending transfer to the General Services Administration.	H.E. Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Paperweight, 2⅝″ diameter, sterling silver with parcel gilding, Jerusalem, by A. Klein. Rec'd—5/1/02. Est. Value—$500.00. Pending transfer to the General Services Administration.	H.E. Ariel Sharon, Prime Minister of Israel.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Coins, 100 So'm, silver proofs, 10 oz T each, Uzbekistan. Rec'd—11/23/02. Est. Value—$300.00. Pending transfer to the General Services Administration.	H.E. Islam A. Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Table decoration, 8½″ H, gold palm tree with lapis lazuli, rock crystals ball mounted with a map of Saudi Arabia set with three tiny emeralds (Riyadh, Mecca and Medina (probably), rock crystal stem, leather box. Rec'd—4//24/02. Est. Value—$10,000.00. Pending transfer to the General Services Administration.	H.R.H. Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
T.H. Colin L. Powell, Secretary of State.	Bowl, pottery, 10½″ diameter set with pierced yellow gold mounts, by Laghrissi Fafi, leather box. Rec'd—4/22/02. Est. Value—$1,000.00. Pending transfer to the General Services Administration.	H.M. Mohammed Vi, King of Morocco.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Vase 11½″ H, silver, repousse floral decoration, 18ozsT. Rec'd—4/5/02. Est. Value—$450.00. Pending transfer to the General Services Administration.	H.E. Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Figure, 9″ H, weighted silver decorated with polychrome enamels depicting an elephant with mahout. Rec'd—1/1/02. Est. Value—$450.00. Pending transfer to the General Services Administration.	H.E. Lal Krishna Advani, Minister of Home Affairs of the Republic of India.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Coins, silver proof, 100 Som, wood Box and Flatware, sterling silver, 6 dinner knives, 6 demitasse spoons, 6 soup spoons, 6 dinner forks, fitted box. Rec'd—3/12/02. Est. Value—$1,450.00. Pending transfer to the General Services Administration.	H.E. Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Wristwatch, man's, stainless steel Breitling ''Emergency'' with transmitter tester and case. Rec'd—5/6/02. Est. Value—$2,700.00. Pending transfer to the General Services Administration.	H.E. Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Cigarette box, 8¾″ L, handwrought sterling silver, engraved with dedication, 34ozsT. Rec'd—3/23/02. Est. Value—$450.00. Pending transfer to the General Services Administration.	H.E. Diego Garcia Sayan, Minister of Foreign Relations of the Republic of Peru.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Cufflinks, 18 karat white gold disks bearing crests, each set with 28 round diamonds TW 56 points both. Rec'd 4/29/02. Est. Value—$1,500.00. Pending transfer to the General Services Administration.	H.E. Milo Djukanovic, President of the Republic of Montenegro.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Carpet, 7′10″ x 6′4″, wool on cotton, two tone green field with sculpted modern decoration. Rec'd—1/18/02. Est. Value—$1,000.00. Pending transfer to the General Services Administration.	H.E. Sher Bahadur Deuba, Prime Minsiter of Nepal.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Chess set, tooled leather case, camel bone chessmen, 20th/21st century. Rec'd—9/23/02. Est. Value—$350.00. Pending transfer to the General Services Administration.	H.E. Askar Akayev, President of the Kyrgyz Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
T.H. Colin L. Powell, Secretary of State.	Wristwatches, man's, 18 karat white gold case and bracelet, Piaget ''Dancer'', burlwood case. Rec'd—8/1/02. Est. Value—$16,000.00. Pending transfer to the General Services Administration.	H.M. Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam, Bandar Seri Begawan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Medal, bronze, Bartholomew 1. Rec'd—3/5/02. Est. Value—$500.00. Pending transfer to the General Services Administration.	His All Holiness Bartholomew, Archbishop of Constantinople, New Rome and Ecumenical Patriarch.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Charger, 9¾″ diameter, 900 silver, repousse decoration of Madonna and Child, Greece, 2002, 140ozsT. Date Rec'd—3/5/02. Est. Value—$550. Pending transfer to the General Services Administration.	His All Holiness Bartholomew Archbishop of Constantinople, New Rome and Ecumenical Patriarch.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Bowl, 6″ diameter, polished black stone bowl resting on a sterling silver star shape base, has a face at each point. Mexico, 7 ozsT. Rec'd:—10/24/02. Est. Value—$300.000. Pending transfer to the General Services Administration.	H. E. Jorge Castaneda, Secretary of Foreign Relations of Mexico.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Bottle of vodka in the form of a Khalashnikov rifle, fitted green painted wood case, Russia, 20th/21st century. Rec'd—4/10/02. Est. Value—$450.00. Pending transfer to the General Services Administration.	H.E. Igor Ivanov, Minister of Foreign Affairs of the Russian Federation.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Pastel, 16″ x 11½″, Caricature portrait of Colin Powell, by Stefan Papa, Romanian, late 20th century, metal frame, fitted leatherette case. Rec'd:—11/23/02. Est. Value—$300.00. Pending transfer to the General Services Administration.	H.E. Ion Iliescu, President of Romania.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Dress sword, chromed metal, lion head pommel with two red garnet eyes, by Carl Eickhorn, Solingen, Germany. Rec'd:—11/23/02. Est. Value: $550.00. Pending transfer to the General services Administration.	H.E. Ion Iliescu, President of Romania.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Sculpture, 8¾″ H, patinated and polished bronze, Madonna and Child, b Mpanda Vita, Angola, wood base. Rec'd:—10/9/02. Est. Value—$400.00. Pending transfer to the General Services Administration.	H.E. Jose Eduardo dos Santos, President of the Republic of Angola.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Sculpture, 7⅝″ L, white marble, polar bear by Wilbur Hobbs, Inuit.	T.H. William Graham, Minister of Foreign Affairs of Canada.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Colin L. Powell, Secretary of State.	Tray, 11¾″ diameter, silver plate, Christofle, France. Rec'd:—4/15/02. Est. Value:—$450.00. Pending transfer to the General Services Administration.	H.E. Emile Lahoud, President of the Republic of Lebanon.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
T.H. Colin L. Powell, Secretary of State.	Carpet, 6′5″ × 8′10″, wool on cotton, dark bule field with overall polychrome scrolling, multiple borders, Afghanistan. Rec'd:—1/28/02. Est. Value:—$500.00. Pending transfer to the General Services Administration.	H.E. Hamid Karazi, Chairman of the Afghanistan Interim Authority.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Mrs. Alma Powell, Spouse of the Secretary of State.	Wristwatch, woman's stainless steel case with 120 tiny diamonds set to bezel and face TW 1.2 carat, blue straps, Techno Marine. Rec'd:—8/1/02. Est. Value:—$1,000.00. Pending transfer to the General Services Administration.	Her Majesty Raja Isteri Pengiram Anak Hajah Saleha, First Wife of the Sultan of Brunei.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Mrs. Alma Powell, Spouse of the Secretary of State.	Minaudiere, 7½″ L oval, woven ''Yan Lipao'' basketry having 18 karat yellow gold mounts and swing handle set with a total of 147 diamonds TW 2 carats. Rec'd:—10/16/02. Est. Value—$4,000.00. Pending transfer to the General Services Administration.	H.M. Queen Sirikit of Thailand	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Mrs. Alma Powell, Spouse of the Secretary of State.	Vase, 10¼″ H, Britannia Heritage porcelain with polychrome floral encrustation, late 20th century, England. Rec'd:—7/31/02. Est. Value:—$400.00. Pending transfer to the General Services Administration.	H.R.H. Penigiran Isteri Hajah Mariam, Second Wife of the Sultan of Brunei.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Mrs. Alma Powell, Spouse of the Secretary of State.	Brooch, 18 karat yellow and white gold floral mounting set with 218 round diamonds TW 4.36 carats and 11 round diamonds TW 1.65, by deFred. Rec'd—08/01/02. Est. Value:—$3,850.00. Pending transfer to the General Services Administration.	Her Majesty Raja Isteri Pengiram Anak Hajah Saleha, First Wife of teh Sultan of Brunei.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Mrs. Alma Powell, Spouse of the Secretary of State.	Woven polychrome ''yan lipao'' straw envelope containing two pieces of handwoven fabric, Thai ''Hill Tribe'' work. Rec'd—10/16/02. Est. Value:—$250.00.Pending transfer to the General Services Administration.	H.M. Queen Sirikit of Thailand	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Albright, Madeleine K., former Secretary of State.	Carpet, 6′8″ x 10′3″, wool on cottonkilim, blue field with polychrome decoration, Bosnia Rec'd:—3/9/00. Est. Value:—$850.00. Pending transfer to the General Services Administration.	Family in Bosnia	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Albright, Madeleine K., former Secretary of State.	Pastel, 23 ¼″ x 17 ¼″, Sloth, by Luisa Periaza, late 20th century, matted and framed, Costa Rica. Rec'd:—5/7/97. Est. Value:—$400.00. Pending transfer to the General Services Administration.	Ms. Luisa Periaza, Costa Rica	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Albright, Madeleine K., former Secretary of State.	Painting, oil on canvas, 8″ x 9 ¾″, bread and doughnuts, by Marite lagunes, late 20th century, matted and framed, Mexico. Rec'd:—5/1/97. Est. Value:—$300.00. Pending transfer to the General Services Administration.	Ms. Maria Teresa Lagunes, Mexico.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Albright, Madeleine K., former Secretary of State.	Bows, lacquered wood, signed, together with four arrows having handwrought pints, black lacquered wood stand, late 20th century, Japan. Rec'd:—7/12/00. Est. Value:—$1,000.00. Pending transfer to the General Services Administration.	Governor of Miyazaki Suketaka Matsukata.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Albright, Madeleine K., former Secretary of State.	Scaft, Silk, Hermes, Paris. Rec'd:—12/8/98. Est. Value:—$375.00. Pending transfer to the General Services Administration.	M. Badinter, France	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Albright, Madeleine K., former Secretary of State.	Miniature coach and horses, silver, wood base, glass case, Indonesia. Rec'd:—1/4/00. Est. Value:—$300.00. Pending transfer to the General Services Administration.	Mr. Tony Winata, Indonesia	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Ensenat, Donald B., Ambassador, Chief of Protocol of the United States.	Wristwatch, man's, stainless steel case, Bulgari ''Rettangolo'' #RT45SJ19334, black leather strap. Rec'd:—5/1/02. Est. Value:—$2,350.00. Pending transfer to the General Services Administration.	H.R.H. Abdallah bin Abd al-Aziz Al Saud Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Kattauouf, Theodore H., U.S. Ambassador to the United Arab Emirates.	Wristwatch, man's, gold filled and stainless steel case, by Paola del Lungo. Rec'd:—6/1/02. Est. Value:—$500.00. Pending transfer to the General Services Administration.	Abdul Rahman Alokazay, Managing Director of Al-Wali Trading.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Kattauouf, Theodore H., U.S. Ambassador to the United Arab Emirates.	Wristwatch, woman's, gold filled and stainless steel case, by Paola del Lungo. Rec'd:—6/1/02. Est. Value:—$500.00. Pending transfer to the General Services Administration.	Abdul Rahman Alokazay, Managing Director of Al-Wali Trading.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Kattauouf, Theodore H., U.S. Ambassador to the United Arab Emirates.	Wristwatches, stainless steel, man's plain, woman's set with 59 diamonds. Rec'd:—6/1/02. Est. Value:—$3,000.00. Pending transfer to the General Services Administration.	Abdul Rahman Alokazay, Managing Director of Al-Wali Trading.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Keshap, Atul, Special Assistant to the Under Secretary of State for Political Affairs.	Eterna Men's Watch. Rec'd—10/29/02. Est. Value—$500.00. Pending transfer to the General Services Administration.	H.E. Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Kraus, Martin, Special Agent, Diplomatic Security.	Rolex Watch. Rec'd—1/30/02. Est. Value—$4,000.00. Pending transfer to the General Services Administration.	Major Mohammed Al-Junaibi, United Arab Emirates.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Mr. Randy Bumgardner, Assistant Chief of Protocol, General Manager of Blair House.	Wristwatch, man's, stainless steel, Rolex Oyster Perpetual ''Datejust'' Saudi Arabia Coat of Arms. Rec'd—9/25/02. Est. Value—$3,250.00. Pending transfer to the General Services Administration.	H.E. Abd al-Aziz Al Saud, Crown Prince of Saudi Arabia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ross, Dennis B., Special Middle East Coordinator (SMEC).	Engraved Picture Frame. Rec'd—10/28/97. Est. Value—$270.00. Pending transfer to the General Services Administration.	Woodrow Wilson House	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Sembler, Melvin, Ambassador to Italy.	Wristwatch, man's, 18 karat yellow gold case and bracelet, Etherna #5001.68. Rec'd—12/10/01. Est. Value—$8,000.00. Pending transfer to the General Services Administration.	H.E. Silvion Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Sembler, Melvin, Ambassador to Italy.	Wristwatch, man's, stainless steel and 18 karat yellow gold case and bracelet, ''Scuba'' model, #LCF35SCD10946, Italy (lacing arrantee, instruction booklets) Rec'd—12/10/01. Est. Value—$6,000.00. Pending transfer to the General Services Administration.	H.E. Silvio Berlusconi, President of the Council of Ministers of the Italizn Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Shear, David, Minister Counselor for Political Affairs, American Embassy, Tokyo.	Wristwatch. Rec'd—11/21/02. Est. Value—$300.00. Pending transfer to the General Services Administration.	Tsuyoshi Yamaguchi, Diet Member, Tokyo, Japan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Beth Jones, Assistant Secretary for European and Eurasian Affairs.	Vase, ''Liberty'' reproduction from the Liberty Collection introduced by Ginori in 1905, numbered A187. Rec'd—5/28/02. Est. Value—$500.00. Pending transfer to the General Services Administration.	H.E. Silvion Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Johnny Young, U.S. Ambassador to Bahrain.	Tray, 15¼″ diameter, silver plate, Christofle, France. Rec'd—8/23/02. Est. Value—$500.00. Pending transfer to the General Services Administration.	H.E. Mohamed bin Khalifa Al-Khalifa, Minister of the Interior, Kingdom of Bahrain.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Marcelle Wahba, U.S. Ambassador to United Arab Emirates.	21K Gold Necklace with Seed Pearls. Rec'd—11/25/02. Est. Value—$3,676.00. Pending transfer to the General Services Administration.	Sheikha Fatimah, First Lady of the United Arab Emirates.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Marcelle Wahba, U.S. Ambassador to United Arab Emirates.	Dupont Platinum Lighter. Rec'd—12/25/02. Est. Value—$1,906.00. Pending transfer to the General Services Administration.	H.E. Abdullah M. Al Uthman, Qatari Ambassador to the United Arab Emirates.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
T.H. Robert W. Jordan, U.S. Ambassador to Saudi Arabia.	Wristwatches (2)—His and hers Bulgari wristwatches—gold circular face, croc strap. Rec'd—4/25/02. Est. Value—$6,000.00. Pending transfer to the General Services Administration.	H.R.H. Abdulah bin Abdulaziz, Crown Prince of Saudi Arabia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF THE TREASURY

[Report of Tangible Gifts, Calendar Year 2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition	Identity of foreign donor and government	Circumstances justifying acceptance
Michele Davis, Assistant Secretary (Public Affairs).	Gold commemorative coin. Rec'd—March 4, 2002. Est. Value—$395. Treasury retained on August 23, 2002.	Abdulla Saif, Finance Minister, Government of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE TREASURY—Continued

[Report of Tangible Gifts, Calendar Year 2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition	Identity of foreign donor and government	Circumstances justifying acceptance
Paul H. O'Neill, Secretary	Gold commemorative coin. Rec'd—March 8, 2002. Est. Value—$395. Treasury retained on August 23, 2002.	Abdulla Saif, Finance Minister, Government of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Gold commemorative coin. Rec'd—March 5, 2002. Est. Value—$500. Treasury retained on August 27, 2002.	Salem Abdulaziz Al-Sabab, Governor, Central Bank of Kuwait, Government of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Sterling silver flatware (6 sets). Rec'd—March 5, 2002. Est. Value—$779.70. Treasury retained on August 23, 2002.	Islam Karimov, President, Government of Uzbekistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Silver dagger. Rec'd—March 22, 2002. Est. Value—$300. Treasury retained on August 23, 2002.	Abdulla Saif, Finance Minister, Government of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Juan Zarate, DAS, Terrorism & Violent Crime.	Gold commemorative coin. Rec'd—March 4, 2002. Est. Value—$395. Treasury retained on August 23, 2002.	Abdulla Saif, Finance Minister, Government of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Nilmini Gunaratne, International Economist.	Gold commemorative coin. Rec'd—March 29, 2002. Est. Value—$395. Treasury retained on August 23, 2002.	Abdulla Saif, Finance Minister, Government of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Gold plated brass & silver tea set. Rec'd—March 5, 2002. Est. Value—$500. Treasury retained on August 23, 2002.	Ibrahim Al-Assaf, Finance Minister, Government of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Gold khanjar (dagger). Rec'd—May 6, 2002. Est. Value—$1,000. Treasury retained on August 23, 2002.	Ibrahim Al-Assaf, Finance Minister, Government of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Two handmade cold cast bronze sculptures. Rec'd—June 28, 2002. Est. Value—$760. Pending review in Treasury General Counsel.	John Kufuor, President, Government of Ghana.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Oil painting of a woman on a horse. Rec'd—July 29, 2002. Est. Value—$325. Pending review in Treasury General Counsel.	Edward Shevardnadze, President, Government of Georgian Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul H. O'Neill, Secretary	Sterling silver flatware (6 sets). Rec'd—August 8, 2002. Est. Value—$779.70. Pending review in Treasury General Counsel.	Islam Karimov, President	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John B. Taylor, Under Secretary (International Affairs).	Commemorative gold coin. Rec'd—March, 2002. Est. Value—$395.00. Treasury retained on December 31, 2002.	Abdulla H. Saif, Finance Minister, Government of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Gold Bracelet. Rec'd—Feb. 4, 2002. Est. Value—$395.00. Reported to GSA.	Minister of Defense and Military Production, Field Marshal Tantawy, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Rug 9 x 12. Rec'd—Feb. 15, 2002. Est. Value—$1,100,00. Reported to GSA.	Chairman H. Karzai, Afghanistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Rug. Rec'd—Mar. 1, 2002. Est. Value—$300.00. Reported to GSA.	Minister of Defense and Military Production, Field Marshal Tantawy, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Souvenir Set of Coins ($220.00) and Silver Tray 11½″ ($115.00). Rec'd—Mar. 13, 2002. Est. Value—$335.00. Reported to GSA for Purchase.	President Islam A. Karmiv, Uzbekistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Rug. Rec'd—Apr. 27, 2002. Est. Value—$400.00. Reported to GSA for Purchase.	Chairman H. Karzai, Afghanistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver ring w/emerald stone. Rec'd—Apr. 27, 2002. Est. Value—$425.00. Reported to GSA for Purchase.	Defense Minister Fahim Khan, Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Embroidered Velvet Robe w/hat ($160.00). Reported to GSA, Framed Rug w/Stitched picture of SecDef ($400.00). Reported to GSA for Purchase and Photo album of pictures of SecDef in Kazakstan (N/V), Reported to GSA SecDef. Retained Apr. 27, 2002.	Minister of Defense, General-Colonel Mukhtar Altynbaev, Kazakstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Rug w/heart city theme. Rec'd—Apr. 27, 2002. Est. Value—$980.00. Reported to GSA for Purchase.	President of Kryugyzstan, Askar Akayev, Krygzstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	7″ Silver dagger w/silver casing in leather case. Rec'd—Apr. 27, 2002. Est. Value—$340.00. Reported to GSA for Purchase.	Governor of Herot, Ismail Khan, Kazakstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver Dish, 9 x 8 ($265.00), Plaque (N/V), Double-barreled Shotgun w/Ammunition ($280.00) and Gold Bracelet ($1240.00) Rec'd—Sept. 17, 2002. Est. Value—$1,785.00. Reported to GSA for Purchase.	Minister of Defense and Military Production, Field Marshal, Tantawy, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Gold/Silver Stamps in wooden case, ($170.00) Reported to GSA and Antique Pistol ($2,200.00) Reported to GSA for Purchase. Rec'd—Nov. 22, 2002. Est. Value—$2,370.00.	His Excellency Rudolf Schuster, President Slovak Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Deputy Secretary of Defense.	Rug. Rec'd—Jan. 2, 2002. Est. value—$350.00. Approved for Official Display.	Field Marshall Hussein, Tantawy, MOD.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Deputy Secretary of Defense.	Coin Set. Rec'd—July 15, 2002. Est. Value—$290.00. Approved for Official Display.	S. Sargsyan, Minister of Defense, Armenia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Deputy Secretary of Defense.	Khafan Robe ($100.00), Afghan Shawl ($20.00) and Afghan Handmade Rug ($200.00), Rec'd—July 15, 2002. Est. Value—$320.00. Reported to GSA for Purchase.	Chairman H. Karzai, Afghanistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Deputy Secretary of Defense.	Diamond Crystal ($65.00) and Gold Necklace with Bug Pendant ($300.00). Rec'd—Sept. 17, 2002. Est. Value—$365.00. Reported to GSA for Purchase.	Field Marshal Hussein Tantawy, Commander in Chief of the Armed Forces, Minister of Defense and Military Production.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Deputy Secretary of Defense.	2 Silver Vases 13″ tall. Rec'd—Oct. 30, 2002. Est. Value—$370.00. Reported to GSA for Purchase.	Lt. Gen. Hamdy Weheba, Chief of Staff of the Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Paul Wolfowitz, Deputy Secretary of Defense.	Hand-woven Rug. Rec'd—July 15, 2002. Est. Value—$900.00. Reported for Purchase.	Deputy Minister of Defense, Special Rep to the North, Northern Province, Abdul Rashid Dostum.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dov S. Zakheim, USD, Comptroller.	Large Rug. Rec'd—Nov. 01, 2002. Est. Value—$1,200.00. Reported to GSA for Purchase.	General Abdul Rashid Dostum, Mazar-e-Sharif.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Peter Rodman, ASD, International Security Affairs.	Gold Bracelet. Rec'd—Oct. 23, 2002. Est. Value—$495.00. Reported to GSA for Purchase.	Lt. Gen. Hamdy Weheba, Chief of Staff of the Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Peter Rodman, ASD, International Security Affairs.	Silver Candle-holder ($100.00). Reported to GSA for Purchase and Gold Bracelet ($320.00) Reported for Purchase. Rec'd—Sept. 16, 2002. Est. Value—$420.00.	Field Marshal Hussein Tantawy, Commander in Chief of the Armed Forces, Minister of Defense and Military Production.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dr. William J. Luti, DASD, Near Eastern & South Asian Affairs.	Sportivo Wrist Watch w/Saudi Arabia Crest in Lower Left Corner. Rec'd—Mar. 31, 2002. Est. Value—$780.00. Reported to GSA for Purchase.	Crown Prince Abdullah, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Richard B. Myers, Chairman, Joint Chiefs of Staff.	Gold Necklace and Bracelet ($1,840.00) and Rectangular Persian Rug ($190.00). Rec'd—Jan. 19, 2002. Est. Value—$1,930.00. Approved for Official Display.	Field Marshall Tantawy, Minister of Defense, Egypt.	Acceptance of the gift, in the judgment of the recipient, in that refusal of the gift may have offended or embarrassed the donor.
General Richard B. Myers, Chairman, Joint Chiefs of Staff.	Sword. Rec'd—Jan. 22, 2002. Est. Value—$290.00. Approved for Official Display.	Mr. Malkawi, Minister of Defense, Jordan.	Acceptance of the gift, in the judgment of the recipient, in that refusal of the gift may have offended or embarrassed the donor.
General Richard B. Myers, Chairman, Joint Chiefs of Staff.	Gold Bracelet ($1,840.00) and Rectangular Persian Rug ($190.00). Rec'd—Jan. 22, 2002. Est. Value—$1,930.00. Approved to Official Display.	Lt. Gen. Hamdy Veheba, COS, Egyptian Armed Forces.	Acceptance of the gift, in the judgment of the recipient, in that refusal of the gift may have offended or embarrassed the donor.

AGENCY: DEPARTMENT OF THE NAVY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
RADM William M. Fogarty, COMJTF, Middle East.	Man's watch/gold bracelets/gold sword. Rec'd—Sept. 1991. Est. Value—$6500.00. Transferred to GSA on June 6, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore, Commander, U.S. Naval Forces Central Command.	Man's Omega watch w/cufflinks. Rec'd—Sept. 7, 1998. Est. Value—$7567.70. Transferred to GSA on June 6, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Charles W. Moore	Woman's Omega watch. Rec'd—Sept. 7, 1998. Est. Value—$3000. Purchased by recipient on May 23, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Man's Piaget watch. Rec'd—Mar. 1, 1999. Est. Value—$16,492.00. Transferred to GSA on June 6, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs Charles W. Moore	Woman's Piaget watch. Rec'd—Mar. 1, 1999. Est. Value—$14,896.00. Transferred to GSA June 6, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs Charles W. Moore	Coral & silver necklace/earrings. Rec'd Oct. 4, 1998. Est. Value—$319.20. Transferred to GSA June 6, 2002.	The Gov't. of Yemen	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mr Charles W. Moore	Set of 3 gold bracelets. Rec'd—Sept. 7, 1998. Est. Value—$1400. Transferred to GSA Sept. 12, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs Charles W. Moore	Double-strand pearl necklace. Rec'd—Oct. 15, 1998. Est. Value—$10,000. Transferred to GSA June 6, 2002.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Man's Ebel sportswave watch. Rec'd—May 13, 2001. Est. Value—$1,489.60. Transferred to GSA June 6, 2002.	Chief of Staff, Kuwaiti Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Brass/goldplated dhow. Rec'd—Oct. 18, 1998. Est. Value—$319.00. Approved for official use.	Dubai Ports Authority	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Omani Khanjar. Rec'd—May 23, 2000. Est. Value—$370.00. Approved for official use.	Command and Staff College, Sultan Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Goldplated and crystal camel. Rec'd—Aug. 2, 2000. Est. Value—$1995.00. Approved for official use.	Minister of Foreign Affairs, UAE	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Brass/goldplated dhow. Rec'd—May 17, 2001. Est. Value—$532–$665.00. Approved for official use.	Commander, UAE Navy	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Silver dagger. Rec'd—Feb. 1, 2002. Est. Value—$1596.00. Approved for official use.	Prime Minister, State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Brass/goldplated sword. Rec'd—Feb. 6, 2002. Est. Value—$3192.00. Approved for official use.	Commander-in-Chief, Bahrain Defense Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Aluminum/copper dhow. Rec'd—Feb. 8, 2002. Est. Value—$319.20. Approved for official use.	Coast Guard General Deputy, Ministry of Interior, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Charles W. Moore	Silver/goldplated khanjar w/belt clip and holder. Rec'd—June 29, 1999. Est, Value—$480.00. Transferred to GSA June 6, 2002.	Commander, UAE Navy	Non-acceptance would have caused embarrassment to donor and U.S. Government.
CAPT Phillipp Renaud, Commanding Officer, Naval Oceanography Command.	24K gold coin with a portrait of the Crown Prince of Bahrain. Rec'd May 9, 2002. Est. Value—$350.00. Approved for official use at the Maurey Library at the Stennis Space Center, MS.	His Excellence Mohammed Al'Kalifa, Director of the Ministry of Housing and Environment, Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
BGEN K. J. Stalder, Deputy Director, J–5, U.S. Central Command.	Concord Sportivo Chronograph Wristwatch. Rec'd—Mar. 17, 2002. Est. Value—$1075.00. Transferred to GSA Oct. 17, 2002.	King Abdul Aziz, Saudi Arabia	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

[Report of Travel or Expenses of Travel]

Name and title of person accepting gift on behalf of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
ADM Vern E. Clark, Chief of Naval Operations.	Rec'd Oct. 15–17, 2002. Est. Value—$1439.34. Expended for hotel.	Chief of Staff, Italian Navy	Represented U.S. Navy and spoke at Fourth Regional Seapower Symposium.
CAPT D.W. Davenport, Executive Assistant to ADM Clark.	Rec'd Oct. 15–17, 2002. Est. Value—$1439.34. Expended for hotel.	Chief of Staff, Italian Navy	Accompanied CNO at Fourth Regional Seapower Symposium.

AGENCY: DEPARTMENT OF AGRICULTURE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identify of foreign donor and government	Circumstances ustifying acceptance
Ann M. Veneman, U.S. Secretary of Agriculture.	A heavily decorated ceremonial robe made with blue velvet. The border and the front panels are decorated with gilt machine embroidered floral designs. The gold colored hat is designed with a multilayered mane style tassel. Received—February 10, 2002. Appraised Value—$400.00 SF–120 prepared; pending transfer to GSA.	Islom Karimov, President of Uzbekistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ann M. Veneman, U.S. Secretary of Agriculture.	A set of six cut crystal stemmed goblets. Origin: Czech Republic. Hexagonal bases with bowls having etched stars. Labels include ''RUCKL Czech Republic,'' ''A. Ruckle & Sons 1846,'' and ''Lead crystal 24% Bohemia'' Ht. 8″ in presentation box. Received—November 27, 2001. Appraised value—$60.00 per goblet; $480.00 for the set. SF–120 prepared; pending transfer to GSA.	Jan Fencl, Minister of Agriculture, Czech Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ann M. Veneman, U.S. Secretary of Agriculture.	Flatware Set: A twenty-four piece set of sterling silver flatware made in Uzbekistan. Configured as a service for six, the service consists of six each dinner knives, dinner forks, oval soup spoons and small coffee spoons. Markings include ''.925,'' ''OYK,'' and a pyramid of 12 stars with the letter ''K.'' Total weight (to include the stainless steel blades on the knives) is 1,640 grams. An accompanying card describes the set having been produced in Uzbekistan. It is fitted in a mahogany case. Received—February 10, 2002. Appraised value: $1,050.00. Approved for official use and is on display in the Office of the Secretary.	Islom Karimov, President of Uzbekistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government
Samuel W. Bodman, Deputy Secretary of Commerce.	Gold coin, 22 carats, weight 33.81 grams. Rec'd—03/02/02. Appraised Value—$300. Location—Deputy Secretary's Office.	Sheik Ahmed bid Mohammed, Governor of The Bahrain Monetary Agency.
Samuel W. Bodman, Deputy Secretary of Commerce.	Ornate, blue-framed (painted lapis tile, six pieces signed.) Rec'd—09/24/02. Appraised Value—$300. Location—Deputy Secretary's Office.	President Bouteflika of Algeria.
Samuel W. Bodman, Deputy Secretary of Commerce.	Ceremonial silver sword w/scabbard, very ornate containing piece of uncut coral. Rec'd—09/24/02. Appraised Value—$350. Location—Deputy Secretary's Office.	President Bouteflika of Algeria.
Donald L. Evans, Secretary of Commerce	Framed Oil Painting (Forest scene), Russia in winter. Signed. Rec'd—05/22/02. Appraised Value—$350. Location—Secretary's Office.	Konstantin Alekseyevich Titov.
Donald L. Evans, Secretary of Commerce	Balalaika (Russian musical instrument), black lacquer. Rec'd—05/23/02. Appraised Value—$650. Location—Secretary's Office.	German Gref, Minister of Economic Development Trade of Russia.
Donald L. Evans, Secretary of Commerce	Russian-made clock. Marble, key wind, silver trim w/gold hands. Rec'd—05/22/02. Appraised Value—$3,000. Location—Secretary's Office.	Igor Yusufov, Russian Minister of Egypt.
Donald L. Evans, Secretary of Commerce	Framed and matted artwork, depicting Shanghai City skyline scene is a piece of dogwood made of silver and jade. Rec'd—04/24/00. Appraised Value—$1,000. Location—Secretary's Office.	Chen Liangyu, Mayor of Shanghai.
Donald L. Evans, Secretary of Commerce	Two marble horses, one green and one white mounted on board background of Chinese characters. Rec'd—04/25/02. Appraised Value—$300. Location—Secretary's Office.	Wang Zhan, WTO Affairs Consultation.
Donald L. Evans, Secretary of Commerce	Chinese book, history of Chinese coinage. Rec'd—04/30/02. Appraised Value—$500. Location—Secretary's Office.	Hu Jinato, Vice President of China.
Donald L. Evans, Secretary of Commerce	Ceremonial dagger (Khanjar) wood handle, scabbard, trimmed in ornately silver. Rec'd—08/21/01. Appraised Value—$500. Location—Secretary's Office.	Yusuf bin Alawi bin Abdulla, Minister of Foreign Affairs, The Sultanate of Oman.
Donald L. Evans, Secretary of Commerce	Obsidian statue, bust of woman 6″ high w/silver earrings and band ornate necklace. Rec'd—09/05/01. Appraised Value—$600. Location—Secretary's Office.	Vincente Fox Quesada, President of Mexico.
Donald L. Evans, Secretary of Commerce	Statue, bronze pedestal, situated on a square, green marble base, 12″ tall. Rec'd—10/14/01. Appraised Value—$800. Location—Secretary's Office.	German Gref Minister, Economic Development and Trade, Russia.
Donald L. Evans, Secretary of Commerce	Two large amethyst crystals (geodes). Rec'd—02/15/02. Appraised Value—$400. Location—Secretary's Office.	Jorge Batlle, President of Uruguay.
Donald L. Evans, Secretary of Commerce	Framed & matted geode (petrified wood). Rec'd—04/23/02. Appraised Value—$350. Location—Secretary's Office.	Jiang Zemin, President of Bejing, China.
Donald L. Evans, Secretary of Commerce	Decorative crystal plate, engraved of President's residence in center. Rec'd—07/17/02. Appraised Value—$400. Location—Secretary's Office.	Aleksander Kwansiewski, President of Poland.
Donald L. Evans, Secretary of Commerce	Afghan carpet, handmade, 100% wool, 4′ x 6′ fancy guls (hatchli design, number □). Rec'd—07/25/02. Appraised Value—$1,500. Location—Secretary's Office.	Sayed Mustafa Kazemi, Minister of Commerce.
Donald L. Evans, Secretary of Commerce	Egyptian statue—ceramic (neferti), gilt with blue and red trim. Rec'd—10/04/02. Appraised Value—$500. Location—Secretary's Office.	Youssef Boutros-Ghali, Minister for Foreign Affairs, Egypt.
Donald L. Evans, Secretary of Commerce	Replica of a Dake tripod, made of bronze (cooking vessel). Rec'd—12/11/02. Appraised Value—$350. Location—Secretary's Office.	Xu Guanhua, Chinese Minister of Science and Technology.

DEPARTMENT OF ENERGY

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identify of foreign donor and government	Circumstances justifying cceptance
None			

DEPARTMENT OF ENERGY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identify of foreign donor and government	Circumstances justifying acceptance
Spencer Abraham, Secretary of Energy.	''Russian Field'' specially commissioned one-of-a-kind artwork by Sirin of Moscow tracking number 112, 175.42g of yellow gold, 366 diamonds totaling 6.48 karats, 3.2g of enameling. Received—May 2, 2002. Estimated Value—$7,00.00. Reported to GSA October 30, 2002; pending transfer to GSA.	Igor Yusufov, Minister of Energy, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Spencer Abraham, Secretary of Energy.	Algerian rug with bands of geometric patterns, approx 97″ x 140″ Received—June 5, 2002. Estimated Value—$540.00. Reported to GSA October 30, 2002; pending transfer to GSA.	Abdelaziz Bouteflika, President of Algeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Spencer Abraham, Secretary of Energy.	Silver plated falcon on glove. Received—June 19, 2002. Estimated Value—$340.00. Reported to GSA October 30, 2002; pending transfer to GSA.	Abdullah Bin Hamad Al-Attiyah, Minister of Energy, Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George J. Tenet, Director, Central Intelligence.	Silvered metal katar and scabbard, modern, on a silver embroidered black velvet belt with two boxes. L of belt: 43 inches. Rec'd—February 16, 2002. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Filigree silver figure of a dove, modern, mounted on a black slate base. H: 7 inches. Rec'd—February 18, 2002. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Middle Eastern or Indian embossed partial gilt silver short sword and scabbard, modern, with attached black silk cord. L overall: 27½ inches. Rec'd—February 20, 2002. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George J. Tenet, Director, Central Intelligence.	Coral and jeweled filigree silver short sword and scabbard, modern, in a fitted carved wood case. L: 25½ inches. Rec'd—February 20, 2002. Est. Value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Embossed silver mounted ivory short sword and scabbard, modern, with attached silk cord. L: 26 inches. Rec'd—February 28, 2002. Est. Value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Pair of gold overlay rock crystal candlesticks, modern. H: 9 inches. Rec'd—April 23, 2002. Est. Value—$600.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Coral six-strand necklace, with silver clasp mounted with a coral bead, in fitted blue silk case. L: 17 inches. Rec'd—May 31, 2002. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Rug, 7 ft. 8 in. x 5 ft. 8 in., modern, windowpane field with multi-colored floral reserves, zigzag guard boarder on salmon ground. Rec'd—February 19, 2002. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Rug, 116 x 82 inches, modern, beige ground with stepped prayer design field. Rec'd—February 19, 2002. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Silver double horse-drawn condiment cart with salt and pepper shaker, modern, fitted in a black velvet case, with stamped 13 standard mark. L: 12 inches. Rec'd—August 19, 2002. Est. value: $600.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Henry Jean Pontoy (French 1888–1968) Femme du Sud, signed lower right, also title on reverse and numbered 7, oil on canvas. 18 x 15 inches. Rec'd—December 11, 2002. Est. value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John E. McLaughlin, Deputy Director, Central Intelligence.	Sterling ''double tower'' pen holder and letter opener Standish, on an oval mahogany base. L: 11 inches. Rec'd—April 6, 2002. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Rug, 117 x 82 inches, modern, red ground with diagonal rows of octagon and floral medallions, multi-colored guard border. Rec'd—February 3, 2002. Est. value—$600.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Diamond dinner ring, the contemporary 875 (18 karat) yellow gold crossed over mount set with two rows of round faceted brilliant cut diamonds, each weighing approximately .10 carats, total weight approximately 1 carat. Rec'd—June 1, 2002. Est. value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Contemporary hallmarked 18 karat yellow gold and diamond five-piece ensemble, the Florentine and polished gold setting set with round faceted brilliant cut diamonds, each weighing approximately .10 to .15 carats each, consisting of: a pendant necklace set with eleven diamonds, a bangle bracelet set with twelve diamonds, a ring set with two diamonds and a pair of pierced type earrings, each set with one diamond, fitted in a rose velvet case. Gross weight: 6 oz. Rec'd—June 2, 2002. Est. value—$2,500.00.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Contemporary 18 karat white and yellow gold diamond four-piece ensemble, each in the Art Deco style, consisting of: a tassel pendant and chain set wtih a pavé of diamonds, a ring and a pair of pierced type tassel earrings, fitted in a green velvet case. Rec'd—June 2, 2002. Est. value—$3,000.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Gentleman's Swiss stainless steel wristwatch, from the Yves St. Laurent Collection, together with a partial gold ballpoint pen, in a fitted gray leather and gray velvet lined interior locked case. Rec'd—June 2, 2002. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Pair of white gold, diamond and turquoise beaded pendant-type pierced earrings, modern, each set with a round cabochon turquoise, approximately 8½ mm, surrounded by a pavé of round faceted brilliant cut diamonds. Rec'd—June 2, 2002. Est. value—$2,500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Contemporary hallmarked white gold and diamond dinner ring, set with a pavé of melée diamonds. Rec'd—June 2, 2002. Est. value—$750.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Daum amber Pate de Verre Figus (Fig) bowl, modern, the compressed body molded in high relief with berries and leaves and two crawling salamanders, signed on base, Daum/France. H: 7⅝ inches. Rec'd—June 2, 2002. Est. value—$1,500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Ladies four diamond engagement ring, modern, the 18 karat yellow and white gold four prong Tiffany mount set with a single row of round faceted brilliant cut diamonds, each weighing approximately .20 carats, total weight approximately .80 carats. Rec'd—May 24, 2002. Est. value—$650.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmarked yellow gold mounted ivory five-piece ensemble, modern, consisting of: a pendant necklace, a four-panel bracelet, a ring and a pair of leaf-shaped pendant pierced-type earrings, in a red velvet fitted case. Rec'd—September 25, 2002. Est. value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmounted emerald cut emerald weighing approximately 1.70 carats, good color with some inclusions. Rec'd—September 7, 2002. Est. value—$600.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Filigree silver two-handle floriform vase, modern. H: 12½ inches; W: 44 oz. Rec'd—October 1, 2001. Est. value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Wood Group of Two Figures, modern. H: 39½ inches. Rec'd—June 20, 2001. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmounted emerald cut emerald, weighing approximately 2.50 carats, deeper green color with some inclusions; together with an uncut emerald nugget weighing approximately 2 carats. Rec'd—August 1, 2002. Est. value—$1,000.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Silver mounted ivory five-piece ensemble, modern, consisting of: a melon beaded necklace and bracelet, a pair of leaf-shaped pierced-type pendant earrings and a ring, in a fitted tan velvet case. Each stamped 925 standard. Rec'd—October 20, 2001. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Silver mounted ivory five-piece ensemble, modern, consisting of: a melon beaded necklace and bracelet, a pair of leaf-shaped pierced-type pendant earrings and a ring, in a fitted tan velvet case. Rec'd—October 20, 2001. Est. value—$400.000. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmarked yellow gold mounted ivory five-piece ensemble, modern, consisting of: a heart pendant necklace, a four-panel bracelet, a pair of leaf-shaped earrings and a ring, in a fitted red velvet case. **Note:** necklace with one section unattached from the leaf-shaped pendant. Rec'd—October 20, 2001. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmarked yellow gold and gold-filled mounted ivory five-piece ensemble, modern, consisting of: A leaf pendant necklace, a four-panel bracelet, a pair of leaf-shaped pierced-type earrings and a ring, in a fitted red velvet case. Rec'd—October 20, 2001. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmarked silver mounted ivory five-piece ensemble, modern, consisting of: A leaf-shaped pendant necklace, a four-panel bracelet, a pair of leaf-shaped pendant pierced earrings and a ring, in a fitted green and tan velvet case. **Note:** necklace with some silver inlay unattached. Rec'd—October 20, 2001. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Silver mounted ivory seven-piece ensemble, modern, consisting of: a 925 marked melon ball necklace with matching bracelet, two pairs of pendant-type earrings and a ring, in a red velvet fitted case. Rec'd—October 20, 2001. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Unmarked silver mounted ivory five-piece ensemble, modern, consisting of: a leaf-shaped pendant necklace, a four panel bracelet, a pair of leaf shaped pendant leaf earrings and a ring, fitted in a red velvet case. Rec'd—October 20, 2001. Est. Value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Unmarked silver mounted ivory five-piece ensemble, modern, consisting of: a leaf-shaped pendant necklace, a four panel bracelet, a pair of leaf shaped pendant leaf earrings and a ring, fitted in a red velvet case. Rec'd—October 20, 2001. Est. Value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Rug, 13 ft. 1 in. x 7 ft. 8 in., modern, windowpane field with alternating blue and rose ground enclosing floral medallions, lozenge and floral guard border on blue and ivory ground. Rec'd—December 11, 2002. Est. Value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Chased silver plated samovar, modern. H: 24 inches. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Silver plated and partial gilt chess set and board, modern. D of board: 20 inches. H of chessmen: 3½ inches. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Contemporary 750 (18 karat) yellow gold chain link gentleman's signate bracelet and inscribed ''God Bless You'' and contemporary ring, set with a round faceted brilliant cut diamond weighing approximately .10 carats. Rec'd—June 1998. Est. Value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Double strand graduated cultured pearl necklace and a pair of pendant earrings, modern, the necklaces measuring from 8 mm to 5½ mm (not individually knotted), with a silver plated clasp, the earrings set in gold-filled bowknot form tassel mounts set with a synthetic diamond, suspending a pendant pearl and a mabé pearl clasp. Rec'd—May 12, 2002. Est. Value—$750.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Contemporary diamond star-form pendant and 918 (21 karat) yellow and white gold round braided chain, the princess-type pendant set with a pavé of round faceted diamonds, total weight approximately 1 carat. Rec'd—December 23, 2002. Est. Value—$800.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Contemporary diamond star-form pendant and 918 (21 karat) yellow and white gold round braided chain, the princess-type pendant set with a pavé of round faceted diamonds, total weight approximately 1 carat. Rec'd—December 23, 2002. Est. Value—$800.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Contemporary diamond and emerald three-piece ensemble, the 14 karat yellow gold ''V'' pendant mount set with seven marquise faceted cut emeralds alternating with six twin round faceted melée diamonds, on a flat braided chain; together with a pair of complementary leaf-shaped pierced-type earrings, each set with three marquise faceted cut emeralds and a row of six round faceted melée diamonds. Rec'd—April 19, 1998. Est. value—$650.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Group of nine unmounted precious and semi-precious stones, consisting of: two emerald cut emeralds, two oval faceted rubies and five round faceted white sapphires. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Pair of Contemporary hallmarked 21 karat partial silver and yellow gold bangle bracelets and a ring. Rec'd—June 30, 2002. Est. value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Pair of Contemporary hallmarked 21 karat partial silver and yellow gold bangle bracelets and a ring. Rec'd—June 30, 2002. Est. value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Contemporary 750 (18 karat) white gold, diamond and sapphire dinner ring, the interlocking mount set with a row of fifteen round faceted blue sapphires surrounded by a pavé of round faceted diamonds. Rec'd—June 30, 2002. Est. value—$2,500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts—2002]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Pair of Contemporary hallmarked 21 karat yellow gold polished and textured herringbone bangle bracelets, total weight approximately 1 oz. Rec'd—June 30, 2002. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Gentleman's Swiss stainless steel and black reptile bank water resistant wristwatch by Corum, in a fitted blue leather case. Rec'd—June 30, 2002. Est. value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Yellow gold mounted ivory five-piece ensemble, modern, consisting of: a leaf pendant necklace, a four-panel bracelet, a pair of pendant leaf-type earrings and a ring, in a glazed top wood case. Rec'd—July 20, 2001. Est. value—$400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Nain partial silk and wool rug, 8 ft 10 × 8 ft 2 in, modern, green ground with palmate and trellising vine field centering a pull star medallion on ivory to blue ground, palmette and trellising vine guard boarder on ivory ground. Rec'd—April 28, 2001. Est. value—$1,500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Kerman rug, 12 ft 6 in × 8 ft 2 in, post 1950's ivory ground with a floral spray field centering an oval medallion with complementary field on green ground, palmette and trellising vine guard border on red ground. Rec'd—May 20, 2000. Est. value—$1,000.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AMENDED REPORT

AGENCY: UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Andrew Natsios, USAID Administrator.	Leather rug & three pillow cushions. Est. value—$850.00. Rec'd—11/18/02. Location—Administrator's Suite.	Government of Nigeria	Refusal to accept would have caused embarrassment to the donor.
Andrew Natsios, USAID Administrator.	Afghanistan Rug. Est. value—$300.00. Record—12/20/02. Location—Administrator's Suite.	Sayed Hussan Anwari, Min. of Agric.	Refusal to accept would have caused embarrassment to the donor.

[FR Doc. 03–15209 Filed 6–20–03; 8:45 am]
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Federal Register

Monday,
June 23, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI46

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) pursuant to the Endangered Species Act of 1973, as amended (Act). The designation includes 8 habitat units totaling approximately 12,632 hectares (ha) (31,222 acres (ac)) found along 578.1 kilometers (km) (359.2 miles (mi)) of rivers and streams in the States of Colorado and Wyoming. The designation includes river and stream reaches and adjacent areas in the North Platte River and South Platte River.

The critical habitat designation defines the width of designated critical habitat as a distance outward from the river or stream edge (as defined by the ordinary high water mark) varying with the size (order) of a river or stream. This publication also provides notice of the availability of the Addendum to the Economic Analysis of Critical Habitat Designation for the Preble's Meadow Jumping Mouse (Addendum to the Economic Analysis) and the final Environmental Assessment for Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (EA) for this final rule.

DATES: This final rule is effective July 23, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, CO 80215. You may obtain copies of this final rule, the Addendum to the Economic Analysis, and the final EA from the field office address above or by calling 303–275–2370.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Colorado Ecological Services Field Office, (*see* **ADDRESSES** section), (telephone 303–275–2370; facsimile 303–275–2371).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 306 species or 25% of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own to proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for additional public participation beyond those minimally required by the APA, the Act, and the FWS implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Much of what is now known about the Preble's meadow jumping mouse is a result of information gained from the early 1990s to the present. Following the Preble's listing as a threatened species in 1998, knowledge about its distribution, habitat requirements, abundance, and population dynamics has grown substantially. However, much of the biology and ecology of the Preble's is still not well understood. Where gaps in knowledge exist, scientists have relied on information from closely related subspecies of the meadow jumping mouse (*Zapus hudsonius*), whose biology and ecology

appear similar to the Preble's. Information presented below that is specific to the Preble's is described as being relevant to this subspecies, the Preble's, but when information pertains to what is known about other subspecies of meadow jumping mouse, it will be described as relevant to the species, the meadow jumping mouse. Portions of the following have been adapted from the general biology section of the Preble's Meadow Jumping Mouse Recovery Team's (Recovery Team's) February 27, 2002, working draft of a recovery plan for the Preble's (the Draft Discussion Document referenced in the proposed rule) and the updated March 11, 2003, working draft of the recovery plan for the Preble's (Working Draft). We believe that the information provided in the Working Draft represents the best available science on the Preble's.

Taxonomy and Description

The Preble's is a member of the family Dipodidae (jumping mice) with four living genera, two of which, *Zapus* and *Napaeozapus,* are found in North America (Hall 1981). The three living species within the genus *Zapus* are *Z. hudsonius* (the meadow jumping mouse), *Z. princeps* (the western jumping mouse), and *Z. trinotatus* (the Pacific jumping mouse).

Edward A. Preble (1899) first documented the meadow jumping mouse from Colorado. Krutzsch (1954) described the Preble's as a separate subspecies of meadow jumping mouse limited to Colorado and Wyoming. The Preble's is now recognized as 1 of 12 subspecies of meadow jumping mouse (Hafner *et al.* 1981).

The Preble's is a relatively small rodent with an extremely long tail, large hind feet, and long hind legs. The tail is bicolored, lightly-furred, and typically twice as long as the body. The large hind feet can be one-third again as large as those of other mice of similar size. The Preble's has a distinct, dark, broad stripe on its back that runs from head to tail and is bordered on either side by gray to orange-brown fur. The hair on the back of all jumping mice appears coarse compared to other mice. The underside hair is white and much finer in texture. Total length of adult Preble's mice is approximately 180 to 250 millimeters (mm) (7 to 10 inches (in)), with the tail comprising 108 to 155 mm (4 to 6 in) of that length (Krutzsch 1954, Fitzgerald *et al.* 1994).

The average weight of 120 adult Preble's mice captured early in their active season (prior to June 18) was 18 grams (g) (0.6 ounce (oz)); included were 10 pregnant females weighing more than 22 g (0.8 oz) (Meaney *et al.*, in prep.). Upon emergence from hibernation, adult Preble's mice can weigh as little as 14 g (0.5 oz). Through late August and into mid-September, Preble's adults ready for hibernation weighed 25 to 34 g (0.9 to 1.2 oz) (Meaney *et al.*, in prep.), comparable to pre-hibernation weights for the meadow jumping mouse cited by Muchlinski (1988).

While the western jumping mouse is recognized as a separate species from the Preble's, it is similar in appearance and can easily be confused with the Preble's. The range of the western jumping mouse in Wyoming and Colorado is generally west of, and at higher elevations than, the range of the Preble's. However, the two species appear to coexist over portions of their range in southeastern Wyoming and Colorado (Long 1965, Clark and Stromberg 1987, Schorr 1999, Meaney *et al.* 2001). Compared to the western jumping mouse, the Preble's is generally smaller, has a more distinctly bicolored tail, and a less obvious dorsal (back) stripe. However, field identification of the western jumping mouse and the Preble's in the range of overlap is difficult due to their similarity in size and color. Krutzsch (1954) described skull characteristics useful for differentiating the two species. Previously, studies found that the meadow jumping mouse could be distinguished from the western jumping mouse by a fold in the first lower molar (Klingener 1963, Hafner 1993). However, this molar characteristic is not always reliable due to tooth wear as animals age; specimens showing the tooth fold are presumed to be the Preble's, while specimens lacking the fold may be either species (Klingener 1963; Conner and Shenk, in prep.). A recent reevaluation of Preble's and western jumping mouse morphology showed that, by using a combination of six skull measurements and this molar characteristic, the Preble's could be distinguished from the western jumping mouse (Conner and Shenk, in prep.).

Riggs *et al.* (1997) analyzed the mitochondrial DNA from tissue samples of western and meadow jumping mice from Colorado and Wyoming and concluded that the Preble's forms ''a homogenous group recognizably distinct from nearby populations and adjacent species of the genus.'' Hafner (1997) reviewed the Riggs study and concluded that the Preble's does in fact form a relatively homogenous group, as determined by inspection of the original sequence data. Hafner (1997) also stated that he remained convinced of the accuracy of the biogeography and taxonomic arrangement of jumping mice. While results from the genetic study supported the taxonomic status of the Preble's, analysis of samples from jumping mice in a few Wyoming and Colorado locations produced unexpected results. In these cases, samples of assumed Preble's mice at lower elevations were later determined to be the western jumping mice and samples of assumed western jumping mice at higher elevations were later determined to be Preble's mice. Hafner (1997) suggested that limited hybridization could have affected the results of the study and Beauvais (2001) stated that zones of co-occurrence of the Preble's and the western jumping mouse in Wyoming provide the opportunity for hybridization. However, Krutzsch (1954) cited significant range overlap between the meadow jumping mouse and the western jumping mouse in North America and indicated that, based on examination of skulls from the area of range overlap, there was no evidence of interbreeding. The question of possible hybridization between the Preble's and the western jumping mouse has yet to be fully explored. Future DNA studies, including a current study being conducted at the Denver Museum of Nature and Science, may help to resolve this and other taxonomic questions regarding *Zapus.*

Geographic Range

The Preble's is found along the foothills in southeastern Wyoming, southward along the eastern edge of the Front Range of Colorado to Colorado Springs, El Paso County (Hall 1981, Clark and Stromberg 1987, Fitzgerald *et al.* 1994). Knowledge about the current distribution of the Preble's comes from collected specimens, and live-trapping locations from both range-wide survey efforts and numerous site-specific survey efforts conducted in Wyoming and Colorado since the mid-1990s. Recently collected specimens are housed at the Denver Museum of Nature and Science and survey reports are filed with the Service's Field Offices in Colorado and Wyoming.

In Wyoming, capture locations of mice confirmed as the Preble's, and locations of mice identified in the field as the Preble's and released, extend in a band from the town of Douglas southward along the Laramie Range to the Colorado border, with captures east to eastern Platte County and Cheyenne, Laramie County. In Colorado, the distribution of the Preble's forms a band along the Front Range from Wyoming southward to Colorado Springs, El Paso County, with eastern marginal captures in western Weld County, western Elbert

County, and north-central El Paso County.

The Preble's is likely an Ice Age relic (Hafner *et al.* 1981, Fitzgerald *et al.* 1994). Once the glaciers receded from the Front Range of Colorado and the climate became drier, the Preble's was confined to the riparian (river) systems where moisture was more plentiful. The semi-arid climate in southeastern Wyoming and eastern Colorado limits the extent of riparian corridors and restricts the range of the Preble's in this region. The Preble's has not been found east of Cheyenne in Wyoming or on the extreme eastern plains in Colorado. The eastern boundary for the subspecies is likely defined by the dry shortgrass prairie, which may present a barrier to eastward expansion (Beauvais 2001).

The western boundary of Preble's range in both States appears related to elevation along the Laramie Range and Front Range. The Service has used 2,300 meters (m) (7,600 feet (ft)) in elevation as the general upward limit of Preble's habitat in Colorado (Service 1998). Recent morphological examination of specimens has confirmed the Preble's to an elevation of approximately 2,300 m (7,600 ft) in Colorado (Meaney *et al.* 2001) and to 2,360 m (7,750 ft) in southeastern Wyoming (Cheri Jones, Denver Museum of Natural Science, *in litt.*, 2001). In a modeling study of habitat associations in Wyoming, Keinath (2001) found suitable habitat predicted in the Laramie Basin and Snowy Range Mountains (west of known Preble's occurrence) but very little suitable habitat predicted on the plains of Goshen, Niobrara, and eastern Laramie Counties (east of known Preble's occurrence).

Although there is little information on past distribution or abundance of the Preble's, surveys have identified various locations where the subspecies was historically present but is now absent (Ryon 1996). Since at least 1991, the Preble's has not been found in Denver, Adams, or Arapahoe Counties in Colorado. Its absence in these counties is likely due to urban development, which has altered, reduced, or eliminated riparian habitat (Compton and Hugie 1993, Ryon 1996).

Ecology and Life History

Typical habitat for the Preble's comprises well-developed plains riparian vegetation with adjacent, undisturbed grassland communities and a nearby water source. Well-developed plains riparian vegetation typically includes a dense combination of grasses, forbs, and shrubs; a taller shrub and tree canopy may be present (Bakeman 1997). When present, the shrub canopy is often *Salix* spp. (willow), although shrub species including *Symphoricarpus* spp. (snowberry), *Prunus virginiana* (chokecherry), *Crataegus* spp. (hawthorn), *Quercus gambelli* (Gambel's oak), *Alnus incana* (alder), *Betula fontinalis* (river birch), *Rhus trilobata* (skunkbrush), *Prunus americana* (wild plum), *Amorpha fruticosa* (lead plant), *Cornus sericea* (dogwood), and others also may occur (Bakeman 1997, Shenk and Eussen 1998).

The Preble's have rarely been trapped in uplands adjacent to riparian areas (Dharman 2001). However, in detailed studies of the Preble's movement patterns using radio telemetry, the Preble's has been found feeding and resting in adjacent uplands (Shenk and Sivert 1999b, Ryon 1999, Schorr 2001). These studies suggest that the Preble's uses uplands at least as far out as 100 m (330 ft) beyond the 100-year floodplain (Ryon 1999; Tanya Shenk, Colorado Division of Wildlife, *in litt.,* 2002). The Preble's also can move considerable distances along streams, as far as 1.6 km (1.0 mi) in one evening (Ryon 1999, Shenk and Sivert 1999a).

In a rangewide comparison of existing habitat data from Colorado, Clippenger (2002) found that subshrub cover and plant species richness are higher at most sites where meadow jumping mice are present as compared to sites where they are absent, particularly at distances 15 to 25 m (49 to 82 ft) from streams. In a study comparing habitats at Preble's capture locations on the Department of Energy's Rocky Flats Environmental Technology Site (Rocky Flats), Jefferson County, Colorado, and the U.S. Air Force Academy (Academy), El Paso County, Colorado, the Academy sites had lower plant species richness at capture locations but considerably greater numbers of the Preble's (Schorr 2001). However, the Academy sites had higher densities of both grasses and shrubs. It is likely that Preble's abundance is not driven by the diversity of plant species alone, but by the density and abundance of riparian vegetation (Schorr 2001).

The tolerance of the Preble's for invasive exotic plant species is not well understood. Whether or not exotic plant species reduce Preble's persistence at a site may be due in large part to whether plants create a monoculture and replace native species. There is particular concern about nonnative species such as *Euphorbia esula* (leafy spurge) that may form a monoculture, displacing native vegetation and thus reducing available habitat.

Fifteen apparent Preble's hibernacula (hibernation nests) have been located through radio telemetry, all within 78 m (260 ft) of a perennial stream bed or intermittent tributary (Bakeman and Deans 1997, Shenk and Sivert 1999a, Schorr 2001). Of these, one was confirmed through excavation (Bakeman and Deans 1997); others were left intact to prevent harm to the mice. Apparent hibernacula have been located under willow, chokecherry, snowberry, skunkbrush, *Rhus* spp. (sumac), *Clematis* spp. (clematis), *Populus* spp. (cottonwoods), Gambel's oak, *Cirsium* spp. (thistle), and *Alyssum* spp. (alyssum) (Shenk and Sivert 1999a). At the Academy, four of six apparent hibernacula found by radio-telemetry were located in close proximity to *Salix exigua* (coyote willow) (Schorr 2001). The one excavated hibernaculum, at Rocky Flats, was found 9 m (30 ft) above the stream bed, in a dense patch of chokecherry and snowberry (Bakeman and Deans 1997). The nest was constructed of leaf litter 30 centimeters (cm) (12 in) below the surface in coarse textured soil.

The Preble's constructs day nests composed of grasses, forbs, sedges, rushes, and other available plant material. They may be globular in shape or simply raised mats of litter, and are most commonly above ground but also can be below ground. They are typically found under debris at the base of shrubs and trees, or in open grasslands (Ryon 2001). An individual mouse can have multiple day nests in both riparian and grassland communities (Shenk and Sivert 1999a), and may abandon a nest after approximately a week of use (Ryon 2001).

Hydrologic regimes that support Preble's habitat range from large perennial rivers such as the South Platte River to small drainages only 1 to 3 m (3 to 10 ft) in width, as at Rocky Flats and in montane habitats. Flooding is a common and natural event in the riparian systems in southeastern Wyoming and along the Front Range of Colorado. This periodic flooding helps create a dense vegetative community by stimulating resprouting from willow shrubs, and allows herbs and grasses to take advantage of newly-deposited soil.

Fire is also a natural component of the Wyoming foothills and Colorado Front Range, and Preble's habitat naturally waxes and wanes with fire events. Within shrubland and forest, intensive fire may result in adverse impacts to Preble's populations. However, in a review of the effects of grassland fires on small mammals, Kaufman *et al.* (1990) found a positive effect of fire on the meadow jumping mouse in one study and no effect of fire on the species in another study.

Meadow jumping mice usually have two litters per year, but there are records of three litters per year. An average of five young are born per litter, but the size of a litter can range from two to eight young (Quimby 1951, Whitaker 1963).

The Preble's is long-lived for a small mammal, in comparison with many species of mice and voles that seldom live a full year. Along South Boulder Creek, Boulder County, Colorado, seven individuals originally captured as adults were still alive 2 years later, having attained at least 3 years of age (Meaney *et al., in prep.*). However, like many small mammals, the Preble's annual survival rate is low. Preble's survival rates appear to be lower over the summer than over the winter. Over-summer survival rates ranged from 22 to 78 percent and over-winter survival rates ranged from 56 to 97 percent (Shenk and Sivert 1999b; Ensight Technical Services 2000, 2001; Schorr 2001; Meaney *et al., in prep.*).

The Preble's has a host of known predators including garter snakes (*Thamnophis* spp.), prairie rattlesnakes (*Crotalus viridus*), bullfrogs (*Rana catesbiana*), foxes (*Vulpes vulpes* and *Urocyon cinereoargenteus*), house cats (*Felis catus*), long-tailed weasels (*Mustela frenata*), and red-tailed hawks (*Buteo jamaicensis*) (Shenk and Sivert 1999a, Schorr 2001). Other potential predators include coyotes (*Canis latrans*), barn owls (*Tyto alba*), great horned owls (*Bubo virginianus*), screech owls (*Otus* spp.), long-eared owls (*Asio otus*), northern harriers (*Circus cyaneus*), and large predatory fish.

Other mortality factors of the Preble's include drowning and vehicle collision (Schorr 2001, Shenk and Sivert 1999a). Mortality factors known for the meadow jumping mouse, such as starvation, exposure, disease, and insufficient fat stores for hibernation (Whitaker 1963) also are likely causes of death in the Preble's subspecies.

White and Shenk (2000) determined that riparian shrub cover, tree cover, and the amount of open water nearby are good predictors of Preble's densities, and summarized abundance estimates from nine sites in Colorado for field work conducted during 1998 and 1999. Estimates of abundance ranged from 4 to 67 mice per km (6 to 110 mice per mi) of stream and averaged 33 mice per km (53 mice per mi) of stream.

While fecal analyses have provided the best data on the Preble's diet to date, they overestimate the components of the diet that are less digestible. Based on fecal analyses the Preble's eats insects; fungus; moss; pollen; willow; *Chenopodium sp.* (lamb's quarters); *Salsola* sp. (Russian thistle); *Helianthus* spp. (sunflowers); *Carex* spp. (sedge); *Verbascum* sp. (mullein); *Bromus, Festuca, Poa, Sporobolus* and *Agropyron* spp. (grasses); *Lesquerella* sp. (bladderpod); *Equisetum* spp. (horsetail); and assorted seeds (Shenk and Eussen 1998, Shenk and Sivert 1999a). The diet shifts seasonally; it consists primarily of insects and fungus after emerging from hibernation, shifts to fungus, moss, and pollen during mid-summer (July-August), with insects again added in September (Shenk and Sivert 1999a). The shift in diet along with shifts in mouse movements suggests that the Preble's may require specific seasonal diets, perhaps related to the physiological constraints imposed by hibernation (Shenk and Sivert 1999a).

The Preble's is a true hibernator, usually entering hibernation in September or October and emerging the following May, after a potential hibernation period of 7 or 8 months. Adults are the first age group to enter hibernation because they accumulate the necessary fat stores earlier than young of the year. Similar to other subspecies of meadow jumping mouse, the Preble's does not store food, but survive on fat stores accumulated prior to hibernation (Whitaker 1963). Apparent hibernacula of the Preble's have been located both within and outside of the 100-year floodplain of streams (Shenk and Sivert 1999a, Ryon 2001, Schorr 2001). Those hibernating outside of the 100-year floodplain would likely be less vulnerable to flood-related mortality.

Meadow jumping mice are docile to handle and not antagonistic toward one another (Whitaker 1972). Introduced species that occupy riparian habitats may displace or compete with the Preble's. House mice (*Mus musculus*) were common in and adjacent to historic capture sites where the Preble's was no longer found (Ryon 1996).

The Preble's is primarily nocturnal or crepuscular but also may be active during the day, when they have been seen moving around or sitting still under a shrub (Shenk 1998). Little is known about social interactions and their significance in the Preble's. Jones and Jones (1985) described lively social interactions in which several Preble's mice were observed jumping into the air and squeaking and suggested that they formed a gregarious unit. In a recent study, for the month their radio-collars were active, several Preble's mice came repeatedly from different day-nest locations to meet at one spot at night (Shenk, pers. comm., 2002).

Conservation Issues

The Preble's is closely associated with riparian ecosystems that are relatively narrow and represent a small percentage of the landscape. If habitat for the Preble's is destroyed or modified, populations in those areas will decline or be extirpated. The decline in the extent and quality of Preble's habitat is considered the main factor threatening the subspecies (Service 1998, Hafner *et al.* 1998, Shenk 1998). Habitat alteration, degradation, loss, and fragmentation resulting from urban development, flood control, water development, agriculture, and other human land uses have adversely impacted Preble's populations. Habitat destruction may impact individual Preble's mice directly or by destroying nest sites, food resources, and hibernation sites, by disrupting behavior, or by forming a barrier to movement.

Despite numerous surveys, the Preble's has not recently been found in the Denver and Colorado Springs metropolitan areas, and is believed to be extirpated from these areas as a result of extensive urban development. Given the overlap of the Preble's range with an area of extensive and rapid urban development along the Colorado Front Range, it is likely that significant losses of Preble's populations and habitats have occurred and may continue to occur.

Conversion of native riparian ecosystems to commercial croplands and grazed rangelands was identified as the major threat to Preble's persistence in Wyoming (Clark and Stromberg 1987, Compton and Hugie 1993). Intensive grazing and haying operations may negatively impact the Preble's by removing food and shelter. While some Preble's populations coexist with livestock operations, overgrazing can decimate riparian communities on which the Preble's depends. Similarly, haying operations that allow significant riparian vegetation to remain in place may be compatible with persistent Preble's populations.

Trail systems frequently parallel or intersect riparian communities and thus are common throughout Preble's range. Trail development can alter natural communities and may impact the Preble's by modifying nest sites, food resources, and hibernation sites, and by fragmenting its habitat. Humans and pets using these trails may alter behavior patterns of the Preble's and cause a decrease in survival and reproductive success.

Habitat fragmentation limits the extent and abundance of the Preble's. In

general, as animal populations become fragmented and isolated, it becomes more difficult for them to persist. Small, isolated patches of habitat are unable to support as many Preble's mice as larger patches of habitat. When threats to persistence are similar, larger populations are more secure from extirpation than smaller ones.

The structure and function of riparian ecosystems are determined by the hydrology of the waterway. Changes in timing and abundance of water can alter the channel structure, riparian vegetation, and the adjacent floodplain, and may result in changes that are detrimental to the persistence of the Preble's. Similarly, depletion of groundwater also affects the habitat components needed by the Preble's. As groundwater supplies are depleted, more xeric (low moisture) plant communities replace the riparian vegetation. The conversion of habitats from mesic (moderate moisture), shrub-dominated systems to drier grass-dominated systems may preclude the Preble's from these areas.

Alluvial aggregate extraction may produce long-term changes to Preble's habitat by altering hydrology and removing riparian vegetation. In particular, such extraction removes and often precludes reestablishment of habitat components required by the Preble's. Such mining impacts the deposits of alluvial sands and gravels that may be important hibernation locations for the Preble's.

Within the Preble's range, bank stabilization, channelization, and other measures to address flooding and stormwater runoff have increased the rate of stream flow, straightened riparian channels, and narrowed riparian areas (Pague and Grunau 2000). Using riprap and other structural stabilization options to reduce erosion may destroy riparian vegetation, and prevent or delay its re-establishment. In some cases these measures can alter the hydrologic processes and plant communities present to the point where Preble's populations can no longer persist.

Transportation and utility corridors frequently cross Preble's habitat and may negatively affect populations. As new roads are built and old roads are maintained, habitat is destroyed or fragmented. Roads and bridges also may act as barriers to dispersal.

The increasing presence of humans near Preble's habitats may result in increased level of predation that may pose a threat to the Preble's. The striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*), and the domestic and feral cat are found in greater densities in and around areas of human activity; all four of these species feed opportunistically on small mammals. The indication that summer mortality is higher than overwinter mortality underscores the impact that predators can have on the Preble's.

While normal flooding events help maintain the riparian and floodplain communities that provide suitable habitat for the Preble's, increased development and surfaces impervious to water absorption within a drainage can result in more frequent and severe flood events, increase erosion, cause downcutting of channels (lowering of channel grade relative to the banks and adjacent floodplain), and prevent the re-establishment of riparian communities.

Catastrophic fires can alter habitat dramatically and change the structure and composition of the vegetation communities so that the Preble's may no longer persist. In addition, precipitation falling in a burned area may degrade Preble's habitat by causing greater levels of erosion and sedimentation along creeks. Controlled use of fire may be one method to maintain appropriate riparian, floodplain, and upland vegetation within Preble's habitat. However, over the past several decades, as human presence has increased through Preble's range, significant effort has been made to suppress fires. Long periods of fire suppression may result in a build-up of fuel and result in a catastrophic fire.

Previous Federal Actions

On July 17, 2002, we published the proposed rule to designate critical habitat for the Preble's (67 FR 47154). In that proposed rule (beginning on page 47518), we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. We now provide updated information on the actions that we have completed since the proposed critical habitat designation. Four public hearings were held during the 60-day public comment period, which closed September 16, 2002. Public hearings were held in Cheyenne, Wyoming, on August 27; Wheatland, Wyoming, on August 28; Castle Rock, Colorado, on August 28; and Loveland, Colorado, on August 29. Because of numerous requests to reopen the comment period and hold additional public hearings in Colorado, the comment period was reopened on November 21, 2002, for 60 days, through January 21, 2003 (67 FR 70202). Two additional public hearings were held in Golden, Colorado, on November 21. On January 28, 2003, the Service announced the availability of the Draft Economic Analysis of Critical Habitat Designation for the Preble's Meadow Jumping Mouse (Draft Economic Analysis) and draft EA for the proposed designation of critical habitat for the Preble's (68 FR 4160), and opened the comment period on all three documents through February 27, 2003.

Recovery Plan

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting the species, and estimate time and cost for implementing the recovery measures needed.

In early 2000, the Recovery Team was established by the Service pursuant to section 4(f)(2) of the Act and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (59 FR 34272). Stakeholder involvement in the development of recovery plans helps minimize the social and economic impacts that could be associated with recovery of endangered species. Various stakeholders are represented on the Recovery Team and other public participation (including oral comments at recovery team meetings and written comments on the early drafts of the recovery plan) has taken place. The Recovery Team has prepared a series of drafts of a recovery plan for the Preble's. They identify the criteria for reaching recovery and delisting of the Preble's. A draft recovery plan, once completed, will be published in the **Federal Register**, will be available for public comments, and will provide an additional venue for stakeholder and public participation. Our proposed rule to designate critical habitat cited the draft dated February 27, 2002, which we referred to as the Draft Discussion Document. This final rule and the conservation strategy that supports it have been developed incorporating information included through the March 11, 2003, Working Draft.

Summary of Comments and Recommendations

In the July 17, 2002, proposed rule, we requested all interested parties to submit comments or information concerning the designation of critical habitat for the Preble's meadow jumping mouse. During the comment period, we held four informational meetings followed by public hearings. We

published newspaper notices inviting public comment and announcing the public hearings. In addition we contacted interested parties (including elected officials, media outlets, local jurisdictions, and interest groups) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. We received numerous requests to reopen the comment period and hold additional public hearings in Colorado. On September 12, 2002, prior to the closing of the initial comment period, the Service contacted interested parties in a letter, committing to reopen the comment period and, in response to criticism that the previous Colorado hearings had been inadequately publicized, committed to holding at least one more hearing in Colorado. The Service expanded efforts to notify interested parties directly for the second (and third) comment periods. The second comment period opened on November 21, 2002, for a period of 60 days. Two additional public hearings were held. On January 28, 2003, the Service announced the availability of the Draft Economic Analysis and draft EA for the proposed designation of critical habitat for the Preble's and opened a 30-day comment period on all three documents.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we seek the expert opinions of at least three appropriate and independent specialists regarding proposed rules. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We solicited opinions of four independent experts familiar with the species or the conservation of small mammals to peer review the proposed critical habitat designation. Three of the four peer reviewers provided comments. We also received 170 written and 47 oral comments. Many individuals or organizations commented more than once. Approximately 104 comments were from Colorado and 102 from Wyoming. Additionally, comments were received from 6 other States. Overall, 121 written comments and 38 oral comments opposed designation or favored reduced designation, 28 written comments and 6 oral comments supported designation or favored expanded designation, and 21 written comments and 3 oral comments were deemed neutral. Several neutral comments consisted of requests for extending the comment period or holding additional hearings.

Peer Review Comments

Comment 1: Two reviewers commented on the taxonomy of the Preble's, both in relation to the western jumping mouse and as compared with other subspecies of the meadow jumping mouse. One reviewer stated that the limited genetic data available is ''enough to suggest (consistent with the prevailing taxonomic review of the genus *Zapus* by Krutsch,1954) that *Zapus hudsonius* is distinct from the western jumping mouse, *Z. princeps.*'' He emphasized the need to review any available genetic studies regarding the validity of the Preble's as compared to *Z. h. luteus* to the south and *Z. h. campestris* to the north. It was that reviewer's opinion that the conservation value of the proposed rule was dependent on whether the recognized Preble's subspecies represents an evolutionarily significant unit. A second reviewer suggested that the two species, western jumping mouse and the meadow jumping mouse, may not be distinctly separate within the range of the Preble's and that the possibility of hybridization should be given more credence. This reviewer noted that the document ''presupposes that the taxon *Z. h. preblei* exists, and that dental, cranial, and genetic evidence is just some sort of double-checking of that forgone conclusion.'' He suggested specific language to describe existing evidence regarding the taxonomic status of the Preble's.

Our Response: At the time of the 1998 listing, the Service concluded that the best scientific and commercial data available indicated that the Preble's was a valid subspecies. Little additional information has become available since 1998 to revise this conclusion. We anticipate that genetic studies, including those currently being conducted at the Denver Museum of Nature and Science, will significantly add to the existing knowledge regarding the genetic makeup of the Preble's and its relationship to other jumping mice. Based on the court-approved settlement agreement setting a completion date of June 4, 2003, for designation of critical habitat, we can not wait for the results of ongoing genetics studies before completing critical habitat designation. The designation is based on the best scientific information available to date.

Comment 2: Two reviewers were critical of the use of an elevation of 2,300 m (7,600 ft) as a general upper limit to designated critical habitat. One pointed out that vegetation differs by elevation depending on factors such as aspect, slope, and latitude. The other reviewer stated that prairie habitats extend to higher elevations in the foothills of the Laramie Mountains than in the Front Range of Colorado. One of the reviewers questioned the premise that the Laramie Mountains represented the western boundary of Preble's range in southern Wyoming, since passes in the range do not exceed 2,300 m (7,600 ft) and appropriate habitat appears to exist west of the mountains.

Our Response: It is likely that a variety of factors dictate the maximum elevation at which the Preble's might be found in a given drainage. Research conducted to date on the Preble's has not provided specific knowledge of all factors involved, nor in most cases have drainage-specific trapping studies been done to document the upper limits of the Preble's. We believe that the 2,300 m (7,600 ft) elevation in most cases provides a reasonable estimate of habitat likely to be occupied by the Preble's. While it is possible that the Preble's ranges west of the Laramie Mountains in southern Wyoming (based on preliminary identification of recently acquired specimens), there is currently no conclusive evidence of this. If an established population of the Preble's is documented west of the Laramie Mountains, it would represent a change in our understanding of the Preble's range.

Comment 3: One reviewer stated that without comprehensive taxonomic or biosystematic study across the range of the Preble's, assumptions regarding the identity of trapped and released mice represented a critical deficiency in the proposed rule. In contrast, a second reviewer concluded that, in order to conserve the Preble's, it seemed acceptable to identify and designate critical habitat on stream reaches with ''reasonably high chances'' of supporting the Preble's, based on captures of jumping mice at elevations shown to support the Preble's.

Our Response: The western jumping mouse and Preble's meadow jumping mouse appear to coexist over portions of their range in southeastern Wyoming and Colorado, and they are difficult to distinguish by visual examination in the field. Detailed morphological or genetic examination is generally required to conclusively establish the identity of a specimen. We proposed critical habitat in some areas where the presence of Preble's was based only on field identification at sites with elevations appropriate for the presence of Preble's. However, we have re-examined the merits of this approach in light of the substantive and thoughtful critique from a peer reviewer. In consideration of these comments from a peer reviewer, we are not persuaded that it is

appropriate in this instance to include such areas within the critical habitat designation, and they are not included in the final designation. We have included in the final designation only those units occurring in drainages within which there is a specimen verified as Preble's through morphological or genetic means. Accordingly, we have removed the Horseshoe Creek unit (NP2), the Friend Creek and Murphy Canyon unit (NP4), the Horse Creek unit (NP5), the Lone Tree Creek unit (SP3), the Cedar Creek unit (SP7), and the Cherry Creek unit (SP11) from final critical habitat. Each of these units occurred in a drainage within which no mice had been verified to be Preble's through morphological or genetic means, but rather only through field identification.

For the purpose of determining whether federal actions may affect the Preble's in areas not designated as critical habitat, we will continue to accept field identification by qualified individuals using established survey guidelines as an adequate basis for determining presence or absence of this subspecies. We do not believe it is appropriate and practical to hold project-specific section 7 consultations to the same level of certainty as a final rulemaking designating critical habitat, nor do we believe it to be sound public policy to require genetic or morphological examination that could substantially delay project review. Federal agencies and project sponsors may voluntarily opt to employ these more detailed and time consuming identification techniques, but it will be at their discretion and not as a requirement of the Service.

Comment 4: One reviewer critiqued conservation strategies used to support the Draft Discussion Document and the proposed critical habitat rule. He emphasized the need to understand Preble's movements, connectivity of habitat, interchange of individuals among populations, and potential for re-colonization when populations are extirpated. He commented on the lack of redundancy in the proposed recovery populations within each hydrological unit, resulting in reduced opportunity for re-colonization, and he viewed the number of proposed recovery populations as potentially insufficient. He also emphasized that persistence of Preble's populations will be dependent on habitat quality at the selected recovery sites and that habitat quality may be a more important consideration than land ownership. Regarding the proposed rule to designate critical habitat, he acknowledged that in some drainages designation of additional populations beyond those identified as recovery populations in the Draft Discussion Document would increase the probability of Preble's persistence.

Our Response: Currently proposed distribution and potential connectivity of recovery populations were considered in developing the conservation strategy proposed in the Draft Discussion Document. Future peer review will address a draft recovery plan and the conservation strategies that support it. Regarding designation of critical habitat, we examined both quality of existing habitat and land ownership in making our determinations.

Comment 5: One reviewer suggested that hibernation is a key element that separated the Preble's from more common small riparian rodents within its range, and that location and integrity of alluvial deposits appropriate for excavating hibernacula may be an important aspect of Preble's habitat. He also suggested that ''bioassay'' (assessment) of probable habitat was preferable to delineating outward boundaries of critical habitat based on a set distance from the stream bank.

Our Response: We believe that designated outward limits of critical habitat capture most alluvial deposits likely used by the Preble's for hibernacula. We agree that site specific assessment of habitat would be preferable to use of a standard distance outward to designate extent of critical habitat. However, we had neither the time nor resources to conduct such a reach by reach assessment through the range of the Preble's. In addition, we believe that appropriate outward boundaries of critical habitat are not necessarily equivalent to probable Preble's habitat, which corresponds closely to vegetation currently present, and is dependent on current land use and recent site history.

Section 4(i) Comments From States

Comment 1: To suggest that no county-level or individual habitat conservation plans (HCPs) are likely to be implemented in Wyoming during the next 10 years is unacceptable (Governor Freudenthal, State of Wyoming).

Our Response: The Addendum to the Economic Analysis acknowledges the possibility that HCPs may be developed and implemented over the next 10 years for activities in Wyoming that are not exempt from sections 9 and 10 of the Act by the special 4(d) rule (*i.e.*, residential or industrial development).

Comment 2: An agricultural economist from the University of Wyoming should be hired for the economic analysis to ensure familiarity with both the economics field and the people being affected rather than relying on those who are comparatively unfamiliar with the subject matter (Wyoming Department of Agriculture).

Our Response: To address these very issues, Gary Watts (Watts and Associates, Inc., Laramie, Wyoming) was contracted to assist in development of the Draft Economic Analysis. Mr. Watts is a natural resource and environmental economist from Wyoming with over 30 years of research and consulting experience, including several years of experience as a Senior Economist with the Division of Business and Economic Research at the University of Wyoming. Mr. Watts' expertise and experience include economic analyses associated with water projects, irrigation, and agriculture.

Comment 3: The Service needs to define ''near'' as used on page ES–1 of the Draft Economic Analysis regarding future section 7 impacts in or near proposed critical habitat. Provide information on what being ''near'' critical habitat will mean (Wyoming Department of Agriculture).

Our Response: Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In considering the effects of a proposed action, the Federal agency looks at the direct and indirect effects of an action on the species or critical habitat. Indirect effects are caused by the proposed action, are later in time, and are reasonably certain to occur. They may occur outside of the area directly affected by the action. For example, construction of a housing development upstream of critical habitat may result in increased runoff, sedimentation, and pollution in critical habitat. The definition of ''near'' or distance within which indirect effects should be considered will vary depending upon the type of Federal action occurring.

Comment 4: The Draft Economic Analysis was not clear regarding whether the total cost of section 7 included the Service's cost for consultation (Wyoming Game and Fish Department).

Our Response: The total cost of section 7 includes the administrative costs of consultation (borne by the Service, the Federal action agency, and occasionally third parties), as well as the costs of project modifications.

Comment 5: The benefits associated with critical habitat designations are overstated. Providing habitat for only one species in a riparian area will not enhance ecosystem health, but ultimately could be detrimental to the system in total. Prevention of vegetative succession and successional setbacks will decrease habitat diversity and harm some species (Wyoming Game and Fish Department).

Our Response: The Service contends that good Preble's habitat is generally a healthy riparian ecosystem. Clippenger (2002) found evidence of ecological disturbance in the form of lower native species diversity, lower richness, and increased presence of exotic species found in rodent communities at riparian sites lacking meadow jumping mice and concluded that Preble's can be a useful indicator of environmental integrity in riparian areas and associated upland areas in the Colorado piedmont.

Comment 6: Wyoming's contention continues to be that the original Preble's listing was not justified. The existence of the Preble's in Wyoming is yet to be verified. Designation of critical habitat based on the presumption of presence is wrong (Governor Geringer, State of Wyoming). The Service should perform a 5-year status review as required under the Act (Governor Freudenthal, State of Wyoming).

Our Response: We listed the Preble's as a federally-threatened species in 1998 and described its range based on the best scientific and commercial data available at that time. Substantial additional information on the Preble's has become available since the 1998 listing. Petitions to delist the Preble's have been received and are being addressed. We plan to initiate a 5 year review of Preble's meadow jumping mouse in the near future. We anticipate that the results of continuing genetic and morphological studies of *Zapus* will supplement current information on the taxonomic status of the Preble's subspecies and its distribution in Wyoming. The taxonomy and distribution of the Preble's are addressed in the Background section of this rule. *See also* the Peer Review section above. As discussed above, we have decided to include in the final critical habitat determination only those units occurring in drainages within which there is a specimen verified as Preble's through morphological or genetic means. Accordingly, we have removed the Horseshoe Creek unit (NP2), the Friend Creek and Murphy Canyon unit (NP4), the Horse Creek unit (NP5), and the Lone Tree Creek unit (SP3) in Wyoming; as well as the Cedar Creek unit (SP7), and the Cherry Creek unit (SP11) in Colorado. Each of these units occurred in a drainage within which no mice had been verified to be Preble's through morphological or genetic means, but rather only through field identification. If, in the future, one or more of these areas is determined to support mice verified as Preble's through morphological or genetic examination, we would consider whether rulemaking to amend critical habitat is warranted.

Comment 7: The majority of areas proposed as critical habitat have not been visited by Service personnel. (Wyoming Department of Agriculture)

Our Response: The Service used site visits to specific reaches, aerial photographs, habitat maps, coordination with Federal, State, and local government agencies, public comments, and other submitted information in determining proposed and final designation of critical habitat. Time, staffing, and monetary constraints, as well as issues of access, limited site visits and methods used to assess specific stream reaches.

Comment 8: The Service should prepare a list of all activities with a Federal nexus for which designation of critical habitat may have economic effects (Wyoming Game and Fish Department).

Our Response: In general, actions on Federal lands, and actions on non-federal lands that are funded or permitted by a Federal agency have a Federal nexus. An exception exists in cases where the Federal agency involved has no discretionary involvement or control over the action in question (see Federal Actions that May Destroy or Adversely Modify Preble's Meadow Jumping Mouse Critical Habitat, below). The determination of whether a Federal nexus exists for a given activity should be made on a case by case basis and largely rests with the Federal agency involved. Preparation of an all-inclusive list of potential Federal actions by all Federal agencies, that would result in a Federal nexus, is impractical.

Comment 9: Landowners may forgo Federal assistance because of the anxiety associated with section 7 consultations (Governor Freudenthal, State of Wyoming).

Our Response: In cases where a Federal nexus exists and the resulting action is beneficial or neutral to the Preble's, consultation requirements under section 7 of the Act can be easily completed. We anticipate that all Federal agencies will promote projects beneficial to the Preble's, work with landowners to reduce potential impacts to the Preble's, and provide information and guidance to landowners to help alleviate fears regarding Federal regulation of activities on private lands.

Comment 10: If designation of critical habitat is projected to have a modest impact on agricultural land use, why are these lands included in the designation (Governor Freudenthal, State of Wyoming)? It is puzzling that the Service believes that agricultural development is not a threat to the Preble's but still believes that agricultural lands need critical habitat designation (Wyoming Game and Fish Department).

Our Response: Agriculture, including grazing and haying, can be managed in many different ways, some of which may be beneficial to Preble's habitat, others harmful. Much of the habitat in Wyoming is currently being grazed or managed for hay production in a manner that maintains what appears to be good habitat for the Preble's. However, there are also areas being managed in a manner that is not conducive to the development or maintenance of Preble's habitat. As defined, critical habitat is essential to conserve the species and it may require special management considerations or protection. The areas designated as critical habitat have been determined to be essential to the conservation of the Preble's. Additionally, those areas where current management is resulting in maintenance of good habitat have no agreements committing to the continuation of such practices. In such cases, special management considerations or protections may be required. ''Agricultural development'' implies a change in land use and could be a threat to the Preble's. In instances where a Federal nexus exists, protections would ensure that changes in agricultural practices harmful to the Preble's are not instituted without required consultation.

Comment 11: Protection of the Preble's critical habitat is in direct opposition to the needs of the threatened Colorado butterfly plant (*Gaura neomexicana* ssp. *coloradensis*) and the threatened Ute ladies'-tresses orchid (*Spiranthes diluvialis*) (Wyoming Game and Fish Department).

Our Response: At a landscape scale, requirements of these species are not in conflict and they are able to co-exist. All have similar, although not identical, habitat requirements. All three occur in floodplain areas, often within the same drainages. Preble's requires more dense vegetation than do the plants, which do not compete well with dense vegetation. However, Preble's also utilizes these more open, grassy areas for foraging and other activities. We believe that

management can provide for a mosaic of habitat within individual drainages and allow for conservation of these and many other species.

Comment 12: The Draft Economic Analysis causes confusion by not specifying the costs generated from the designation of critical habitat as opposed to those generated by the listing. It is difficult to estimate the true economic impact of critical habitat designation (Governor Freudenthal, State of Wyoming).

Our Response: The court, as in *New Mexico Cattle Growers Ass'n* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277, requires us to look at co-extensive costs (consideration of the impact of all economic effects that could be a result of the designation, even if they are the same as those that arise from the listing). This is the approach the Draft Economic Analysis and Addendum to the Economic Analysis take. The Service recognizes that if an area is excluded from the final designation, not all of the economic impacts described in the Economic Analysis may be avoided.

Comment 13: Critical habitat boundaries should align with county-wide HCP boundaries for consistency (Colorado Department of Natural Resources).

Our Response: We agree with the comment that critical habitat boundaries should match HCP boundaries wherever possible. We have included modifications in SP4 where there is agreement on a proposed protection zone associated with a rural agricultural conservation plan. Additionally, we have excluded units SP8, SP9, SP12, and A1, and private lands in Douglas County in unit SP13, which are included presently in the following proposed HCPs: Boulder, Douglas County, and El Paso County. The reasons for excluding these pending HCPs are discussed below.

Public Comments

We reviewed all comments received for substantive issues and new data regarding critical habitat and the Preble's meadow jumping mouse, the Draft Economic Analysis, and the draft EA. In the following summary of issues we address comments received on all three documents during the comment periods and public hearing testimony.

Comments of a similar nature are grouped into issues.

Issue 1: Biological Concerns and Methodology

Comment 1: Critical habitat for the Preble's is not determinable. Too little is known about the Preble's, its habitat needs, population sizes, and its distribution to designate critical habitat.

Our Response: Several commenters cited our statement that "* * * much of the biology and ecology of the Preble's is still not well understood." A similar statement could probably made for a majority of species upon listing under the Act. See our statement above. We have used the best scientific and commercial data available, and exercised our professional judgment to propose critical habitat. In addition, peer review comments, all public comments, and any additional information received were considered in final designation of critical habitat.

Comment 2: The extent of critical habitat proposed by the Service is inadequate (*e.g.*, critical habitat should be designated for all occupied habitat; all high-quality habitat should be designated regardless if the Preble's has been documented in the area). A number of comments were received suggesting that specific reaches be added in the final designation of critical habitat. One commenter roughly mapped approximately 500 km (300 mi) of additional rivers and streams over approximately 50 additional reaches in Colorado as suggested additions to final critical habitat.

Our Response: We believe that the suggestions that critical habitat designation be extended to all habitat occupied by the Preble's or to all potentially occupied areas of high-quality habitat are not supported by the definition of critical habitat under 3(5)(A) of the Act. Within the geographic area occupied by the species we designate only areas currently known to be essential to conserve the species. In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. We designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. Based on the best scientific data available there appears no basis for designation of critical habitat outside of the geographic area occupied by the species. Translocation of the Preble's from existing populations to unoccupied habitat is not part of our conservation strategy for the Preble's. Given the extent and distribution of known Preble's populations, we believe that protection within the area currently occupied will be sufficient to conserve the Preble's. Where suggestions for additions to proposed critical habitat were accompanied by specific justification, our responses are detailed in Issue 3, Comments on Specific Units, below. If in the future, we determine from information or analysis that those areas designated in this final rule need further refinement, or if we identify or determine additional areas to be essential to the conservation of the Preble's and requiring special management or protection, we will evaluate whether a revision of critical habitat is warranted.

Comment 3: The Draft Discussion Document is not a final document and has not received public review; therefore, it should not be used as a basis for designation of critical habitat.

Our Response: Although a draft recovery plan has not been published for public review, the Draft Discussion Document, as now modified in the subsequent Working Draft, provides the latest available scientific information on the Preble's. This information is being used in development of a recovery plan and has been used to develop a conservation strategy that supports the critical habitat designation. For example, information on range, occupancy, populations, and habitat characteristics are being used in both efforts. The critical habitat proposal has been refined through comments and additional information received, as has the Draft Discussion Document. Whenever and wherever the best scientific and commercial information presents itself to the Service, we will incorporate it into species conservation efforts, as illustrated here and in the recovery planning process for the Preble's.

Comment 4: Critical habitat should correspond more closely to proposed recovery populations described in the Draft Discussion Document. In several drainages, proposed critical habitat falls short of the recovery populations proposed. In some instances proposed critical habitat greatly exceeds minimum stream lengths of large or medium recovery populations described in the Draft Discussion Document. Also, proposed critical habitat has added units beyond those discussed as recovery populations in the Draft Discussion Document.

Our Response: The conservation strategy underlying this critical habitat designation was informed by the ongoing recovery planning process and the associated Draft Discussion Document and Working Draft, but the outcomes are not identical. The Draft Discussion Document and the subsequent Working Draft provide recovery criteria for achieving recovery of the species. Recovery populations are proposed for specific hydrological units within the range of the Preble's,

described by an 8-digit Hydrological Unit Code or HUC (hereafter, we refer to these specific subdrainages as ''HUCs.''). We adopted some of the same elements when developing a conservation strategy for designating critical habitat. For some HUCs there is little or no available information on the existence of Preble's populations or the extent of occupied habitat. In these cases we exercised our judgement as to whether the areas were essential to the conservation of the Preble's and whether designation of critical habitat was warranted based on any confirmed occurrence of the Preble's, and quality and distribution of appropriate habitat. The Draft Discussion Document provided minimum stream lengths deemed necessary to achieve population goals; however, we believe that the potential for reaching population goals increases with increased length of streams included in a recovery population. Therefore, we have not limited the extent of critical habitat to minimum stream lengths described in the Draft Discussion Document. In some HUCs we proposed critical habitat units beyond the number of recovery populations that the Draft Discussion Document specifies. We have placed emphasis on those Preble's populations occurring on Federal lands and have designated critical habitat for several Preble's populations on Federal lands independent of recovery populations proposed in the Draft Discussion Document and the subsequent Working Draft.

Comment 5: Proposed critical habitat units are discontinuous within some drainages. These areas should be linked even where intervening steam reaches do not support the Preble's.

Our Response: In most cases proposed critical habitat units exceed minimum reach lengths for large, medium, and small populations proposed in the Working Draft and reflected in our conservation strategy. All proposed critical habitat units exceed 5 km (3 mi) in length. In some cases we chose not to link stream reaches through designation of marginal habitat or to substantially extend critical habitat to cover a larger Preble's population where multiple small recovery populations are consistent with our conservation strategy.

Comment 6: Critical habitat should not be designated in reaches where the Preble's has not been confirmed present. The Service must clearly establish that the Preble's lives in the area before designating critical habitat.

Our Response: See response to Peer Review Comment 3 above.

Comment 7: Within proposed critical habitat units there are locations where Preble's habitat is not present. Some incised, or otherwise impacted or altered reaches of stream may be impassable for the Preble's and do not serve as travel corridors. There should be a process for site-specific exclusions from critical habitat where primary constituent elements are not present. Several commenters requested that specific sites within proposed critical habitat units not be included in the final critical habitat designation.

Our Response: The Act does not require that a species live in an area in order for it to be included in critical habitat. It defines critical habitat as including ''specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species'' Sec. 3(4)(ii). Additionally, our regulations state: ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). All primary constituent elements upon which the Preble's depends are present within each proposed unit of critical habitat. At any given site within the unit, one or more primary constituent element must be present for the site to qualify as critical habitat. Site-specific determination of limits of critical habitat will be made by the Service on a site by site basis. For example, it may be determined that a reach qualifies as critical habitat based on its ability to provide connectivity between habitat upstream and downstream. Reaches that provide even minimal connectivity may be essential to maintaining Preble's population over a critical habitat unit. Yet, in the same reach, uplands away from the creek may be developed and not be considered critical habitat. The scale of mapping that we used to approximate our delineation of critical habitat did not allow us to exclude all developed areas such as roads and rural development. Federal actions limited to these areas would not trigger a section 7 consultation unless they affect the Preble's or primary constituent elements within designated critical habitat. Response to comments that suggest omitting specific areas from final critical habitat designation are included in Issue 3, Comments on Specific Units, below.

Comment 8: The primary constituent element addressing ecological processes should be more clearly described.

Our Response: We have listed and described the ''dynamic geomorphological and hydrological processes'' that create and maintain Preble's habitat as a primary constituent element. In designating critical habitat we consider presence of primary constituent elements. The integrity of such processes in a given area, and thus the probability that quality Preble's habitat will be maintained over time, was considered in the designation of critical habitat. As with other primary constituent elements, there is a qualitative aspect to ecological processes. Streams that have highly managed flows or whose flows are dictated by urban runoff, and those that are severely downcut, channelized, or armored to prevent erosion were less likely to be designated as critical habitat. Likewise, we chose not to designate man-made ditches as reaches of critical habitat, even though some have been shown to support Preble's populations. In some cases current land uses (mowing, overgrazing) may limit primary constituent elements relating to vegetation, but underlying ecological processes are still operative. Such areas may still qualify as critical habitat based on presence of this primary constituent element. Actions that would degrade these ecological processes would be viewed as adversely affecting critical habitat.

Comment 9: One component of a primary constituent element for the Preble's is ''open water throughout the Preble's active season.'' In some proposed reaches, water is not present throughout the Preble's active season.

Our Response: We believe that in each critical habitat unit proposed, open water is generally available throughout the Preble's active season. Portions of certain critical habitat units, including side tributaries, may have little or no water in late summer. In drought years availability of open water may be more generally limited.

Comment 10: Mountain streams areas are less important for the Preble's than streams with wider floodplains that are present in the foothills or on the plains.

Our Response: While it is likely that streams with wider floodplains support higher numbers of the Preble's per unit length of stream, we believe that mountain streams are also essential to the overall conservation of the Preble's. Preble's populations along mountain streams may be less subject to certain threats including water projects, residential development, flooding, and long-term climate change. For example, while the Upper South Platte River supports populations of the Preble's, few are thought to exist along the South

Platte River through the Denver metropolitan area and downstream areas that have been subject to residential development, agriculture, and aggregate extraction.

Comment 11: Varying the outward extent of critical habitat by stream order does not consider topography or habitat variability. These distances are arbitrary. Lines should be based on site-specific mapping of primary constituent elements or county mapping of habitat that has been done in support of HCPs currently being developed.

Our Response: We received significant comment on this topic but little in terms of viable alternative approaches, applicable throughout the range of the Preble's. Site-specific mapping across the range of the Preble's would be a more precise method of designating critical habitat, but was not practical given the time, personnel and funding constraints under which we were working. Mapping done to define boundaries of HCPs varies by planning effort and is being done using criteria unlike those used to designate critical habitat. The most common suggestion we received was to standardize the distance outward for all streams regardless of stream order. We continue to believe that varying outward extent of critical habitat based on the width of existing riparian corridor and flood plain is appropriate, and that stream order provides an approximation of this width.

Comment 12: The upland habitat included in proposed critical habitat is too extensive. Preble's use of uplands proposed as critical habitat is not supported by radio-telemetry studies. Value of upland habitat to the Preble's varies by type; shortgrass prairie should not be included in critical habitat.

Our Response: We did not intend the outward extent of the proposed critical habitat to be limited to areas of most frequent Preble's use. Some commenters cited the distance outward that would include 95 percent of all radio-tracking locations from studies done at research sites as an appropriate outward limit of critical habitat, apparently with the belief that this would include a significantly smaller distance outward than was proposed. (We believe that it would actually increase the distance outward.) In determining which areas to designate as critical habitat we are required to consider primary constituent elements that are essential to conservation of the species, and that may require special management considerations and protection. We believe that corridors of critical habitat proposed, ranging from 220 m (720 ft) to 280 m (920 ft) in width (plus the river or stream width) are appropriate to support the full range of primary constituent elements identified as essential for persistence of Preble's populations.

Frequently used habitat corresponds closely to vegetation currently present, and is dependent on current land use and recent site history. We do not have the time, funding or staffing to map vegetation over all stream reaches designated as critical habitat. The extent of designated critical habitat is designed to protect all primary constituent elements required by the Preble's, including geomorphological and hydrological processes that shape Preble's habitat. When a Federal action takes place that may affect critical habitat, a site-specific determination will be made as to the presence of primary constituent elements and potential adverse impacts. In some cases, it may be determined that the extent of critical habitat into upland areas is more limited than the outward boundary of critical habitat designated.

Comment 13: Stream edge is an ''ephemeral reference point'' and should not be used to designate boundaries of critical habitat. The proposal fails to identify ''specific geographic areas'' as required by the Act.

Our Response: Stream edge will eventually change, as will the stream centerline, 100-year flood plain and other pertinent lines of demarcation in Preble's habitat. Alternatives to the use of such boundaries would include extending limits of critical habitat to identifiable features such as the nearest road or ridgetop, or surveying an appropriate line. None of these alternatives were judged as desirable or practical as the method employed. Our critical habitat maps are based on recent GIS coverages depicting stream locations. Specific boundaries of designated critical habitat can be located on the ground based on stream edge, stream order, and occurrence of primary constituent elements.

Comment 14: Too many equivocations exist in the proposal. Phrases like ''presumed to be,'' ''appears that,'' and ''believed to exist'' appear too often.

Our Response: We are required to use the best available information regarding the Preble's. Often information available does not allow us to make statements of positive fact. We have tried to be honest and accurate in stating what is known with certainty and what is believed to be true based on the best scientific data available, and our professional judgement.

Comment 15: The 1998 listing of the Preble's is flawed. There is no evidence that the Preble's is declining. The Preble's should be delisted.

Our Response: The reasons for listing the Preble's were outlined in the 1998 rule listing the Preble's as threatened. While additional populations have been documented, the threats to the Preble's described at the time of listing remain. A process exists for petitioning the Service to delist a species and such petitions are currently being assessed. No decisions have been made regarding these delisting petitions that would affect the final designation of critical habitat.

Comment 16: Structural measures to control and stabilize channels are not a threat to the Preble's. Stabilization of channels is positive. Such measures will not affect hydrology.

Our Response: At times, structural measures may stabilize channels where erosion is taking place and allow revegetation. In some instances where habitat is largely degraded, such stabilization may provide benefits over time. However, in general, structural measures limit the hydrological and geomorphological processes that maintain and restore habitats required by the Preble's. Elimination of natural meanders, channelization, and armoring of rivers and streams generally degrades riparian and flood plain habitats needed by the Preble's. Impact of specific projects on the Preble's and its habitat must be assessed on a case by case basis.

Comment 17: Irrigation of hayfields is beneficial to the Preble's. It promotes Preble's habitat where it would not otherwise be present.

Our Response: Irrigation of hayfields maintains more moist conditions over a wider area of streamside habitat for a longer period than would naturally occur. This promotes a wider area of dense riparian-type vegetation along streams, but is generally accompanied by repeated mowing, sometime very near the banks of streams, that may kill individual mice, disrupt breeding and other behaviors, leave little native vegetation, and destroy food sources during the period when the Preble's is preparing for hibernation. While some aspects of irrigated hayfields are undoubtably beneficial to the Preble's, overall effects on Preble's populations are likely complex and have not yet been studied.

Comment 18: The Service should breed the Preble's in captivity and release them on unoccupied public lands or to supplement existing populations. The Preble's could be maintained in zoos or on small preserves; they do not need extensive habitat.

Our Response: At this time we do not anticipate that captive breeding and release will be part of the conservation strategy to recover the Preble's. We believe that translocation (moving animals from one site to another) and captive breeding should be considered only as a ''last resort'' for maintaining a population. Small populations in zoos or in small, highly managed preserves would not substantially contribute to recovery goals.

Issue 2: Procedural and Legal Compliance

Comment 19: Designation of critical habitat will result in taking of private lands.

Our Response: See Takings within the Required Determinations section of this rule below.

Comment 20: The Draft Economic Analysis and the draft EA should have been released along with the proposed critical habitat designation. The 30-day comment period following availability of all three documents was insufficient. They must be viewed together.

Our Response: Comments on the entire proposal, and all three document, were accepted for 30 days following the notice of availability of the Draft Economic Analysis and the draft EA. We believe that 30 days was sufficient time for review, especially considering that the proposed rule for critical habitat designation had been available for review months prior to release of the other two documents.

Comment 21: The proposed rule to designate critical habitat does not comply with Office of Management and Budget, and Department of Interior 2002 information quality guidelines.

Our Response: The rule to designate critical habitat is subject to the requirements of the Federal Data Quality Act (DQA) 44 U.S.C. 3506, and the specific guidelines that the Department of the Interior issued regarding data quality. These guidelines, Information Quality Guidelines Pursuant to section 515 of the Treasury and General Government Appropriations Act For Fiscal Year 2001, became effective October 1, 2002. This final rule meets these information quality standards as it is based on the best available information. The Service rulemaking with regard to designation of critical habitat for the Preble's includes a comprehensive public comment process and imposes a legal obligation on us to respond to comments on all aspects of the action. These procedural safeguards can ensure a thorough response to comments on quality of information. The thorough consideration required by this process generally meets the needs of the request for correction of information process. In the case of rulemakings and other public comment procedures, where we disseminate a study analysis, or other information prior to the final rulemaking, requests for correction will be considered prior to the final action. We believe the public comment and review process for this rulemaking adequately addresses the commenter's concerns regarding the quality, objectivity, utility, and integrity of the proposed rule.

Comment 22: The Service can not treat public lands and private lands differently when making decisions regarding designation of critical habitat.

Our Response: The Service has not treated public and private lands differently as far as prerequisites for critical habitat designation are concerned. However, public lands, especially undeveloped Federal lands and other public lands currently devoted to conservation purposes, are more likely, both currently and in the future, to support viable Preble's populations. Therefore, such lands contribute significantly to a rangewide conservation strategy for the Preble's and, as a percentage of occurrence, have more frequently been proposed as critical habitat than have private lands.

Comment 23: The final critical habitat designation should be postponed until the Service promulgates rules to clarify the definition of ''adverse modification.''

Our Response: In a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (Sierra Club v. U.S. Fish and Wildlife Service *et al.,* F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species. However, clarifying the adverse modification definition is not a sufficient reason to delay designation of critical habitat.

Comment 24: Under the Act, designated critical habitat should be limited to ''the geographic range occupied by the species at the time of listing.'' At the time of listing much less was known about the range of the Preble's.

Our Response: The reference to ''at the time of listing'' applies to designation of critical habitat concurrent with listing. When critical habitat is proposed later, as in this case, status at the time the proposal is used. It would make no sense to ignore the latest available scientific information when proposing critical habitat.

Comment 25: Insufficient notice was given for the public hearings. Service guidance indicates that a notice should be placed in the **Federal Register** 15 days prior to the hearing.

Our Response: We have attempted to provide the notice of public hearings through a variety of means. We held additional hearings based on requests received from the public. Delays in publication of the notice of meetings in the **Federal Register** prevented us from meeting the 15-day guidance.

Comment 26: All affected landowners should be notified directly of the proposed critical habitat designation. The Service should create a file of affected landowners.

Our Response: The Service employed the normal means to notify the public of the proposed rule and of public hearings. While direct notification of affected landowners would have been desirable, the scope of proposed critical habitat and the number of land owners involved made it impractical.

Comment 27: The Service should be receptive to making changes in the final rule that add critical habitat, rather than just deleting areas previously proposed.

Our Response: To add significantly to the critical habitat proposed would likely require us to repropose the rule and open an additional public comment period. Since the proposal was published, we have not received any scientific or commercial information that indicates that we should make significant additions to areas proposed.

Issue 3: Comments on Specific Units

Comment 28: The Horseshoe Creek unit (NP2), and Friend Creek and Murphy Canyon unit (NP4) contain lower quality habitat than many of the units comprised mostly of private land.

Our Response: Based on site visits and information provided by the Forest Service, these units contain habitat suitable for use by the Preble's. The Horseshoe Creek unit and the Friend Creek subunit contain wide riparian areas with beaver ponds, stands of willows, and subirrigated meadows interspersed with some narrower, rocky areas. These narrower areas provide connection between patches of good habitat. The Murphy Canyon subunit is a narrower, mountain canyon, but does support some healthy willow stands and healthy areas of native riparian vegetation. However, both units have been removed from this designation as the drainages contain no mice verified as Preble's through morphological or genetic means.

Comment 29: In the Chugwater Creek unit (NP3), remove Spring Creek and Three Mile Creek from critical habitat

designation based upon the very limited amount of actual riparian habitat, hydrology, and the nature of the surrounding upland habitat.

Our Response: Based upon information regarding habitat suitability obtained through public comment and additional site visits to portions of NP3, the Service has removed four tributaries to Chugwater Creek from the critical habitat designation. See the discussion of NP3 for more details regarding these tributaries and the rationale for their removal.

Comment 30: About 5 km (3 mi) upstream from Chugwater in the Chugwater Creek unit (NP3), the proposed critical habitat extends one-half mile from Chugwater Creek to include a pivot sprinkler in an attempt to gain control of the water.

Our Response: Our maps do not indicate any location in that general vicinity where the critical habitat widens to more than 120 m (394 ft) from Chugwater Creek nor are any small tributaries included in that vicinity of NP3.

Comment 31: In the Lodgepole Creek and Upper Middle Lodgepole Creek unit (SP1), extend critical habitat to join the two subunits into one larger, contiguous unit. Expand the Upper Middle Lodgepole Creek subunit upstream along the south branch of Middle Lodgepole Creek for a distance of approximately 2 mi (3 km).

Our Response: Our conservation strategy has a goal of three small recovery populations in this subdrainage. Each of the subunits is slightly larger than necessary to support a small population and is located in an area determined to support the Preble's. Expanding the critical habitat to connect the subunits would provide a larger unit than that called for in our conservation strategy. Additionally, it appears this intervening habitat is less suitable than the habitat found in each of the subunits. According to the National Wetland Inventory maps for the area, much of the habitat between the two subunits has little shrub component and becomes narrow and steep, providing only for connectivity between the two subunits. The Service has decided not to add additional critical habitat to connect these two subunits. Additionally, no areas of adequate habitat are available to provide a third subunit in this intervening area.

The Service considered upstream expansion of the Upper Middle Lodgepole Creek subunit. However, this upstream reach contains less of the shrub component and is less complex than the north branch of Middle Lodgepole Creek. Additionally, although the Service recognizes the difficulties in using elevation as a general upper limit to critical habitat (see response to Peer Review comment 2), the Service has generally used 2,300 m (7,600 ft) as the upper bound of critical habitat. This unit is an exception based upon genetic and morphological identification of a specimen in this area from approximately 2,350 m (7,700 ft). However, extension of the critical habitat upstream for 3 km (2 mi) on the south branch of Middle Lodgepole Creek would include elevations up to approximately 2,400 m (7,900 ft). Based on these factors, the Service has decided not to add the suggested additional critical habitat to this subunit.

Comment 32: In the Crow Creek watershed, add critical habitat on Middle Crow Creek from near Turtle Rock downstream to the forest boundary and unidentified sections of the south fork of Middle Crow Creek.

Our Response: The Service considered including Middle Crow Creek and the south fork of Middle Crow Creek on the Pole Mountain unit of the Medicine Bow National Forest when proposing critical habitat. Previously, Forest Service trapping efforts at sites relatively close to the forest boundary along both creeks yielded mice identified as the Preble's in the field. At that time, voucher specimens were not being collected for further morphological examination. As with most of the creeks occurring on the Pole Mountain unit, most of Middle Crow Creek and the south fork of Middle Crow Creek are at elevations above those generally used by the Preble's. The Service has decided not to include Middle Crow Creek or the south fork of Middle Crow Creek as critical habitat. However, the Service will encourage the collection of voucher specimens to clarify the actual distribution of the Preble's in these higher elevations.

Comment 33: In the Lone Tree Creek unit (SP3), extend critical habitat to join the two subunits into one larger, contiguous unit.

Our Response: We have removed this unit from the final designation of critical habitat after reevaluating the available data regarding the identification of jumping mice form this drainage. Mice from this drainage have not been confirmed as Preble's through morphological or genetic means.

Comment 34: Reduce the area proposed as critical habitat on the mainstem of the North Fork of the Cache La Poudre River unit (SP4) upstream of Seaman Reservoir, from the reservoir to approximately 0.5 mi (0.8 km) above Long Draw Creek. The reach supports only patches of willow and has little habitat for the Preble's.

Our Response: Within the limited area suggested for exclusion, current habitat appears discontinuous and of lower current quality than habitat upstream of this reach; however, we believe that the area in question does, and in the future will, help to support the Preble's population along the North Fork of the Cache La Poudre River. Therefore, the Service has included this reach as designated critical habitat.

Comment 35: On the North Fork of the Cache La Poudre River unit (SP4) critical habitat should not be designated for the area downstream for a distance of 600 m (2,000 ft) from the existing Halligan Dam. Disturbance from past dam construction, lack of continuous riparian vegetation, steep slopes, and heavy grazing contribute to conditions unlikely to support the Preble's.

Our Response: Preble's habitat downstream of Halligan Dam is within a canyon environment and is more limited in continuity and extent than habitat that develops on broad sedimentary floodplains. Nonetheless, we believe that this reach represents habitat essential to the conservation of the Preble's. The Service has included this reach as designated critical habitat. Depending on presence of primary constituent elements that support the Preble's, outward extent of critical habitat may be limited in certain canyon areas. Similarly, presence of past disturbance in areas directly below the Halligan Dam suggests that site specific adjustment of critical habitat boundaries may be appropriate based on presence or absence of primary constituent elements.

Comment 36: Mainstem portions of the Cache La Poudre River unit (SP5) are highly impacted by State Highway 14, campgrounds, and recreational use of the river. Human disturbance limits Preble's habitat and travel corridors used by the Preble's. The Cache la Poudre is designated a Wild and Scenic River and the mainstem has been classified as a Recreational River. Designation of critical habitat through this reach would make management of National Forest System lands along the river more difficult, with little benefit to Preble's populations.

Our Response: Habitat along the Cache La Poudre River serves as a travel corridor connecting several tributaries proposed as part of this critical habitat unit. While human uses have degraded and fragmented habitat in some areas, in other places high quality Preble's habitat occurs along the mainstem of the river. Therefore, the Service has included this reach as designated

critical habitat. We recognize that both natural limitations (steep canyon slopes) and human activities (roads, campgrounds, recreation areas) affect the site-specific boundaries of critical habitat present within this reach. We anticipate working closely with the Forest Service to further define areas that are, or are not, Preble's critical habitat, as determined by primary constituent elements present along the reach. Proposed Forest Service actions in this area that affect the Preble's will generally require section 7 consultation regardless of whether critical habitat is designated in this reach. We do not believe that this designation will substantially impact the management of National Forest System lands in this area. In addition, maintaining habitat for the Preble's appears consistent with wildlife management goals of the Recreational River segment.

Comment 37: The Buckhorn Creek unit (SP6) between Little Bear Gulch and Stringtown Gulch lacks habitat connectivity due to steep slopes. Bear Gulch has a series of waterfalls at its confluence with Buckhorn Creek that forms a barrier to movement.

Our Response: A confirmed Preble's and other mice thought to be the Preble's have been captured on Little Bear Creek and Bear Creek. These captures suggest that connectivity (either via riparian habitat or through nearby uplands) is being maintained through this reach. Therefore, the Service has included this reach as designated critical habitat. The ability of the Preble's to traverse canyon areas is not fully known. We do not anticipate that the Preble's climbs sheer cliffs; however, it may be adept at circumventing steep areas to travel up and down stream. Portions of the Buckhorn Creek unit may serve only as a travel corridor for the Preble's. Site-specific determinations could define boundaries of critical habitat and limits of areas that serve as travel corridors.

Comment 38: The Cedar Creek unit (SP7) should be omitted from final critical habitat designation. Jumping mice captured in the unit were not conclusively identified as the Preble's. Management of private and public lands in the unit is consistent with conservation of the Preble's.

Our Response: We have removed this unit from the final designation of critical habitat after reevaluating the available data regarding the identification of jumping mice form this drainage. Mice from this drainage have not been confirmed as Preble's through morphological or genetic means.

Comment 39: Designation of critical habitat is not needed along South Boulder Creek unit (SP8) because existing protection (City of Boulder Open Space and Mountain Parks Lands, Colorado State Natural Area) and reasonably foreseeable protections (Boulder HCP) exist.

Response: We have excluded the unit from critical habitat designation under 4(b)(2) of the Act (see Relationship to Sections 3(5)(A) and 4(b)(2) of the Act below).

Comment 40: Within the South Boulder Creek unit (SP8), designate critical habitat to connect Spring Creek to South Boulder Creek.

Our Response: We have elected not to designate critical habitat in this unit.

Comment 41: Spring Brook, in the South Boulder Creek unit (SP8) is discontinuous from South Boulder Creek and only about 1 mile of Spring Brook has been proposed as critical habitat. It does not meet the 5 km (3 mi) minimum criteria for a small population as described in the Draft Discussion Document. It is of insufficient length and quality to warrant critical habitat designation.

Our Response: See response to Comment 40.

Comment 42: Segments of the St. Vrain River and Coal Creek (Boulder County, Colorado) support the Preble's, have the primary constituent elements required by the Preble's, and should be designated critical habitat.

Our Response: We have reviewed these reaches and do not believe that they are known to be essential for the conservation of the Preble's consistent with our conservation strategy. Much of the St. Vrain River reach where the Preble's has been documented to occur is impacted by past or ongoing aggregate mining. While portions of Coal Creek have been show to support the Preble's, other portions have experienced repeated unsuccessful trapping efforts. Our conservation strategy calls for one medium recovery population in the St. Vrain subdrainage and designates South Boulder Creek as the location of that population.

Comment 43: Hake Ditch near Coal Creek (Boulder County, Colorado) should be designated as critical habitat.

Our Response: Hake Ditch is judged not worthy of critical habitat designation by the Service. As described above, Coal Creek is not known to be essential consistent with our conservation strategy for the Preble's. No reaches of ditches have been specifically designated as critical habitat in this rule.

Comment 44: On the Rocky Flats Environmental Technology Site unit (SP9), final critical habitat should be designated to improve connectivity between Rock Creek, Walnut Creek, and Woman Creek.

Our Response: These three creeks are not connected on or near the Rocky Flats site. As in other cases, we have designated critical habitat only along natural water courses. The Service has chosen not to connect these stream by designation of critical habitat over uplands separating these drainages. While not confirmed by studies to date, it appears probable that individual Preble's mice occasionally move from one drainage to another over uplands at Rocky Flats.

Comment 45: How would designation of Woman Creek on Rocky Flats Environmental Technology Site unit (SP9) affect the timing of ongoing cleanup at the facility and the transfer of lands at the site to the Service? How would it affect the designated road right-of-way along Indiana Street on Rocky Flats.

Our Response: We have excluded the Rocky Flats site from designation.

Comment 46: The Rocky Flats Environmental Technology Site unit (SP9) includes Indiana Street and a parcel east of the road, on property owned by the City and County of Broomfield, that does not support riparian habitat.

Our Response: See Response to Comment 45.

Comment 47: Preble's presence at the Ralston Creek unit (SP10) is based on a single positive trapping survey. The population is unlikely to persist over time.

Our Response: Under our conservation strategy, the Ralston Creek population would likely be one of three small recovery populations in the Clear Creek subdrainage. We believe that maintenance of even a small population along Ralston Creek is significant to the conservation of the Preble's and therefore the Service has designated this reach as critical habitat.

Comment 48: Exclude from final critical habitat three unnamed tributaries to Upper Lake Gulch in the Cherry Creek unit (SP11) in Douglas County, Colorado. In the West Plum Creek Unit (SP12) exclude portions of an unnamed tributary to West Plum Creek, Upper Metz Canyon, and Bear Creek in the Lake Waconda area. These reaches do not support Preble's habitat based on mapped done for the Douglas County HCP. They have been altered by human land uses and lack primary constituent elements required by the Preble's.

Our Response: We have removed the Cherry Creek unit (SP11) from the final designation of critical habitat after reevaluating the available data regarding

the identification of jumping mice form this drainage. Mice from this drainage have not been confirmed as Preble's through morphological or genetic means. We have excluded SP12 as part of the pending Douglas County HCP.

Comment 49: Subunits in the Upper South Platte River unit (SP13) should be connected to provide one contiguous critical habitat unit including the South Platte River and tributaries proposed for designation.

Our Response: Quality Preble's habitat is not contiguous along the South Platte River. In addition, ownership and land uses vary. The proposed areas largely consist of National Forest System lands. Many of the intervening reaches do not. The Service has determined that connection these subunits to form one very large critical habitat unit is not warranted.

Comment 50: Portions of proposed Upper South Platte River unit (SP13), were burned in the 2002 Hayman Fire. The Forest Service recommends that these areas be removed from consideration for critical habitat designation.

Our Response: We have visited the reaches in question and the Service has elected not to designate the proposed Wigwam Creek subunit as critical habitat. This subunit was severely burned, does not currently support the primary constituent elements required by the Preble's, and it appears that such habitat elements will not return for a period of years. In contrast, we have determined that other reaches proposed as critical habitat that were impacted by the Hayman Fire have been less severely burned and continue to support primary constituent elements required by the Preble's. These areas, in the South Platte River subunit and the Trout Creek subunit, have been designated critical habitat despite impacts of the Hayman Fire.

Comment 51: In the Upper South Platte River unit (SP13) there are instances where, based on mapping, critical habitat appears to extend above 2,300 m (7,600 ft). The Service should revisit the mapping to make sure it is consistent with coverage developed by the Forest Service and Colorado Division of Wildlife.

Our Response: The upward limit of critical habitat proposed in this unit was 2,300 m (7,600 ft). We have reviewed the maps that depict critical habitat boundaries and have not found deviation from the 2,300 m (7,600 ft) standard. Any apparent discrepancies may result from GIS base mapping used by the different agencies.

Comment 52: Proposed critical habitat within the Monument Creek unit (A1) should be modified to correspond to the mapped Regional Habitat Conservation Plan habitat area.

Our Response: The Service has not designated critical habitat in this unit.

Comment 53: Include the Union Meadows area (along Union Boulevard and the Templeton Gap Floodway) in El Paso County, Colorado, as critical habitat. An isolated site such as this could be valuable to the conservation of the Preble's.

Our Response: The Preble's is not known to exist on or near the area. Our evaluation of this area indicates that it does not warrant critical habitat designation.

Comment 54: Do not exclude the Academy, in El Paso County, Colorado from critical habitat.

Our Response: The Service has excluded the Academy from critical habitat for reasons cited in Relationship with Department of Defense Lands below.

Comment 55: Kettle Creek on the Academy should not be included in the Monument Creek unit (A1) based on the proposed exclusion for the Academy.

Our Response: Inclusion of this reach of the A1 Unit in the proposed rule to designate critical habitat was in error. Like all portions of the Academy, it is excluded in the final critical habitat designation.

Issue 4: Other Relevant Issues:

Comment 56: Provide exemptions from critical habitat where county-wide HCPs are currently being developed. Alternately, provide assurance that critical habitat will be terminated for an area addressed in an HCPs, upon Service issuance of a section 10 permit for a completed HCP.

Our Response: Currently, a limited number of regional or county-wide HCPs are being developed in close cooperation with the Service. For finalized HCPs where a section 10 permit has been issued, and for certain pending HCPs, the Service has considered whether the area covered by the HCP should be excluded under 3(5)(A) or 4(b)(2) of the Act. If pending HCPs are not completed, we will determine whether areas designated in this final rule need further refinement.

Comment 57: Exclude Denver Water properties included under Denver Water's recently completed HCP from final critical habitat designation. The eight properties in question include a total of approximately 250 ac (113 ha) of proposed critical habitat in four proposed critical habitat units in the South Platte River drainage.

Our Response: The Service has excluded these properties from final critical habitat designation (see Relationship to Habitat Conservation Plans below).

Comment 58: HCPs do not provide sufficient protection of the Preble's to allow exclusion of these areas covered from critical habitat designation. Specifically, areas included in the El Paso County HCP currently under development should not be excluded.

Our Response: See the response to Comment 56 above.

Comment 59: The Air Force Academy should not be excluded based on section 3(5)(A) of the Act.

Our Response: We continue to believe that an exclusion for the Academy is warranted (see Relationship with Department of Defense Lands below).

Comment 60: Critical habitat designation should be limited to public lands.

Our Response: As defined, critical habitat is not limited by land ownership, but rather based on being essential to the conservation of the species. Federal lands are limited in location, size, and habitat quality. We have designated Federal lands where we believe they have met the definition, but we are unable to limit critical habitat designation to Federal lands.

Comment 61: Table 1 of the proposed rule, describing land ownership, should separate out local government lands from private lands.

Our Response: Property ownership was determined from Bureau of Land Management maps that were determined to provide the best ownership information over the range of the Preble's. However, these maps address only Federal lands, State lands and ''other'' lands. Local government lands and private lands were not differentiated on these maps. Substantial additional effort, including incorporation of diverse mapping data from multiple local jurisdictions, would be required to differentiate local public lands from private lands.

Comment 62: What agricultural practices are allowable, beneficial, or detrimental to the Preble's in designated critical habitat?

Our Response: On May 22, 2001, we adopted special regulations governing take of the Preble's (66 FR 28125), which provide exemption from take provisions under section 9 of the Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and existing uses of water because these activities are consistent with conservation of the Preble's. On October 1, 2002, we amended those regulations (67 FR 61531) to provide exemptions for certain activities related to noxious

weed control and ongoing ditch maintenance activities because these activities are also consistent with conservation of the Preble's. Any questions regarding specific practices and their potential effects to the Preble's should be addressed to the Service's Colorado or Wyoming Field Offices.

Comment 63: What does the Service consider to be the beneficial and adverse effects on critical habitat of forest thinning and prescribed burns?

Our Response: Thinning and prescribed burns may cause both short-term and long-term effects. These can be both beneficial or adverse for the Preble's. Often, minor short-term adverse effects are followed by more substantial long-term beneficial effects as ground level vegetation experiences enhanced growth.

Comment 64: What happens to critical habitat if it is greatly impacted, for example, from a catastrophic fire?

Our Response: Once critical habitat is designated, even if it is greatly impacted, the boundaries of unit continue to exist. Whether primary constituent elements required to support the species are still within a given area will be determined by the Service on a case by case basis during section 7 consultation.

Comment 65: Verify that if actions are covered by exemptions provided under the existing 4(d) rule, section 7 consultation under the Act is not needed.

Our Response: This is not the case. The 4(d) rule currently in place provides an exemption from take prohibitions found in section 9 of the Act. Federal agencies are required under section 7 of the Act to utilize their authorities to conserve listed species, to consult with the Service to ensure that their actions are not likely to jeopardize the Preble's or destroy or adversely affect its critical habitat. Exemptions from section 9 prohibitions do not alter this requirement. For consultations that involve the use of Federal land, we expect that those lands will be managed in furtherance of the conservation of the species to the maximum extent possible. Other types of section 7 consultations involve actions on non-federal lands. For example, many of the activities likely to affect Preble's undertaken outside of Federal land, but wholly or partly in wetlands, will be subject to permitting requirements of the Clean Water Act, such as section 404 permits issued by the Army Corps of Engineers. This would be true for sites occupied by the Preble's whether or not they are designated as critical habitat.

Comment 66: Weed control may be hampered by designation of critical habitat.

Our Response: Certain practices regarding the control of noxious weeds are currently covered under the 4(d) rule. However, consultation under section 7 may still be required where a Federal nexus exists. See our response to comment 65 above.

Comment 67: Describe the relationship between critical habitat and take prohibitions under section 9 of the Act.

Our Response: The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding. Take prohibitions under section 9 are not affected by the designation of critical habitat.

Comment 68: Will take guidance issued by the Service for ditch cleaning be affected by the presence of critical habitat?

Our Response: The take guidance referred to was issued by the Service to define ditch-cleaning activities that we believe will not result in take of the Preble's as prohibited by section 9 of the Act. In addition, the existing 4(d) rule provides exclusions to section 9 prohibitions for certain ditch-cleaning activities. This guidance and rule are specific to section 9 prohibitions and will not be affected by designation of critical habitat.

Comment 69: Describe changes required in biological assessments and in ''mitigation ratios'' as a result of critical habitat.

Our Response: Biological assessments submitted to the Service by a Federal agency whose actions may adversely affect critical habitat of the Preble's, must address effects of the action on critical habitat. This analysis will be similar to that which would be conducted for any occupied Preble's habitat. In biological assessments, the term ''mitigation'' is generally used to describe conservation measures submitted by the project proponent as part of the described project. While appropriate extent and design of measures to create, restore, or enhance Preble's habitat, are unlikely to change based on the presence of designated critical habitat, such determinations are best made on a case by case basis.

Comment 70: It is not clear whether upstream activities that affect critical habitat downstream are regulated.

Our Response: In general, if a Federal nexus exists and a Federal agency has discretionary authority over an action, such activities would be regulated under section 7 of the Act. In any such cases the lead Federal agency must evaluate whether the activity may affect the Preble's, including designated critical habitat. The location of the activity in relation to the location of the effects is not an issue. The activity does not have to take place within critical habitat to be regulated under section 7.

Comment 71: Explain the process through which designated critical habitat could be amended in the future.

Our Response: Future modifications to critical habitat for the Preble's would occur through a rulemaking process similar to the one used to designate critical habitat.

Comment 72: Describe what happens to critical habitat upon delisting of the Preble's.

Our Response: Critical habitat terminates upon delisting. However, recovery criteria for the Preble's may include some long-term protection of the Preble's and its habitat.

Comment 73: Designation of critical habitat makes people lose trust in government.

Our Response: We agree that public support is a vital component of protection of the Preble's and its habitat, but designation of critical habitat is required under the Act. See our statement above.

Comment 74: Public comments and hearing testimony does not matter.

Our Response: All comments received, including oral comments provided at the public hearings, were carefully evaluated before we made a final designation of critical habitat. Changes have been made from the draft rule based on public comments and other information received during the comment periods.

Issue 5: Draft Economic Analysis and the Draft EA

Comment 75: The Service must address the costs of listing, including past costs, in the economic analysis.

Our Response: Our current policy is to consider only costs from the time of critical habitat designation forward. We consider co-extensive costs, including those associated with the jeopardy standard.

Comment 76: The 10-year time frame utilized for the economic analysis was inappropriate. The use of a ten-year time period for the analysis creates unrealistic cost estimates since species

typically are not delisted within ten years.

Our Response: The ten-year time frame was chosen for the Draft Economic Analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected numbers of projects are based become increasingly speculative. As a result, it is difficult to predict not only the numbers of projects, but also the cost estimates for the associated consultations, beyond a ten-year window. Consequently, any attempt to extend the economic analysis beyond the ten-year time window would be speculative.

Comment 77: The use of a ''national economic model'' in the economic analysis does not apply to Wyoming because local factors affect their economy differently than other areas of the nation.

Our Response: The Draft Economic Analysis utilized a cost model to estimate the administrative costs associated with technical assistance efforts, informal, and formal consultations. This cost model was developed using historical section 7 files from a number of Service field offices around the country. However, this model was used as the basis for cost estimates only in instances where area- and species-specific costs were not available. The reliance of the Draft Economic Analysis on area- and species-specific cost estimates, where available, reflects the use of the best commercial information available and consideration for the socioeconomics of the area.

Comment 78: The Draft Economic Analysis excluded an analysis of the lost opportunity costs when agricultural landowners forgo Federal operational and conservation funding in order to avoid a Federal nexus, and therefore consultation with the Service.

Our Response: While this may be an issue for some individual landowners, overall use of operational and conservation funding within the region is not expected to change as a result of the designation. The Natural Resources Conservation Service has confirmed that Federal operational and conservation funding rarely goes unused in this region, and that any forgone funding will likely be used by other landowners within the same county.

Comment 79: The designation of critical habitat will cause decreased land values in Wyoming. The proposed critical habitat designation may impose operational costs on agricultural activities that may affect the value of land sold for agricultural purposes, and the proposed designation may result in decreased values associated with the speculative nature of agricultural lands (*i.e.,* potential for sale and conversion to an alternative use, such as residential development).

Our Response: A variety of factors impact the value of land in Wyoming, including climate, elevation, water rights, population density, recreation and scenic values, and timber, mineral, and oil and gas resources. Furthermore, the demand for agricultural lands has increased slightly due to increased interest in agricultural lands for alternative uses, such as ''development potential, recreation, or scenic rural homes.'' Proposed critical habitat for the Preble's is likely to have only a modest impact on agricultural operations and the value of lands sold for agricultural purposes. The value of agricultural lands will be greatly reduced if farmers and ranchers cannot irrigate their lands. However, there will likely be no impacts to agricultural operations and land values as long as the 4(d) rule remains in effect. While there is growth pressure in these counties, a speculative impact on land values is not anticipated because proposed critical habitat is located a significant distance from town centers and is thus not experiencing development pressure. Therefore, impacts to the speculative value of lands within proposed critical habitat for the Preble's are also anticipated to be modest.

Comment 80: The Draft Economic Analysis excluded a discussion of impacts incurred by landowners operating under the special 4(d) rule.

Our Response: We were unable to identify any impacts experienced by landowners under the 4(d) rule. It appears that landowners would only experience a decrease in land values and profits following the expiration of the special 4(d) rule. Many landowners are relying on an extension of the 4(d) rule to avoid future adverse impacts to agricultural operations and irrigation ditch maintenance activities due to protections for the Preble's.

Comment 81: The Draft Economic Analysis excluded a discussion of several land use activities that may be impacted by the designation of critical habitat for the Preble's. Public comments provided input on costs associated with activities at F.E. Warren Air Force Base in Wyoming, construction of new utility lines, development of HCPs, construction of new dams and reservoirs, aggregate mining, Forest Service activities including development of Forest Management Plans.

Our Response: The Addendum to the Economic Analysis analyzes costs associated with the above activities and, where appropriate, provides modified cost estimates that reflect issues raised in public comments.

Comment 82: The protection of Preble's habitat may provide benefits to the public associated with improved ecosystem services, particularly services provided by riparian habitat areas (*e.g.,* habitat for fish and wildlife, erosion control).

Our Response: While the Draft Economic Analysis acknowledges that such benefits are likely, the analysis concludes that they cannot be monetized due to a lack of information linking project modifications for the Preble's to a quantifiable future environmental change.

Comment 83: The Draft Economic Analysis indicates that increasing the quantity of open space (*i.e.,* greenbelts, wetlands, wildlife corridors, and riparian areas) in a community can lead to enhanced residential property values. Open space already exists in Wyoming, precluding benefits associated with preserving open space in that State.

Our Response: The Draft Economic Analysis only assigns potential open space benefits to the areas of proposed designation in Colorado where a relative scarcity of open space enhances its value. We acknowledges the abundance of open space in Wyoming.

Comment 84: The Draft Economic Analysis should have utilized ''benefits transfer'' as a means to quantify the potential benefits associated with preserving open space.

Our Response: The Draft Economic Analysis considered the possibility of transferring the economic values obtained from the literature and applying them to the case of critical habitat for the Preble's. To accurately estimate economic impact through a benefits transfer approach the economic studies must demonstrate adherence to an agreed-upon set of standards or protocol to ensure reliability of results, and the attributes of the environmental good being valued by the study must be substantially similar to the attributes of critical habitat designation for the Preble's. The literature referenced in the Draft Economic Analysis provides examples of society's marginal willingness to pay for changes in open space. However, the values reflect a variety of open space attributes and housing market conditions, none of which are substantially similar to the policy question at hand. Data do not exist to accurately translate these values to areas that may be affected by critical habitat designation in Colorado. Therefore, application of benefits

transfer for the purpose of this analysis is not possible.

Comment 85: There is a lack of NEPA documentation, as the Service failed to produce an environmental analysis of the critical habitat proposal.

Our Response: On January 28, 2003, the Service announced the availability of the Draft Economic Analysis and draft EA for the proposed designation of critical habitat for the Preble's (68 FR 4160) and opened a comment period on the documents through February 27, 2003.

Comment 86: The draft EA fails to indicate whether or not the July 2002 Proposed Rule will result in significant impacts under NEPA and require an Environmental Impact Statement.

Our Response: Based on Information provided in the Draft Economic Analysis and the Addendum to the Economic Analysis, as well as comments received from the public, we prepared this final EA and made a Finding of No Significant Impact (FONSI), negating the need for preparing an Environmental Impact Statement. The final EA, Draft Economic Analysis, the Addendum to the Economic Analysis, and the FONSI provide our rationale for determining that critical habitat designation would not have a significant effect on the human environment. Those documents are available from the Colorado Ecological Services Field Office (U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, CO 80215) or by calling 303–275–2370.

Comment 87: The Service should have considered in detail the alternative designating as critical habitat all areas described as Mouse Protection Areas and Potential Mouse Protection Areas in the 1998 Proposed Special Regulations for Preble's Meadow Jumping Mouse (63 FR 66777).

Our Response: The Service determined that full evaluation of this alternative was not appropriate for several reasons. Mouse Protection Areas and Potential Mouse Protection Areas were never official designations of areas, but rather general classifications of areas based on very crude mapping as an initial attempt to identify those areas of possible conservation value to the Preble's. Many of the areas were later determined to be unsuitable or only marginally suitable for use by Preble's. As such, these areas do not meet the definition of critical habitat under 3(5)(A) of the Act. Within the geographic area occupied by the species we designate only areas currently known to be essential to conserve the species. In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. We designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. Based on the best science available, there appears no basis for designation of critical habitat outside of the geographic area occupied by the species.

Comment 88: The threats section of the draft EA is not an adequate representation of the threats. Characterizing grazing as a threat (based upon the conclusions of Compton and Hugie 1993) is inappropriate. The document needs to disclose the positive attributes relative to the mouse of several of the actions described as threats, specifically grazing and water management.

Our Response: Based upon information obtained since the listing of Preble's, the Service does not completely accept the broad conclusions of Compton and Hugie (1993). The Service has adjusted the discussion of grazing and water management to indicate that these activities, under certain management scenarios, may be consistent with Preble's conservation. However, the Service still views both grazing and water development/management as threats to the Preble's. Grazing can be managed in many different ways, some of which may be beneficial to Preble's habitat, others harmful. For example, much of the habitat in Wyoming is currently being grazed (or managed for hay production) in a manner that maintains what appears to be good habitat for Preble's. In those cases, it might be considered that special management is already taking place, although not committed to an agreement. However, there are also areas being managed in a manner that is not conducive to the development or maintenance of Preble's habitat. Changes in the timing and abundance of water may result in changes that are detrimental to Preble's habitat. Elimination of natural meanders, channelization, and armoring of streams generally degrades riparian and floodplain habitats needed by Preble's. While irrigation of hayfields may promote a wider area of dense riparian-type vegetation by maintaining more moist conditions over a wider area of streamside habitat for a longer period than would naturally occur, this is generally accompanied by repeated mowing that may kill individual mice, disrupt breeding and other behaviors, and destroy food sources during the period when Preble's is preparing for hibernation.

Comment 89: The section 7 informal consultation discussion (section 2.2.2) differs from that in the economic analysis.

Our Response: Changes were made to section 2.2.2 to better reflect pertinent information presented in the Draft Economic Analysis and the Addendum.

Comment 90: In Section 3.1, Alternatives Considered But Not Fully Evaluated, the Service incorrectly states that ''* * * much of the historic range does not meet the definition of critical habitat,'' since the entire historic range in Wyoming and most of that in Colorado has been proposed as critical habitat.

Our Response: Neither the entire range of Preble's in Wyoming nor most of its range in Colorado has been proposed for designation as critical habitat. Many areas of suitable habitat, including many known to be occupied by Preble's, have not been included in the proposed critical habitat. The Service did not find these areas to be essential to the conservation of Preble's.

Comment 91: In the draft EA, the Description of the Affected Environment, the descriptions of the states are not appropriately contrasted. For example, there is no mention of Federal water projects in the South Platte drainage.

Our Response: Changes were made to the Description of the Affected Environment to better contrast the states and river drainages.

Comment 92: The anticipated impacts to transportation projects (Wyoming Department of Transportation in particular) cannot be realistic and should be re-evaluated.

Our Response: We used information and estimates provided to us by the Wyoming Department of Transportation, the Colorado Department of Transportation, and others. These estimates are based on the best commercial information available since the best estimate of impacts is likely to come from the entity that will bear the costs.

Comment 93: The draft EA's discussion of Environmental Justice does not identify any adverse impacts unique to low-income populations. However, the ranching community in Wyoming is financially strapped. The average annual income in Wyoming is $21,000, much less than the average income in Colorado.

Our Response: The Service does not believe the ranching community in Wyoming qualifies as a low-income population, as discussed in Executive Order 12898 and further defined by the

Council on Environmental Quality (1997).

Comment 94: In the draft EA's Analysis of Significance, the statement that effects are expected to be small may be true on a national, regional or local scale, but on a family ranching operation scale they are significant.

Our Response: Significance is not addressed on an individual scale, but rather as it pertains to several different scales, including society as a whole, the affected region, the affected locality, and affected interests. The ranching community in the four affected counties in Wyoming was identified as an affected interest. Potential economic impacts to agricultural activities in Wyoming were evaluated in the Draft Economic Analysis and the Addendum to the Economic Analysis and discussed in the Regulatory Flexibility Act section in the Final Rule. Through those analyses, its was determined that only approximately 3 percent of the small agricultural operations in the counties in which critical habitat units are located may experience a significant effect from section 7 implementation in critical habitat annually.

Summary of Changes From the Proposed Rule

In development of this final designation of critical habitat for the Preble's meadow jumping mouse we made several changes to the proposed critical habitat designation based on review of public comments received on the proposed designation, the Draft Economic Analysis, the draft EA, and further evaluation of lands proposed as critical habitat.

In several cases, changes have been made based upon our reevaluation of available data regarding the method of identification of the Preble's (identification in the field versus through genetic or morphological means). Without morphological of genetic verification of the identity of the mice, it is not possible to know whether an area is essential to the conservation of the species. Therefore, we have decided to include in the critical habitat determination only those units occurring in drainages within which there is a specimen verified as Preble's through morphological or genetic means. Accordingly, we removed from final designation those units occurring in drainages where mice were identified as Preble's only through field identification. If, in the future, one or more of these areas is determined to support mice verified as Preble's through morphological or genetic examination, we would consider whether rulemaking to amend critical habitat is warranted.

In the North Platte River drainage, we have removed the Horseshoe Creek unit (NP2), the Friend Creek and Murphy Canyon unit (NP4), and the Horse Creek unit (NP5). Each of these units occurred in a drainage within which no mice had been verified to be Preble's through morphological or genetic means, but rather only through field identification.

Also in the North Platte River drainage, some adjustments were made to the tributaries included in Unit NP3, the Chugwater Creek unit in Albany, Laramie, and Platte Counties, Wyoming. Upon review of additional information obtained through public comment and during site visits to the area, four tributaries were removed from the final designation. These four tributaries include two named Spring Creek, Threemile Creek, and Sand Creek. Reasons why these tributaries were determined not to be critical habitat included limited riparian vegetation, lack of open water through the Preble's active season, arid uplands with limited grasses and forbs, and regular haying across one creek.

In the South Platte River drainage Unit SP2, the Warren Air Force Base unit, in Laramie County, Wyoming, was excluded in its entirety (see Relationship with Department of Defense Lands below).

Also in the South Platte River drainage, the Lone Tree Creek unit (SP3), the Cedar Creek Unit (SP7), and the Cherry Creek unit (SP11) have been removed in their entirety because they support no records of mice verified to be the Preble's through morphological or genetic means, but rather only through field identification.

In the North Fork Cache La Poudre River (SP4) we have amended the outward extent of the critical habitat boundary for two landowners to be consistent with a specific negotiated rural and agricultural conservation zone for the Preble's. Within existing properties belonging to The Nature Conservancy along the North Fork Cache La Poudre River and to Al Johnson along Rabbit Creek, Lone Pine Creek, and the North Fork Cache La Poudre River, designated critical habitat extends from the center line of the stream outward 325 ft (99 m) on both sides.

In the South Platte River drainage, areas of proposed critical habitat addressed in the Denver Water HCP were excluded from the final designation in units the South Boulder Creek unit (SP8), Boulder County, Colorado; the Ralston Creek unit (SP10), Jefferson County, Colorado; the West Plum Creek unit (SP12) in Douglas County, Colorado; and the Upper Platte River (SP13) unit in Douglas and Jefferson Counties, Colorado (see Relationship to Habitat Conservation Plans below).

Also in the South Platte River drainage some adjustments were made to tributaries included in the West Plum Creek unit (SP12), in Douglas County, Colorado. Upon review of additional information obtained through public comment and review of aerial photographs of the area, portions of two tributaries were removed from the final designation. These include portions of one unnamed tributary to West Plum Creek, and the upper portion of Metz Canyon. Reasons why the tributaries were determined not to be critical habitat included limited riparian vegetation, lack of dense vegetation, lack of open water through the Preble's active season, and alterations from human land uses.

In the Upper South Platte River unit (SP13), the proposed Wigwam Creek subunit in Jefferson County, Colorado, was removed from the final designation. This area was intensively burned during the Hayman Fire in the summer of 2002. Upon review of additional information obtained through public comment and a site visit to the area, it was determined that habitat capable of supporting the Preble's was no longer present and not likely to be re-established in the near future.

In the Arkansas River drainage, within the Monument Creek unit (A1), areas of proposed critical habitat addressed in the Lefever Property HCP and the Dahle Property HCP were excluded from the final designation. In the same unit an error occurred in the written description of Kettle Creek. The text accompanying the map of the unit erroneously included a reach of Kettle Creek on the Academy as critical habitat, while the map excluded it. The text has been changed to accurately reflect the intended reach of critical habitat.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (I) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to conserve the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential to conserve the species.

''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of added protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation does not result in any regulatory requirement for these actions.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In accordance with sections 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Within the geographic area occupied by the species we designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas within the geographic area occupied by the species unless at least one of the primary constituent elements are present, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species. Moreover, areas occupied by certain known populations of the Preble's have not been proposed as critical habitat. For example, we did not designate critical habitat for some small scattered populations or habitats in areas highly fragmented by human development.

Our regulations state, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Based on the best scientific data available, there appears to be no foundation upon which to make a determination that the conservation needs of the Preble's require designation of critical habitat outside of the geographic area occupied by the species, so we have not designated critical habitat outside of the geographic area believed to be occupied.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, procedures, and guidance to ensure decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States, Tribes, and counties, scientific status surveys and studies, and biological assessments or other unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act, and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Though unlikely, future federally-funded or assisted projects affecting listed species outside designated critical habitat areas could still result in likely-to-jeopardize findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, if new information available to these planning efforts calls for a different outcome.

Relationship to Sections 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been Service policy to not include these specific areas in designated critical habitat. Likewise, if we believe, based on an analysis, that an area determined to be biologically essential has an adequate management plan that covers the species, then special management and protection are already being provided, and those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

We consider a current plan to provide adequate management or protection if it

meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such an area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships or military readiness considerations, if we determine that the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided that exclusion will not result in the extinction of the species.

In summary, we use both the definition in section 3(5)(A) and the provisions of section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat as well as for those areas that are subsequently finalized (*i.e.*, designated as critical habitat). On that basis, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species; (2) covered by a legally operative individual (project-specific) or regional HCP that covers the subject species; (3) covered by a complete and approved Integrated Natural Resources Plan (INRMP) for specific Department of Defense installations; or (4) covered by an adequate management plan or agreement that protects the primary constituent elements of the habitat.

As discussed below, for designation of critical habitat for the Preble's, we have considered, but have not designated as critical habitat, land covered by: The Denver Water HCP; the Lefever Property HCP in Black Forest, Colorado (Lefever Property HCP); the Dahle Property HCP in Colorado Springs, Colorado (Dahle Property HCP); the Academy's Integrated Natural Resources Management Plan (INRMP); and the F.E. Warren INRMP.

Relationship to Habitat Conservation Plans

Individual HCPs

In general, the lands essential to the conservation of the Preble's that are managed by an approved individual HCP do not require special management and protections because their value for conservation has been addressed by the existing protective measures and actions from the provisions of the HCP. Consequently, the areas defined in these individual HCPs do not meet the definition of critical habitat. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the ''other relevant impacts'' provisions of section 4(b)(2). Therefore, individual HCPs that cover the Preble's are not being designated as critical habitat.

Section 10(a) of the Act authorizes the Service to issue permits for private actions which result in the taking of listed species that are otherwise lawful activities. Incidental take permit applications must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Service-approved HCPs and their associated Incidental Take Permits contain management measures and protections for identified areas that protect, restore, and enhance the value of these lands as habitat for the Preble's. These measures, which include explicit standards to minimize any impacts to the covered species and its habitat, are designed to ensure that the biological value of covered habitat for the Preble's is maintained, expanded, or improved.

In approving these HCPs, the Service has provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders. Similar assurances will be extended to future permit holders in accordance with the Service's HCP Assurance (''No Surprises'') rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

In light of the intensive investigation and analysis, public comment, and internal section 7 consultations undertaken prior to approval of HCPs, we are confident that individual HCPs identify, protect, and, as appropriate and practicable, provide beneficial adaptive management for essential habitat within the boundary of HCPs. Therefore, we have considered, but not designated as critical habitat lands within approved HCPs that include the Preble's as a covered species. Our analysis of the special management considerations and protections provided by approved HCPs follows below as well as a comparison of benefits of including lands within approved HCPs versus excluding such lands from critical habitat designations.

Regional HCPs

Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act reflecting a voluntary, cooperative approach to large-scale habitat and species conservation planning. The primary goal of such HCPs is to provide for the protection and management of habitat essential for the conservation of the species while directing development to other areas. HCPs provide a package of management considerations that: meet or enhance the conservation of the species and provide an opportunity for data collection and analysis regarding the use of particular habitat areas. HCPs and the accompanying implementation agreements contain management measures and protections for identified areas that protect, restore, and enhance the value of these lands as habitat for the Preble's. These measures, which include explicit standards to minimize any impacts to the covered species and its habitat, are designed to ensure that the value of the conservation lands as suitable habitat for the Preble's is maintained, expanded, and improved.

Approved HCPs provide assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit is valid and the holders are fulfilling their obligations under the plan, no additional mitigation in the form of land or financial compensation will be required of the permit holders

and in some cases, specified third parties. These assurances will be extended in accordance with the Service's No Surprises rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

Because of the similarities between the purposes of regional HCPs and designation of critical habitat, and in light of the intensive investigation and analysis undertaken in conjunction with regional HCP planning processes, regional HCPs currently under development will identify, protect and provide appropriate adaptive management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Given this coordination, we anticipate that the analysis of these HCPs and proposed permits that will be conducted under section 7 of the Act will show that activities covered under such permits will not result in the destruction or adverse modification of designated critical habitat within the boundaries of the plans when the covered activities are carried out in accordance with the provisions of the HCPs.

For the foregoing reasons, we find that the continued development of the pending HCPs is beneficial. Furthermore, the Service has developed positive conservation relationships with the jurisdictions involved in the pending HCPs. The maintenance of these relationships serves to ensure the eventual completion of these HCPs. The pending HCPs, although at different stages of development, represent substantial biological analysis as well as substantial investment of public and private resources for the benefit of conservation. Exclusion of the lands within the pending HCPs benefits the species by providing an incentive to finalize the HCPs.

Inclusion as critical habitat of the lands in the pending HCPs provides no benefit greater than that which would result from completion of the HCPs. HCPs provide greater actual conservation than the mere designation of critical habitat. Thus, the benefits of excluding these areas from designation as critical habitat outweigh the benefits of including them. The exclusion will not cause the extinction of the species. If any pending HCP is not finalized as currently proposed, we will re-evaluate the need for critical habitat designation on lands not included in finalized HCPs.

Following is our preliminary analysis of the benefits of including lands within approved HCPs versus excluding such lands from critical habitat designation.

(1) Special Management Considerations and Section 3(5)(a)

On November 19, 2002, GreyStone Environmental Consults Inc. finalized an HCP for the Preble's on the Lefever Property and was issued a section 10 Incidental Take Permit by the Service. This HCP allows for the construction of a single-family residence in Black Forest, El Paso County, Colorado. Construction will directly impact 0.252 ha (0.561 ac) of potential Preble's habitat, including 0.087 ha (0.215 ac) of temporary disturbance and 0.140 ha (0.346 ac) of permanent disturbance. The applicant will preserve and enhance a 1.828 ha (4.515-ac) conservation easement of similar foraging habitat for the mouse in the remaining acres of property. This area has been deeded to El Paso County, Colorado, and shall be managed according to specific requirements laid out in the HCP. The following activities are expressly prohibited by the agreement on the property easement: construction or reconstruction of any building or other structure or improvement on portions of the property; any division or subdivision of the title to the property; commercial timber harvesting; mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance; paving or otherwise covering with concrete, asphalt, or any other paving material; and the dumping or uncontained accumulation of any trash, refuse or debris on the property. As further compensation for the impacted habitat, 0.36 ha (0.89 ac) of the 1.828 ha (4.515 ac) shall be planted with 100 shrubs to serve as Preble's habitat. This enhancement will follow a strict planting and care plan for 2 years to ensure success. A monitoring program will be in effect for three full growing seasons or until success is achieved. At the end of each growing season, a brief letter report will be submitted to the Service describing the status of any remedial work performed. The shrub planting will be considered successful when 67 percent of shrubs are established and able to survive a full growing season without supplemental irrigation.

On July 23, 2002, Lee Dahle finalized an HCP for Preble's on the Dahle Property and was issued a section 10 Incidental Take Permit by the Service on July 29, 2002. This HCP allows for the construction of a single-family residence on a 0.26 ha (0.65 ac) lot at 17 El Dorado Lane in the Thunderbird Estates in Colorado Springs, El Paso County, Colorado. Construction will directly impact 0.06 ha (0.15 ac) of upland Preble's habitat, including less than 0.01 ha (0.01 ac) of temporary disturbance and 0.034 ha (0.085 ac) of permanent disturbance. The applicant will preserve and enhance the remaining 0.2 ha (0.5 ac) of the property in a native and unmowed condition as a corridor for the mouse. As further compensation for the impacted habitat, the preserved 0.2 ha (0.5 ac) will be enhanced through weed control and willow planting. The enhancement area will be monitored for three full growing seasons or until success is achieved. At the end of each growing season, a brief letter report will be submitted to the Service describing the status of any mitigation work performed. The shrub planting will be considered successful when 67 percent of shrubs are established and able to survive a full growing season without supplemental irrigation. The weed control will be considered successful when a 50 percent reduction of individual weed plants is achieved.

On April 16, 2003, Denver Water finalized an HCP for the Preble's and was issued a section 10 Incidental Take Permit by the Service on May 1, 2003. This HCP covers the water facilities and infrastructure owned and operated by Denver Water including: the Foothills, Marston and Moffat treatment plants; 17 pump stations; 29 treated water storage reservoirs; and 3,968 km (2,464 mi) of pipe. The HCP promotes avoidance and minimization, and where practicable, implementation of applicable best management practices that avoid, minimize, and eliminate impacts to occupied and potential habitat. Where impacts occur, Denver Water will conduct mitigation proposed by the HCP. This HCP provides long-term assurances that Denver Water's covered activities are permitted and in compliance with the Act and provides the Service with a tool to minimize and mitigate take on occupied and potential habitat. To accomplish these goals, the plan requires the following special management and protection:

(a) Before conducting a covered activity (principally operations and maintenance activities) on occupied and potential habitat, Denver Water will determine whether avoidance and minimization efforts are applicable, practicable, and can be used to avoid, reduce, or eliminate take. Generally, the use of best management practices will be the most practicable avoidance or minimization tool. Appendix 5 of the HCP lists best management practices that may be applicable to Denver Water's routine operation and maintenance activities and projects. In some cases, the use of best management

practices will avoid take. In other situations, best management practices will minimize take. Where take still results, mitigation will be used to offset the impacts.

(b) As required by section 10 regulations, the HCP requires Denver Water to perform compliance monitoring and effectiveness monitoring to determine whether the terms and conditions of the HCP are being met. Monitoring activities will: document pre- and post-impact site conditions; determine the extent of take of occupied and potential habitat; determine the success of Preble's habitat revegetation efforts; report on additional Denver Water actions, including initiation of mitigation, discussion of best management practices utilized, if any, and other management decisions that address implementation of the HCP; hold an annual meeting between Denver Water and the Service; and prepare an Annual Monitoring Report.

(c) Adaptive management will be employed to gain new data, research or new information regarding the biology of the Preble's. The use of adaptive management in areas of questionable Preble's habitat suitability, Preble's use, or Preble's presence will likely increase the potential for success within the HCP and increase the potential for new and useful information on Preble's biology to be acquired.

(d) The HCP will result in the protection of over 2,700 ha (6,000 ac) of potential and occupied habitat. Denver Water will limit temporary impacts to 10 ha (25 ac) of occupied and potential habitat at any one time. Temporary impacts are not to exceed 30 ha (74 ac) over the term of the HCP. Denver Water will also track all impacts, restore disturbed vegetation, and track all successful restorations to ensure the above limits are not exceeded.

(e) To offset foreseeable permanent impacts to one-acre of habitat, Denver Water will create 0.10 ha (0.25 ac) of riparian shrub, 0.91 ha (2.25 ac) of upland occupied and potential habitat, and revegetate a number of trails and dirt roads. Should permanent impacts exceed the one-acre, this HCP covers a maximum of 4 ha (10 ac) of permanent impacts, and will mitigate this through: a conservation easement at a ratio of 8:1; by enhancements at a ratio of 2:1; or a combination of preservation at 6:1 and enhancements at 1:1.

(f) Other mitigation includes: weed management; education, training, and the distribution of information to Denver Water employees to promote avoidance, minimization, or best management practices as applicable and practicable; restoration of habitat linkage corridors; population monitoring and research; and provide trapping data to the Service.

Based on our evaluation of special management considerations and protection provided by the Denver Water HCP, the Lefever Property HCP, and Dahle Property HCP, and in light of the definition of critical habitat in section 3(5)(A) of the Act, we have considered, but not designated these areas as critical habitat. We believe that the Denver Water HCP, the Lefever Property HCP, and Dahle Property HCP meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. First, the HCPs provide a conservation benefit to the species through the various management actions discussed above. Second, the HCP provides assurances that the conservation management strategies and actions will be implemented. Denver Water has budgeted $30,000 in 2003 Operations Plan for activities required by the HCP. In consecutive years, it will have a separate line item in the budget. The Lefever Property HCP has funding assurances in the form of a $10,000 letter of credit, has been secured to ensure all obligations of the HCP are fulfilled. The Dahle Property HCP applicant will provide funding for this agreement. Third, the HCPs provides assurances that the conservation strategies and measures will be effective because they are based on the best scientific data available and they require monitoring and reporting to ensure compliance and success. The Denver Water HCP also employs adaptive management where practicable and appropriate.

(2) Benefits of Inclusion Under Section 4(b)(2)

The principal benefit of any designated critical habitat is that Federal activities that may affect the habitat require consultation under section 7(a)(2) of the Act. Consultation is designed to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat resulting from an action authorized, funded, or carried out by a Federal agency. Where HCPs are in place and lands are covered by a section 10(a)(1)(B) permit, the benefit of designating such lands as critical habitat is negligible when the areas concerned are occupied by the species, because the occupied areas already are subject to section 7 consultation based on the ''jeopardy standard.'' Permitted HCPs are designed to ensure the long-term survival of listed species within the area covered by the permit. Under an HCP, an area that might be designated as critical habitat will already be protected by the terms of the HCP and the incidental take permit. The HCP and the incidental take permit include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a section 10(a)(1)(B) permit issued by the Service as a result of an HCP application must itself undergo section 7 consultation. This consultation will address the likelihood of adverse modification or destruction of critical habitat and jeopardy to the listed. Since HCPs address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP.

The development and implementation of HCPs provides other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for compatible land use. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of all HCPs. For these reasons we believe that the designation of critical habitat has little or no benefit in areas covered by HCPs.

(3) Benefits of Exclusion Under Section 4(b)(2)

The benefits of excluding HCPs from designation as critical habitat are significant. Benefits of excluding HCPs include relieving landowners, communities, and counties of any additional regulatory review that might be imposed by critical habitat. Many HCPs take considerable time—sometimes years—to develop and, upon completion, become the basis for regional conservation plans that are consistent with the conservation of covered species. Many of these plans benefit both listed and non-listed species. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing or considering developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory

compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that exclusion encourages the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions that the Service would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and set the stage for more effective conservation actions in the future.

Specifically, for the lands covered by the Denver Water HCP for the Preble's, in a letter dated January 21, 2003, Jennifer McCurdy, with Denver Water, noted the following: ''Denver Water believes that designation of Critical Habitat on Denver Water properties has negligible, if any, benefit to the recovery of the Preble's while the benefits resulting from the exclusion of Critical Habitat on those properties are many. There is little benefit to designating Critical Habitat on Denver Water properties because: (a) Denver Water will have an HCP in place covering the same properties proposed for designation; (b) Denver Water is a private landowner with primarily, if not exclusively, private (non-Federal) actions in these Critical Habitat areas; (c) No portion of designated habitat encompasses an entire unit of proposed habitat, but rather is a small fraction of a unit; (d) Designation of Critical Habitat on private property will discourage private landowners from participating in an HCP, especially when Critical Habitat can be designated on properties already under an HCP or an imminent HCP; and (e) In effect, Critical Habitat will not be treated differently for this species than what is required under Section 9 of the Act. The benefits of exclusion on Denver Water properties, however, are that: (a) Denver Water's HCP will provide greater assurances and conservation benefits to the Preble's than Critical Habitat designation because the HCP will assure the long-term protection (30-year) and management of the species and its habitat, and funding, through the standards in the HCP Handbook, 5-Point Policy, and No Surprises regulations; (b) Exclusion of properties within Denver Water's HCP reduces the requirements for additional regulatory review. Additional review would likely result in additional permitting costs (delays, administrative, consulting and mitigation) for Denver Water. The Service and other federal agencies would also be subject to additional administrative and technical costs resulting from an additional, redundant review process. If only Section 9 or an HCP are required, a greater amount of time and funding could possibly be spent on further conservation measures; (c) Exclusion of Critical Habitat and conservation management based on the HCP will allow more flexibility to a municipal water supplier with private lands and privately owned facilities to operate as it needs in order to meet its mission of supplying high-quality water to its customers; (d) Denver Water's HCP will provide other conservation benefits beyond habitat conservation such as collection and development of additional biological information to assist with conservation and recovery efforts, development of innovative programs, and education regarding the importance of species survival and habitat protection; and (e) The Denver Water HCP will provide an integrated and comprehensive approach to species conservation rather than the ''piecemeal'' approaches of multiple Section 7 consultations that only address activities with a federal nexus. Exclusion of Denver Water properties from the Critical Habitat listing will not result in the extinction of the Preble's, nor would it preclude conservation or recovery of the species.''

We have weighed the small benefit, if any, of including the lands in the HCP in critical habitat against the benefits of exclusion and determined that the benefit of excluding the land covered by the Denver Water HCP, the Lefever Property HCP, and the Dahle Property HCP from designation as Preble critical habitat outweighs the benefits of including the areas. Thus, as required by section 4(b)(2) of the Act, we have excluded them from the critical habitat designation.

In the event that future HCPs covering the Preble's are developed within the boundaries of designated critical habitat, we will provide technical assistance and work closely with the applicants to identify lands essential for the Preble's, ensure that the HCPs provide for protection and management of the habitat areas essential to the Preble's by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive analysis and data collection regarding the use of particular habitat areas by the Preble's and a more detailed analysis of the importance of such lands.

Relationship With Department of Defense Lands

The Academy and F.E. Warren

(1) Special Management Considerations and Section 3(5)(a)

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. The Service consults with the military on the development and implementation of INRMPs for installations with listed species. Bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they already provide special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (a) A current INRMP must be complete and provide a conservation benefit to the species; (b) the plan must provide assurances that the conservation management strategies will be implemented; and (c) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) and consequently not be proposed as critical habitat for the covered species.

The Academy in El Paso County, CO has in place an INRMP, a 1999 ''Conservation and Management Plan for the Preble's Meadow Jumping Mouse at the U.S. Air Force Academy,'' and a 2000 programmatic section 7 consultation addressing certain activities at the Academy that may affect the Preble's. The conservation and management plan provides guidance for Air Force management decisions over the 2000 to 2005, five-year period. While it was based upon the most

current scientific knowledge available at the time that it was developed, research regarding the Preble's is ongoing at the Academy and the conservation and management plan will be updated as new information is collected.

F.E. Warren in Laramie County, WY also has in place an INRMP. Approved in December 2001, the INRMP provides for the conservation, protection, and management of fish and wildlife resources as required by the Sikes Act. The F.E. Warren INRMP also meets the three criteria for assessing whether the management area should be excluded as critical habitat. First, the INRMP is complete and provides a conservation benefit to the species. F.E. Warren's INRMP provides protection for the Preble by: conducting annual trapping surveys; collecting data on habitat preference; monitoring noxious weed infestation; using biological controls for noxious weeds rather than chemical controls; developing a native seed bank for use in restoration activities in sensitive habitats; designing an elevated nature trail to reduce habitat fragmentation and protect sensitive habitat; providing weekly public awareness briefings to all newcomers; conducting field trips for local elementary schools with emphasis on the Preble's and the Colorado Butterfly plant; and coordinating base projects with the Cheyenne Field Office of the Service. Second, the INRMP provides assurances that the conservation management strategies will be implemented. The Sikes Act requires F.E. Warren to implement its INRMP and provides the basis for the Department of Defense Conservation Program. Implementation of the INRMP is supported by Headquarters Air and Space Command and Headquarters U.S. Air Force through the planning, programming, and budgeting process. F.E. Warren and Headquarters Air and Space Command also conduct annual environmental compliance inspections where INRMP implementation is assessed. The goals of these programs are to provide assurances that the INRMP is implemented in accordance with the Sikes Act and Air Force and Department of Defense policy. F.E. Warren has an annual conservation budget of approximately $200,000 dedicated to monitoring, habitat management, and exotic vegetation control. These requirements have been validated by Headquarters Air and Space Command and are ''must fund'' items. Finally, the INRMP provides assurances that the conservation management strategies will be effective by providing for periodic monitoring and revisions as necessary. F.E. Warren has implemented an annual monitoring program to track the effectiveness of its management activities and to document population trends and changes in quality and availability of habitat. Additionally, F.E. Warren will continue to partner with the WY Game and Fish Department, the WY Field Office of the Service, and accredited universities and non-profit conservation organizations to ensure that the best science and technology is utilized in conservation efforts. In addition, pursuant to Air Force instructions, the INRMP is reviewed annually and revised at least every five years. Further, there are multiple layers of environmental protection that further lessen the need for special management or protection, including the additional conservation measures provided by implementation of NEPA, the Clean Water Act, Executive Order 11990, Executive Order 11988, and Department of Defense and Air Force policy.

We have reviewed these measures and have determined that they address the three criteria identified above. Therefore, Academy and F.E. Warren lands that are biologically essential to the Preble's, do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they currently have special management and protection. Consequently, these lands have been considered, but not included in the proposed designation of critical habitat for the species. Further, to the extent that the areas of the Academy and F.E. Warren biologically essential to the Preble's may meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the ''other relevant impacts'' provisions of section 4(b)(2) as discussed below.

(2) Benefits of Inclusion Under Section 4(b)(2)

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if designated critical habitat, would require consultation with the Service to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. As previously discussed, the Academy and F.E. Warren have completed final INRMPs that provide for sufficient conservation management and protection for the Preble's. Moreover, the INRMPs are themselves, already consulted on for installations with listed species prior to approval. Further, activities authorized, funded, or carried out by Federal agencies in these areas that may affect the Preble's will still require consultation under section 7 of the Act, based on the requirement that Federal agencies ensure that such activities not jeopardize the continued existence of listed species. This requirement applies even without critical habitat designation on these lands. Thus, the Service believes designation of the Academy and F.E. Warren as critical habitat will not appreciably benefit the Preble's beyond protection already afforded the species under the Act and the approved INRMPs.

(3) Benefits of Exclusion Under Section 4(b)(2)

However, there would be appreciable benefits to excluding these areas from critical habitat pursuant to section 4(b)(2). If designated as critical habitat, both the Academy and F.E. Warren would be required to consult with the Service under section 7(a)(2) on any action likely to result in the destruction or adverse modification of designated critical habitat. Completion of any additional formal section 7(a)(2) biological opinions may require completion of biological assessments that can require extensive lengths of time and thousands of hours to complete. They may also require the employment of consultants. However, given that section 7(a)(2) consultations are still required, as discussed above, and that both areas are implementing approved INRMPs that provide special management and protection, these consultations offer little added benefit.

The added burden of consultations for activities adversely impacting critical habitat could also result in unnecessary delays, disruption of base activities and potentially impair our Nation's military readiness. F.E. Warren is the largest and most modern strategic missile unit in the U.S. and is comprised of four missile squadrons, each with five missile alert facilities and fifty launch facilities. Although the missile alert facilities and the launch facilities are dispersed throughout a large geographical area, most mission support functions are conducted at F.E. Warren, including administrative support, maintenance support, training, and helicopter support. The F.E. Warren area deemed essential to the conservation of the species, but not designated critical habitat totals 134 ha (331 ac) and effectively bisects the installation. This area, managed by an approved INRMP, extends 120m (400 ft) on either side of Crow Creek and includes several pieces of critical infrastructure such as 7 bridges, 6

buildings, 7 roads, a 15-tank propane tank farm, and a rail line used to transport equipment and supplies essential to the Inter Continental Ballistic Missile mission.

The Academy's Jack's Valley Training Center is also vital in the training of our armed forces and, ultimately, our national security. This 2,000 acre area is used for training throughout the year, but primarily for Basic Cadet Training. The training facility has a total of nearly 60 different obstacles that provide field training in such topics as survival and evasion, chemical warfare, problem solving, riffle and pyrotechnics, and anti-terrorism. Other training undertaken at the Academy include Combat Survival Training, airmanship programs, and free fall parachuting courses. The added burden of consultations for activities that adversely impact critical habitat could result in unnecessary delays or a disruption in these training activities.

Based on section 4(b)(2) and the consideration of the information described above, we find that the benefits of excluding the areas covered by the Academy and Warren greatly exceed the limited benefits of including these areas in the designation of critical habitat. Exclusion of these lands will not result in the extinction of the species.

Department of Energy's Rocky Flats

The Department of Energy's Rocky Flats site spans portions of the St. Vrain HUC and the Middle South Platte-Cherry Creek HUC. Rocky Flats has been a focus of research on the Preble's and monitoring of populations has taken place for several years. The Department of Energy and the Department of the Interior are concluding an agreement mandated by Congress under which the Rocky Flats site will become part of the National Wildlife Refuge system and will be administered by the Service. The Service will manage the refuge in a manner to conserve the Preble's. For that reason, we find that the Rocky Flats site is not in need of special management measures. Furthermore, there is no benefit to including a National Wildlife Refuge in a critical habitat designation under the circumstances presented here. Given concerns over the cleanup at the facility and the transfer of lands at the site to the Service, we find that the benefit of excluding these areas from designation as critical habitat outweigh the benefits of including them. Therefore we have excluded the Rocky Flats site under sections 3(5)(A) and 4(b)(2) of the Act. The exclusion will not cause the extinction of the species.

Methods

In determining areas essential to conserve the Preble's, we used the best scientific and commercial data available. We have reviewed approaches to the conservation of the Preble's undertaken by the Federal, State, and local agencies operating within the species' range since its listing in 1998, and the identified steps necessary for recovery outlined in the Working Draft of the recovery plan for the Preble's. We also reviewed available information that pertains to the habitat requirements of this species, including material received since the listing of the Preble's. The material included research published in peer-reviewed articles, academic theses and agency reports; reports from biologists conducting research under section 10(a)(1)(A) recovery permits; the Working Draft of the recovery plan for the Preble's; information from consulting biologists conducting site assessments, surveys, formal and informal consultations; as well as information obtained in personal communications with Federal, State, and other knowledgeable biologists in Colorado and Wyoming.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These physical and biological features include, but are not limited to—(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The Preble's is able to live and reproduce in and near riparian areas located within grassland, shrubland, forest, and mixed vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water normally exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refugia from catastrophic flooding events. While willows of shrub form are a dominant component in many riparian habitats occupied by the Preble's, the structure of the vegetation appears more important to the Preble's than species composition.

Primary constituent elements associated with the biological needs of dispersal and genetic exchange also are found in areas that provide connectivity or linkage between or within Preble's populations. These areas may not include the habitat components listed above and may have experienced substantial human alteration or disturbance.

The dynamic ecological processes that create and maintain Preble's habitat also are important primary constituent elements. Habitat components essential to the Preble's are found in and near those areas where past and present geomorphological and hydrological processes have shaped streams, rivers, and floodplains, and have created conditions that support appropriate vegetative communities. Preble's habitat is maintained over time along rivers and streams by a natural flooding regime (or one sufficiently corresponding to a natural regime) that periodically scours riparian vegetation, reworks stream channels, floodplains, and benches, and redistributes sediments such that a pattern of appropriate vegetation is present along river and stream edges, and throughout their floodplains. Periodic disturbance of riparian areas sets back succession and promotes dense, low-growing shrubs and lush herbaceous vegetation favorable to the Preble's. Where flows are controlled to preclude a natural pattern and other disturbance is limited, a less favorable mature successional stage of vegetation dominated by cottonwoods or other trees may develop. The long-term availability of habitat components favored by the Preble's also depends on plant succession and impacts of drought, fires, windstorms, herbivory, and other natural events. In some cases these naturally-occurring ecological processes are modified or are supplanted by human land uses that include manipulation of water flow and of vegetation.

Primary constituent elements for the Preble's include:

(1) A pattern of dense riparian vegetation consisting of grasses, forbs,

and shrubs in areas along rivers and streams that provide open water through the Preble's active season.

(2) Adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces).

(3) Areas that provide connectivity between and within populations. These may include river and stream reaches with minimal vegetative cover or that are armored for erosion control, travel ways beneath bridges, through culverts, along canals and ditches, and other areas that have experienced substantial human alteration or disturbance.

(4) Dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.*, those processes that create and maintain river and stream channels, floodplains, and floodplain benches, and promote patterns of vegetation favorable to the Preble's.

Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

Criteria Used To Identify Critical Habitat

The Service's July 17, 2002, proposed rule to designate critical habitat for the Preble's meadow jumping mouse cited the Recovery Team's Draft Discussion Document of February 27, 2002, and the concepts described within it as a source of the best scientific and commercial data available on the Preble's, and used it as a starting point for identifying areas that are essential for the conservation of the Preble's. The proposed rule stated that a draft of the recovery plan would be issued for public comment prior to final designation of critical habitat. For various reasons, including staffing and funding limitations, a draft recovery plan for the Preble's has not yet been finalized or issued for public comment. However, a draft of the recovery continues to evolve. While even a final recovery plan is not a regulatory document (*i.e.*, recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species solely on the basis of a recovery plan), the information, concepts, and conservation recommendations contained in the Working Draft were considered in developing this critical habitat designation. Areas identified as necessary for recovery in the Working Draft are based on the best available information as well as on our best judgement of what we believe to be necessary for recovery even in situations where information is limited. Total disclosure and open communication with the public of our judgements regarding possible future recovery scenarios are essential parts of recovery planning. Recovery plans are not regulatory documents and do not obligate or commit parties to the actions or determination of the plans. Public review, peer review, and stakeholder involvement are essential aspects of recovery planning, and are required by the Act and by Service policy. For these reasons, decisions made by the Service in designation of critical habitat will not preclude determination or decisions in any aspect of recovery planning that may be subject to public review. Therefore determinations as to recovery strategies, criteria, or tasks within the recovery plan will not be limited by this critical habitat designation.

The Working Draft identifies specific criteria for reaching recovery and the delisting of the Preble's. While elements of this Working Draft may change prior to plan finalization, the concepts described within it continue to represent the best scientific and commercial data available on the Preble's. To recover the Preble's to the point where it can be delisted, the Working Draft identifies the need for a specified number, size, and distribution of wild, self-sustaining Preble's populations across the known range of the Preble's. The distribution of these recovery populations is intended both to reduce the risk of multiple Preble's populations being negatively affected by natural or man-made events at any one time, and to preserve the existing genetic variation within the Preble's. The Working Draft identifies recovery criteria for each of the three major river drainages where the Preble's occurs (the North Platte River drainage in Wyoming, the South Platte River drainage in Wyoming and Colorado, and the Arkansas River drainage in Colorado) and for each subdrainage judged likely to support the Preble's. In some cases the Working Draft identifies recovery criteria for subdrainages where trapping for the Preble's has not yet occurred or where limited trapping has not confirmed the presence of the Preble's. Boundaries of drainages and subdrainages have been mapped by the U.S. Geological Survey (USGS). For the Working Draft, 8-digit HUC boundaries were selected to define subdrainages. A total of 19 HUCs are identified in the Working Draft as occupied or potentially occupied by the Preble's. Of these, 5 are located in the North Platte River drainage, 11 in the South Platte River drainage, and 3 in the Arkansas River drainage. In developing the conservation strategy that underlies this rule we have considered and incorporated aspects of the Working Draft.

One large and one medium Preble's population in Wyoming, and one large Preble's population in Colorado that are designated in the Working Draft as recovery populations, and are consistent with our conservation strategy, are reflected in this critical habitat designation. The Working Draft defines large populations as maintaining 2,500 mice and usually including at least 50 mi (80 km) of rivers and streams. It defines medium populations as maintaining 500 mice over at least 10 mi (16 km) of rivers and streams. While the Working Draft designates the approximate location of these recovery populations, it does not delineate specific boundaries. In addition, in each of the remaining ten HUCs within the Preble's range the Working Draft calls for three small recovery populations but, with the exception of the F. E. Warren in the Crow Creek HUC and Lone Tree Creek in the Lone Tree-Owl HUC, does not attempt designate their locations. In most of these remaining 10 HUCs, the Working Draft only prescribes the need to establish three small recovery populations (or the option of one medium recovery population) within a HUC. The Working Draft anticipates that, in the future, the locations of these remaining recovery populations will be designated and their specific boundaries delineated by State and local governments, and other interested parties, working in coordination with the Service. In contrast, to meet the requirements for this critical habitat designation, we have designated specific boundaries for all critical habitat units. It is probable that new information regarding populations in these areas will alter specific details of any future recovery plan. HUCs where little is know regarding status of the Preble's may be proven not to support viable populations. If such is the case they may be determined to be unnecessary for recovery, and may be deleted from a future recovery plan. Other HUCs may be determined to be necessary for recovery even if they are not included within this critical habitat designation.

Beyond designating critical habitat for sites essential to the conservation of the Preble's because they are important to recovery, we reviewed other sites of Preble's occurrence, especially on Federal lands, for possible designation as critical habitat. Our conservation strategy emphasizes the importance of protecting additional Preble's populations, to provide insurance for the Preble's in the event that designated recovery populations cannot be effectively managed or protected as envisioned by the recovery plan, or are decimated by uncontrollable catastrophic events such as fires or flooding. Our conservation strategy entails directing recovery efforts toward public lands rather than private lands where possible, and calls upon all Federal agencies to protect and manage for the Preble's wherever it occurs on Federal lands. As part of our conservation strategy, we believe that the designation of additional areas of critical habitat on Federal land is essential for the conservation of the Preble's. Should unforseen events cause the continued decline of Preble's populations throughout its range, Preble's populations and the primary constituent elements on which they depend are more likely to persist and remain viable on Federal lands than on non-Federal lands. The likelihood of maintaining stable populations is greatest on these Federal lands, where consistent and effective land management strategies can be more easily employed. Preble's populations on Federal lands could serve as substitute recovery populations should designated recovery populations decline or fail to meet recovery goals. In addition, some Preble's populations on Federal lands have been the subject of ongoing research that could prove vital to the conservation of the Preble's.

For the reasons stated above we have designated selected stream reaches on Federal lands supporting the Preble's that we believe to be essential to the conservation of the Preble's, even if these areas appear unlikely to be selected for initially designated recovery populations based on the Working Draft. These areas of designated critical habitat may include short reaches of intervening non-Federal lands that in some cases support all primary constituent elements needed by the Preble's or, if substantially developed, are likely to provide only connectivity between areas of Preble's habitat on nearby Federal lands.

Designated critical habitat units include only river and stream reaches, and adjacent floodplains and uplands, that are within the known geographic and elevational range of the Preble's, have the primary constituent elements present, and, based on the best scientific data available, are believed to currently support the Preble's.

In Wyoming and at higher elevations along the Front Range in Colorado the geographical distribution of the Preble's has been subject to scrutiny due to the close resemblance, and apparent range overlap, between the Preble's and the western jumping mouse. However, new information obtained since the time of the Preble's listing has not appreciably changed the known range of the Preble's. Based on the most recent information on elevational range of the Preble's we have, with one exception, limited designated critical habitat to 2,300 m (7,600 ft) in elevation and below.

Presence of primary constituent elements was determined through a variety of sources including, but not limited to—Colorado Division of Wildlife mapping of Preble's Habitat Similarity Models derived from interpretation of aerial photographs; the Services' 1998 mapping of sites occupied or potentially occupied by the Preble's produced in conjunction with the Colorado Department of Natural Resources as part of proposed special regulations under section 4(d) of the Act (63 FR 66777); working maps produced by the Recovery Team during development of the Working Draft; National Wetland Inventory maps produced by the Service; results of research conducted on a variety of Federal properties by the Forest Service, the Department of Energy, the Air Force, and the Army Corps of Engineers; results of research conducted by the Colorado Division of Wildlife, Colorado Department of Transportation, and the City of Boulder; field assessments of habitat by Service staff; information amassed to support regional HCPs including those in Boulder, Douglas, and El Paso Counties in Colorado, and for Denver Water properties in Colorado; coordination with Forest Service personnel from the Medicine Bow-Routt, Arapaho-Roosevelt, and Pike-San Isabel National Forests; and, numerous evaluations of potential Preble's habitat by consulting biologists in support of developers, landowners, and other clients.

Presence of the Preble's was determined based largely on the results of trapping surveys, the vast majority of which were conducted in the past 7 years. Sites judged to be occupied by the Preble's include those that—(1) have recently been documented to support jumping mice identified by genetic or morphological examination as the Preble's; or (2) have recently been documented to support jumping mice and for which historical verification of the Preble's exists. While in some cases designated critical habitat units extend well beyond these capture locations, boundaries of these critical habitat units include only those reaches that we believe to be occupied by the Preble's based on the best scientific data available regarding capture sites, the known mobility of the Preble's, and the quality and continuity of habitat components along stream reaches. Where appropriate, we have included details on the known status of the Preble's within specific subdrainages in the Critical Habitat Designation section of this document. Survey efforts to document the Preble's in Wyoming have been more limited than in Colorado and have been focused on—(1) Federal lands (the Medicine Bow-Routt National Forest, some Bureau of Land Management lands, and the F.E. Warren in Laramie County); (2) lands owned and surveyed by True Ranches; and (3) areas to be impacted by various proposed projects with a Federal nexus, most notably the Medicine Bow Lateral Pipeline.

We considered several qualitative criteria to judge the current status and probable persistence of Preble's populations in the selection and designation of specific areas as critical habitat. These included—(1) the quality, continuity, and extent of habitat components present; (2) the state of natural hydrological processes that maintain and rejuvenate suitable habitat components; (3) the presence of lands devoted to conservation, either public lands such as parks, wildlife management areas, and dedicated open space, or private lands under conservation easements; and (4) the landscape context of the site, including the overall degree of current human disturbance and presence, and likelihood of future development based on local planning and zoning.

In those units where, based on our conservation strategy, we designate critical habitat on Federal lands, we looked for contiguous Federal property along stream reaches at least 5 km (3 mi) in length supporting required primary constituent elements and occupied by the Preble's. In some cases shorter reaches on Federal lands were designated as critical habitat when they were separated from more substantial reaches on Federal lands by only small segments of intervening non-Federal lands.

North Platte River Drainage

Within the Glendo HUC, we have designated critical habitat on the Cottonwood Creek watershed consistent with the medium recovery population called for in our conservation strategy. Although we originally proposed critical habitat in the Horseshoe Creek watershed on National Forest System land, we have removed this unit from final designation after reevaluation of the available data regarding Preble's identification in this drainage. As indicated previously, we have decided to include in the critical habitat determination only those units occurring in drainages within which there is a specimen verified as Preble's through morphological or genetic means. The Horseshoe Creek has had no mice verified to be Preble's through morphological or genetic means, but rather only through field identification.

Within the Lower Laramie HUC, we have designated critical habitat on Chugwater Creek consistent with the large recovery population. Primary constituent elements required by the Preble's appear widespread within Chugwater Creek and its tributaries. Richeau Creek and Hunton Creek were not included as designated critical habitat since they are segregated from the main portion of the Chugwater Creek complex by long stretches of less suitable habitat. Upon review of additional information obtained through public comment and during site visits to the area, some adjustments were made to the tributaries proposed to be included in this unit. Four tributaries were removed from the final designation. These tributaries include two named Spring Creek, Threemile Creek, and Sand Creek. The Spring Creek located farthest downstream supports somewhat limited riparian vegetation, transitions immediately into arid uplands without adequately vegetation (rather than supporting meadows and hayfields like most of Chugwater Creek), and does not provide open water through the Preble's active season. This tributary is not be considered valuable in providing connectivity, as it does not link one area to another. Similarly, although Threemile Creek does flow through the Preble's active season, the riparian vegetation associated with this creek is extremely limited (only a few feet in width in some locations) and transitions immediately into arid uplands characterized by the presence of cacti and supporting only limited grasses and forbs. Sand Creek has reasonably well developed riparian vegetation, but does not regularly contain open, flowing water. Water flows are restricted to periods after storm events. The Spring Creek occurring farthest upstream flows underground (with haying occurring across it) through significant portions of its reach. Although the upstream reach of the tributary has above-ground flows and adequate vegetation to be considered suitable habitat for the Preble's, the upper reaches are not connected to the lower reach or Chugwater Creek.

Also in the Lower Laramie HUC, habitat components typically used by the Preble's exist on Federal property on the Medicine Bow-Routt National Forest. While many of these locations are at higher elevations than those that the Preble's has been shown to inhabit, surveys have also captured jumping mice identified in the field as the Preble's from the appropriate elevational range. Therefore, we originally proposed critical habitat on National Forest System lands and small parcels of intervening non-Federal lands within the Friend Creek watershed and within the Murphy Canyon watershed. However, as discussed previously, we have removed the Friend Creek and Murphy Canyon unit from this designation, as those drainages contain no mice verified as Preble's through morphological or genetic means.

Within the Horse Creek HUC, we originally proposed critical habitat on Horse Creek consistent with the medium recovery population called for in our conservation strategy. However, for reasons discussed previously, we have removed the Horse Creek unit from this designation as the drainage contains no mice verified as Preble's through morphological or genetic means.

Our conservation strategy calls for three small populations or one medium population in both the Middle North Platte-Casper HUC and the Middle North Platte-Scottsbluff HUC. Suitable habitat appears to be present throughout the Middle North Platte-Casper HUC. However, survey efforts targeted at the Preble's have occurred on only a limited basis in this subdrainage, with the only known captures of jumping mice at elevations above 2,800 m (7,800 ft) and likely to be western jumping mice. Therefore, while primary constituent elements for the Preble's appear present in this subdrainage and the Preble's probably occurs within this system, we have not designated critical habitat based on lack of known occurrence.

Habitat components suitable for the Preble's appear to be quite limited in the Middle North Platte-Scottsbluff HUC and are largely confined to the westernmost portions of the subdrainage. Some small pockets of suitable habitat are scattered throughout the rest of the subdrainage, but they are quite isolated. Additionally, trapping efforts targeted at the Preble's have occurred on a limited basis in this subdrainage with no surveys providing captures of the jumping mice. Therefore, while there is a high probability that the Preble's occurs within this subdrainage, we have not designated critical habitat based on lack of known occurrence.

South Platte River Drainage

Our conservation strategy calls for three small recovery populations or one medium population in the Upper Lodgepole HUC. Suitable habitat for the Preble's is generally limited to the western half of the subdrainage. Most trapping efforts in this HUC have been on the Medicine Bow-Routt National Forest at elevations above 2,300 m (7,700 ft). Additionally, one trapping effort at a lower elevation produced a jumping mouse identified in the field as a Preble's. We have designated two critical habitat units in this subdrainage, Lodgepole Creek and Upper Middle Lodgepole Creek, consistent with two of the three small recovery populations identified for the HUC in our conservation strategy.

In Crow Creek HUC we proposed designation of critical habitat consistent with one of the three small recovery populations called for in our conservation strategy. This area, limited to the F.E. Warren in Cheyenne, has been excluded from the final critical habitat designation under 3(5)(A) and 4(b)(2) of the Act (see Relationship with Department of Defense Lands).

The Lone Tree-Owl HUC supports primary constituent elements for the Preble's both in Wyoming and in Colorado. Based on the recovery criteria of three small or one medium recovery population assigned to this HUC in the Working Draft, we originally proposed two small areas of critical habitat along Lone Tree Creek, one in Wyoming and one in Colorado. However, for reasons discussed previously, we have removed the Lone Tree Creek unit from this designation as the drainage contains no mice verified as Preble's through morphological or genetic means.

We have elected not to designate additional critical habitat on Federal property in the Wyoming portion of the South Platte River drainage aside from the Upper Middle Lodgepole Creek subunit. Within these HUCs, Bureau of Land Management properties are largely upland areas with only small segments of streams. National Forest System lands in the Medicine Bow—Routt National Forest include many suitable-looking streams, but most occur at elevations

ranging from 2,200 m (7,300 ft) to 2,400 m (8,000 ft). Although surveys from these riparian areas have produced jumping mice that are potentially the Preble's, none have been verified as Preble's through genetic or morphological means. It is likely, based on elevation, that many of these are western jumping mice. We will continue to work with the Forest Service regarding potential Preble's populations on their lands and will encourage further survey effort and collection of jumping mouse specimens for species verification.

In the Cache La Poudre HUC, we have designated critical habitat along the lower portions of the North Fork of the Cache Le Poudre River and its tributaries, consistent with the large recovery population called for in our conservation strategy. In addition, further south in this subdrainage we have designated a second area limited largely to National Forest System lands along the main stem of the Cache Le Poudre River and on selected tributaries. While additional stream reaches that support Preble's populations are present on National Forest System lands in the upper reaches of the North Fork of the Cache Le Poudre and its tributaries, including Bull Creek, Willow Creek, Mill Creek, and Trail Creek, the extent of contiguous stream reaches in Forest Service ownership is very limited. A checkerboard pattern of land ownership, resulting in no significant contiguous reaches of Federal lands, convinced us that designating additional critical habitat centered on Federal lands is not warranted; therefore, we designated no critical habitat in this area.

In the Big Thompson HUC we designated critical habitat on Buckhorn Creek and its tributaries consistent with the medium recovery population called for in our conservation strategy. We also assessed National Forest System lands along the Big Thompson River and Little Thompson River for possible inclusion as critical habitat. Potential areas along the Big Thompson River and the North Fork of the Big Thompson River were largely in private ownership, with substantial human development occurring in many places. We originally proposed one additional area as critical habitat, centered on National Forest System lands on portions of Dry Creek and its tributaries. However, for reasons discussed previously, we have removed the Cedar Creek unit from this designation as the drainage contains no mice verified as Preble's through morphological or genetic means. Forest Service holdings along the Little Thompson River and its tributaries are highly fragmented by non-Federal lands or represent only short stream reaches near the 2,300 m (7,600 ft) elevation. No critical habitat has been designated on the Little Thompson River.

Within the St. Vrain HUC, our conservation strategy calls for a medium recovery population on South Boulder Creek.

At the request of representatives from the City of Boulder we considered designating critical habitat along the St. Vrain River between Hygiene and Lyons. We have little evidence to support designation of critical habitat for the Preble's population on the St. Vrain River as a preferable alternative to designation of critical habitat on South Boulder Creek, nor did we find reason to designate critical habitat on a second population on non-Federal lands within this subdrainage. We considered designating critical habitat for the Preble's on National Forest System lands at higher elevations along the North St. Vrain Creek and the Middle St. Vrain Creek. However, since no trapping efforts targeted at the Preble's have been conducted in these areas and we are aware of no records of the Preble's occurrence in these watersheds, neither has been designated as critical habitat.

The Department of Energy's Rocky Flats site spans portions of the St. Vrain HUC and the Middle South Platte-Cherry Creek HUC. Rocky Flats has been a focus of research on the Preble's and monitoring of populations has taken place for several years. The Department of Energy and the Department of the Interior are concluding an agreement mandated by Congress under which the Rocky Flats site will become part of the National Wildlife Refuge system and will be administered by the Service. The Service will manage the refuge in a manner to conserve the Preble's. For that reason, we find that the Rocky Flats site is not in need of special management measures. Furthermore, there is no benefit to including a National Wildlife Refuge in a critical habitat designation under the circumstances presented here. Therefore we have excluded the Rocky Flats site under sections 3(5)(A) and 4(b)(2) of the Act.

Our conservation strategy calls for three small recovery populations or one medium recovery population within the Clear Creek HUC, the Preble's has been captured along a segment of Ralston Creek above Ralston Reservoir. Based on limited occurrence of habitat components needed by the Preble's and the absence of other captures, we limited proposed designation of critical habitat within the Clear Creek HUC to this single population. In the summer of 2002, a single jumping mouse, confirmed as the Preble's through morphological examination, was captured on Elk Creek, a small tributary to Clear Creek. Past trapping efforts on Clear Creek and its tributaries have failed to document Preble's presence. After review of the site, we have decided not to designate the reach at the site of the Elk Creek capture as critical habitat.

Our conservation strategy calls for a medium recovery population along Cherry Creek in the Middle South Platte-Cherry Creek HUC. Preble's habitat in the upper reaches of the Cherry Creek basin appears extensive. We proposed critical habitat in an area that includes a segment of Cherry Creek, Lake Gulch, and its tributaries. However, for reasons discussed previously, we have removed the Cherry Creek unit from this designation as the drainage contains no mice verified as Preble's through morphological or genetic means.

We examined other areas of Preble's habitat on Federal lands within the Upper South Platte HUC, and have designated critical habitat on Army Corps of Engineers lands upstream of Chatfield Reservoir along the South Platte River and on three areas centered on National Forest System land in the Pike-San Isabel National Forest within the South Platte River watershed. Though National Forest System lands in the Upper South Platte HUC are extensive, much of the South Platte itself is not federally owned. On National Forest System lands on some of the major tributaries of the South Platte River, habitat components required by the Preble's have been degraded by catastrophic fire, flooding, or both. The Buffalo Creek watershed has been highly degraded by fire, followed by flooding, accompanying erosion, and sedimentation. Critical habitat has not been designated in the Buffalo Creek watershed. The Wigwam Creek subunit, proposed as critical habitat in the draft rule, has not been designated as critical habitat following intense burning by the 2002 Hayman Fire. In contrast, the Trout Creek subunit was lightly to moderately burned in the same fire, is expected to recover relatively quickly, and is designated as critical habitat. Combined, the four areas of designated critical habitat should help assure that a viable population of the Preble's is maintained in the portion of this HUC upstream of Chatfield Reservoir on the South Platte River.

While our conservation strategy calls for either three small populations or one

medium population in both the Kiowa and Bijou HUCs, no confirmation of the Preble's existed at the time of proposed critical habitat designation for either of these subdrainages. Based on lack of known Preble's occurrence, no critical habitat was proposed within either of these areas. Two 2002 trapping efforts on the Kiowa Creek resulted in captures of jumping mice identified in the field as the Preble's, with one specimen confirmed as the Preble's through morphological examination. After review of habitat at the capture sites in relation to that found elsewhere on Kiowa Creek and its tributaries, we have elected not to designate reaches adjacent to the capture sites as critical habitat. We encourage further trapping to better understand the extent and distribution of occupied habitat in the Kiowa Creek subdrainage.

Arkansas River Drainage

Within the Fountain Creek HUC our conservation strategy calls for a large recovery population along Monument Creek and its tributaries including lands within the Air Force Academy. While the Academy property would support an essential part of this recovery population, we have determined that the Academy does not meet the definition of critical habitat under 3(5)(A) and merits exclusion under 4(b)(2) of the Act (see Relationship with Department of Defense Lands).

Our conservation strategy calls for either three small recovery populations or one medium recovery population to meet recovery criteria in both the Chico and the Big Sandy HUCs. The Preble's has been documented at a single location within the Chico HUC, in apparently marginal habitat along an unnamed tributary of Black Squirrel Creek. Subsequent trapping could not relocate the Preble's at the site. Limited trapping of other sites has produced no captures of the Preble's and the extent of appropriate habitat components within the subdrainage appears limited. We have not designated critical habitat in the Chico HUC based on our uncertainty that the Preble's exists within any given reach in this area. In the Big Sandy HUC limited trapping efforts targeted at the Preble's have not confirmed Preble's presence. Sites supporting primary constituent elements required by the Preble's appear few. For these reasons we have not designated critical habitat in the Big Sandy HUC.

Delineation of Critical Habitat Boundaries

Critical habitat for the Preble's was delineated based on the interpretation of multiple sources used during the preparation of this rule. We used GIS-based mapping using ARCInfo that incorporated streams, steam order (Stahler method), roads, and cities from USGS maps, floodplains from Federal Emergency Management Agency maps, and surface management maps depicting property ownership from the Bureau of Land Management (primarily from the early 1990s). Lands designated as critical habitat were divided into specific mapping units, *i.e.*, critical habitat units, often corresponding to individual HUCs. For the purposes of this rule these units have been described primarily by latitude and longitude, and by section, township, and range, to mark the upstream and the downstream extent of designated critical habitat along rivers and streams.

We were presented with a decision in designating outward extent of critical habitat into uplands. The Service has typically described Preble's habitat as extending outward 300 ft (90 m) from the 100-year floodplain of rivers and streams (Service 1998). The Working Draft defines Preble's habitat as the 100-year floodplain plus 100 m (330 ft) outward on both sides, but allows for alternative delineations that provide for all the needs of the Preble's and include the alluvial floodplain, transition slopes, and pertinent uplands.

In order to allow normal behavior and to assure that the Preble's and the primary constituent elements on which it depends are protected from disturbance, the outward extent of critical habitat should at least approximate the outward distances described above in relation to the 100-year floodplain. Unfortunately, floodplains have not been mapped for many streams within Preble's range and electronic layers depicting 100-year floodplains needed to facilitate GIS mapping are not available for several counties within Preble's range. Where floodplain mapping is available, we have found that it may include local inaccuracies.

While alternative delineation of critical habitat based on geomorphology and existing vegetation could accurately portray the presence and extent of required habitat components, we lacked an explicit data layer that could support such a delineation over the species range. Creation of such a layer through interpretation of aerial photographs and site visits was not possible given the time and resources available for this designation.

We also considered determining the outward extent of critical habitat based on a distance outward from features such as the stream edge, associated wetlands, or riparian areas. We judged wetlands an inconsistent indicator of habitat extent and found no consistent source of riparian mapping available across the range of the Preble's. We also considered using an outward extent of critical habitat established by a vertical distance above the elevation of the river or stream to approximate the floodplain and adjacent uplands likely to be used by the Preble's.

For this designation we ultimately settled on delineating the upland extent of critical habitat boundaries as a set distance outward from the river or stream edge (as defined by the ordinary high water mark) varying with the size (order) of a river or stream. We compared known floodplain widths to stream order over a series of sites and approximated average floodplain width for various orders of streams. To that average we added an additional 100 m (330 ft) outward on each side. Based on this calculation, for streams of order 1 and 2 (the smallest streams) we have delineated critical habitat as 110 m (360 ft) outward from the stream edge, for streams of order 3 and 4 we have delineated critical habitat as 120 m (400 ft) outward from the stream edge, and for stream orders 5 and above (the largest streams and rivers) we have delineated critical habitat as 140 m (460 ft) outward from the stream edge. While designated critical habitat will not include all areas used by individual Preble's mice over time, we believe that these corridors of critical habitat ranging from 220 m (720 ft) to 280 m (920 ft) in width (plus the river or stream width) will support the full range of primary constituent elements essential for persistence of Preble's populations, and should help protect the Preble's and their habitats from secondary impacts of nearby disturbance. We received a number of public comments regarding the appropriate outward limits of critical habitat and means of establishing them. However, most comments suggested either standardizing a single outward distance for all rivers and streams, site specific mapping of critical habitat for each reach designated, or relying on alternative mapping created for HCPs as a surrogate for site-specific mapping of critical habitat. None of these alternatives were determined to be both feasible given the time and resources available to us, and a more accurate alternative to the methodology employed in the proposed rule.

In selecting areas of designated critical habitat, we made an effort to avoid developed areas that are not likely to contribute to Preble's conservation. However, the scale of mapping that we

used to approximate our delineation of critical habitat did not allow us to exclude all developed areas such as roads and rural development. In addition, some developed stream reaches serve as essential connectors within Preble's populations. Existing structures and features within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and certain other areas are not likely to contain primary constituent elements for the Preble's and, therefore, are not critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation unless they affect the Preble's or primary constituent elements within designated critical habitat.

We could not depend solely on federally-owned lands to designate critical habitat, as these lands are limited in geographic location, size, and habitat quality within the range of the Preble's. In addition to the federally-owned lands, we are designating critical habitat on non-Federal public lands and privately owned lands, including lands owned by the State of Colorado and State of Wyoming, and by local governments. All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management considerations or protection.

Critical Habitat Designation

The designated critical habitat contained within units discussed below constitutes our best evaluation of areas necessary to conserve the Preble's. Critical habitat may be revised through rule-making (including notice and public comment) if new information becomes available after the final rule. Table 1 provides a summary of the area of critical habitat in each unit that has been designated as critical habitat. Critical habitat for the Preble's includes approximately 201.3 km (125.1 mi) of rivers and streams and 4,264 ha (10,542 ac) of lands in Wyoming and approximately 376.8 km (234.1 mi) of rivers and streams and 8,386 ha (20,680 ac) of lands in Colorado. Lands designated as critical habitat are under Federal, State, local government, and private ownership. No lands designated as critical habitat are under Tribal ownership. Estimates reflect the total river or stream length, or area of lands within critical habitat unit boundaries, without regard to the presence of primary constituent elements. Therefore, given exclusions for developed areas and other areas not supporting primary constituent elements, the area designated is actually less than indicated in Table 1.

TABLE 1.—CRITICAL HABITAT FOR THE PREBLE'S MEADOW JUMPING MOUSE BY UNIT IN WYOMING AND COLORADO

Linear River Kilometers and Hectares by State	
	Total
Wyoming	201.3 km (125.1 mi) 4,264 ha (10,542 ac)
NP1	43.3 km (26.9 mi) 924 ha (2,284 ac)
NP3	137.2 km (85.3 mi) 2912 ha (7,194 ac)
SP1	20.8 km (13.0 mi) 265 ha (654 ac)
Colorado	376.8 km (234.1 mi) 8,368 ha (20,680 ac)
SP 4	141.8 km (88.1mi) 3,321 ha (8,206 ac)
SP 5	82.4 km (51.2 mi) 1,912 ha (4,725 ac)
SP 6	69.2 km (43.0 mi) 1,537 ha (3,798 ac)
SP 10	12.9 km (8.0 mi) 277 ha (686 ac)
SP 13	70.5 km (43.8 mi) 1,321 ha (3,265 ac)

Lands designated as critical habitat are divided into 8 critical habitat units containing all of those primary constituent elements necessary to meet the primary biological needs of the Preble's. We exempted the proposed Warren Air Force Base unit (SP2 in the proposed rule) from critical habitat designation. In addition we have excluded the Horseshoe Creek unit (NP2), the Friend Creek and Murphy Canyon unit (NP4), and the Horse Creek unit (NP5), the Lone Tree Creek unit (SP3), the Cedar Creek unit (SP7), and the Cherry Creek unit (SP11). In order to avoid confusion from changing numbering critical habitat units, we have retained the original unit numbers of units that have been designated critical habitat.

In designating critical habitat, we did not include all areas currently occupied by the Preble's. A brief description of each Preble's critical habitat unit and the reasons why they are essential for the conservation of the Preble's are provided below. The units are generally based on geographically distinct river drainages and subdrainages. These units have been subject to, or are threatened by, varying degrees of degradation from human use and development. For these reasons, all of the areas in which we are designating critical habitat may require special management considerations or protection. Unless otherwise noted, references to ''morphological examination'' refer to Connor and Shenk (in prep.), references to genetic examination'' refer to Riggs *et al.* (1997), and references to ''captures presumed to be the Preble's'' refer to field surveys where jumping mice identified in the field as the Preble's were released alive and not subject to morphological or genetic examination.

The following critical habitat units are located in the North Platte River drainage:

Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming

Unit NP1 encompasses approximately 924 ha (2,284 ac) on 43.3 km (26.9 mi) of streams within the Cottonwood Creek watershed. It includes Cottonwood Creek from Harris Park Road upstream to the 2,100–m (7,000–ft) elevation. Tributaries include North Cottonwood Creek and Preacher Creek. The unit includes both public and private lands, including a small portion on the Medicine Bow-Routt National Forest.

This unit is located in the Glendo HUC and is designated to address the large recovery population for the North Platte River drainage in our conservation strategy. The Preble's habitat on this unit appears generally excellent, particularly on the National Forest System lands. This population is essential not only to maintain distribution near the northernmost extreme of known Preble's range, but because the large size of the population (as predicted by amount and quality of habitat) should help ensure viability into the future. Private lands within the unit are used extensively for grazing, which could be beneficial to the Preble's and its habitat if managed appropriately.

A specimen examined by Krutzsch (1954) in describing the subspecies is from Springhill in this HUC. Five recent specimens from this subdrainage have been identified as the Preble's through morphological examination (tooth fold presence) (Jones, in litt., 2002). Captures of jumping mice identified in the field as the Preble's have occurred at several other locations in this subdrainage.

Unit NP3: Chugwater Creek, Albany, Laramie, and Platte Counties, Wyoming

Unit NP3 encompasses approximately 2,912 ha (7,194 ac) on137.2 km (85.3 mi) of streams within the Chugwater Creek watershed. It extends from several miles downstream of the town of Chugwater, upstream on Chugwater Creek and its

tributaries to approximately the 2,100–m (7,000–ft) elevation. Major tributaries within the unit include Middle Chugwater Creek, South Chugwater Creek, Ricker Creek, Strong Creek, and Shanton Creek. The unit consists of both public and private lands.

This unit is located in the Lower Laramie HUC and is designated to address the large recovery population in the North Platte River drainage called for in our conservation strategy. The unit supports excellent Preble's habitat with a complex tributary system and is likely to support a high density of the Preble's. While some isolated portions of this unit may be less suitable, we do not believe those areas are permanently affected by current land use practices or pose such barriers as to segregate portions of this Preble's population. Based on the amount and apparent quality of Preble's habitat contained in this unit, it may support one of the largest populations of the Preble's within its entire range and has a high probability of remaining viable well into the future. Threats are presented by future development, road construction, and road improvements. In addition, the unit is repeatedly crossed by gas pipelines and utility corridors. Haying and grazing may be threats to the Preble's in portions of the unit.

Specimens of the Preble's from this HUC include a specimen from Chugwater examined by Krutzsch (1954) in describing the subspecies, and specimens from Sybille Creek, Chugwater Creek, and Hunton Creek verified as the Preble's through morphological examination (tooth fold presence) (Jones, in litt., 2002). Capture of jumping mice presumed to be the Preble's has occurred at several other locations in this subdrainage.

The following critical habitat units are located in the South Platte River drainage:

Unit SP1: Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming

Unit SP1 encompasses approximately 265 ha (654 ac) on 20.8 km (13.0 mi) of streams within two subunits in the Lodgepole Creek watershed, Lodgepole Creek and the Upper Middle Lodgepole Creek. The Lodgepole Creek subunit includes Lodgepole Creek from Horse Creek Road (County Road 211) upstream beyond the confluence of North Lodgepole Creek and Middle Lodgepole Creek up to 2,300–m (7,000–ft) elevation on both creeks. The subunit consists of almost entirely private lands. The Upper Middle Lodgepole Creek subunit includes Middle Lodgepole Creek from the eastern boundary of the Pole Mountain Unit of the Medicine Bow-Routt National Forest upstream to about 2,400–m (7,750–ft) elevation and including the North Branch of Middle Lodgepole Creek. The unit consists of public lands including portions of the Medicine Bow-Routt National Forest.

This unit is located in the Upper Lodgepole HUC and is designated to address two of three small recovery populations called for in this HUC in our conservation strategy. The Lodgepole Creek subunit will likely be threatened in the future by development including road construction. The Upper Middle Lodgepole Creek subunit may be threatened by grazing pressure (particularly during drought conditions) and off-road vehicle use.

Critical habitat on this unit is designated based on captures of jumping mice on Middle Lodgepole Creek and North Branch of Middle Lodgepole Creek. Although these two trap sites are fairly high in elevation, a specimen was confirmed as the Preble's on the North Branch of Middle Lodgepole Creek through genetic examination and a second specimen was verified to be the Preble's through morphological examination (tooth fold presence) (Jones, in litt., 2001).

Unit SP4: North Fork Cache La Poudre River, Larimer, Colorado

Unit SP4 encompasses approximately 3,321 ha (8,206 ac) on 141.8 km (88.1 mi) of streams within the North Fork of the Cache La Poudre River watershed. It includes the North Fork of the Cache La Poudre River from Seaman Reservoir upstream to Halligan Reservoir. Major tributaries within the unit include Stonewall Creek, Rabbit Creek (including its North Fork, Middle Fork and South Fork), and Lone Pine Creek. The unit includes both public and private lands. It includes portions of the Arapaho-Roosevelt National Forest, as well as Lone Pine State Wildlife Area.

The unit is located in the Cache La Poudre HUC and is designated to address the large recovery population designated for this area in our conservation strategy. The area remains rural and agricultural with habitat components likely to support relatively high densities of the Preble's. Pressure for expanded development is increasing within the area. Within existing properties belonging to The Nature Conservancy along the North Fork Cache La Poudre River and to Al Johnson along Rabbit Creek, Lone Pine Creek, and the North Fork Cache La Poudre River, designated critical habitat extends from the center line of the stream outward 325 ft (99 m) on both sides.

Specimens from Rabbit Creek and Lone Pine Creek were verified through genetic examination as the Preble's. Jumping mice identified in the field as the Preble's have been captured at several locations within the unit.

Unit SP5: Cache La Poudre River, Larimer County, Colorado

Unit SP5 encompasses approximately 1,912 ha (4,725 ac) on 82.4 km (51.2 mi) of streams within the Cache La Poudre River watershed. It includes the Cache La Poudre River from Poudre Park upstream to the 2,300 m (7,600 ft) elevation (below Rustic). Major tributaries within the unit include Hewlett Gulch, Young Gulch, Skin Gulch, Poverty Gulch, Elkhorn Creek, Pendergrass Creek, and Bennett Creek. The unit is primarily composed of Federal lands of the Arapaho-Roosevelt National Forest, including portions of the Cache La Poudre Wilderness, but includes limited non-Federal lands.

The unit is located in the Cache La Poudre HUC and, while unlikely to serve as an initial recovery population, it encompasses a significant area of habitat likely to support a sizeable population of the Preble's. Due to Federal ownership, development pressure is minimal; however, the area is subject to substantial recreational use (rafting, kayaking, fishing) in the Cache La Poudre River corridor. Non-Federal lands include existing development that may limit habitat components present. Some such reaches may serve the Preble's mostly as connectors between areas containing all necessary primary constituent elements.

A number of jumping mice, identified in the field as the Preble's, have been captured from this unit, with one specimen from Young Gulch verified through morphological examination as a Preble's.

Unit SP6: Buckhorn Creek, Larimer County, Colorado

Unit SP6 encompasses approximately 1,537 ha (3,798 ac) on 69.2 km (43.0 mi) of streams within the Buckhorn Creek watershed. It includes Buckhorn Creek from just west of Masonville, upstream to the 2,300 m (7,600 ft) elevation. Major tributaries within the unit include Little Bear Gulch, Bear Gulch, Stringtown Gulch, Fish Creek, and Stove Prairie Creek. The unit includes both public and private lands, and includes portions of the Arapaho-Roosevelt National Forest.

The unit is located in the Big Thompson HUC and is designated to address the medium recovery population called for this area in our conservation strategy. Pressure for

expanded rural development exists on non-Federal lands within the unit.

Jumping mice identified in the field as the Preble's have been captured from various portions of this unit with one specimen from Little Bear Gulch verified through morphological examination as the Preble's.

Unit SP10: Ralston Creek, Jefferson County, Colorado

Unit SP10 encompasses approximately 277 ha (686 ac) on 12.9 km (8.0 mi) of streams within the Ralston Creek watershed. It includes Ralston Creek from Ralston Reservoir upstream to the 2,300 m (7,600 ft) elevation. The unit includes both public and private lands including lands in Golden Gate Canyon State Park and White Ranch County Park. Denver Water lands along Ralston Creek, originally proposed for designation within this unit, have been excluded from the final designation (see Relationship to Habitat Conservation Plans).

This unit is located in the Clear Creek HUC and is designated to partially address the criteria of three small recovery populations or one medium recovery population called for this area in our conservation strategy. The segment of Ralston Creek that passes through the Cotter Corporation's existing Schwartzwalder Mine serves as a connector between areas supporting all primary constituent elements required by the Preble's located in areas upstream and downstream. The Preble's has been verified through morphological examination of a specimen from the lower portion of this unit.

Unit SP13: Upper South Platte River, Jefferson and Douglas Counties, Colorado

Unit SP13 encompasses approximately 1,321 ha (3,265 ac) on 70.5 km (43.8 mi) of streams within the Platte River watershed. It includes four subunits. The Chatfield subunit includes a section of the South Platte River upstream of Chatfield Reservoir within Chatfield State Recreation Area (Army Corps of Engineers' property). The Bear Creek subunit includes Bear Creek and West Bear Creek, tributaries to the South Platte River on National Forest System lands. The South Platte sub-unit includes a segment of the South Platte River upstream from Nighthawk, including the tributaries Gunbarrel Creek and Sugar Creek. This subunit is centered on Federal lands of the Pike-San Isabel National Forest but includes some intervening non-Federal lands. Non-Federal lands in Douglas County are not included in the final designation (see Relationship to Habitat Conservation Plans below). The Trout Creek subunit includes portions of Trout Creek, a tributary to Horse Creek, and also portions of Eagle Creek, Long Hollow, Fern Creek, Illinois Gulch, and Missouri Gulch. This subunit is centered on Federal lands of the Pike-San Isabel National Forest but includes some intervening non-Federal lands along Trout Creek. Denver Water lands within the Chatfield, Bear Creek, and South Platte River subunits, originally proposed for designation within this unit, have been excluded from the final designation (see Relationship to Habitat Conservation Plans).

This unit is located in the Upper South Platte HUC and, while unlikely to serve as an initial recovery population, encompasses four areas of primarily Federal land spread through the drainage, three within the Pike-San Isabel National Forest boundary. Habitat components present and the likely density of Preble's populations vary. The Trout Creek subunit appears to have high quality Preble's habitat and may provide an opportunity to research relationships between the Preble's and the western jumping mouse, both of which have been verified from the same trapping effort in the subunit. Small segments of non-Federal lands in the unit are within the Douglas County HCP currently being developed. The Preble's has been confirmed through morphological examination of a specimen from Trout Creek near the Douglas County-Teller County boundary at 2,310 m (7,590 ft). Other captures of jumping mice from various locations within this unit have been identified in the field as the Preble's.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish population goals, prescribe management actions, or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits. Critical habitat designation does not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be the subject of the full range of considerations in recovery planning, conservation actions that may be implemented under Section 7(a)(1), regulatory protections afforded by the Section 7(a)(2) jeopardy standard, and the Section 9 take prohibition. Areas outside of critical habitat designation may still be determined to be necessary for species recovery and survival. Similarly, Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings. Critical habitat designations made on the basis of the best scientific and commercial data available at the time of designation may not dictate the direction and substance of future recovery plans, habitat conservation plans under section 10 of the Act, or conservation planning.

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would

advise the agency whether the action would likely jeopardize the continued existence of the species or adversely modify its critical habitat.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Federal Actions That May Destroy or Adversely Modify Preble's Meadow Jumping Mouse Critical Habitat

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation.

Federal actions that, when carried out, funded or authorized by a Federal agency, may destroy or adversely modify critical habitat for the Preble's include, but are not limited to:

(1) Any activity that results in development or alteration of the landscape within a unit, including land clearing; activities associated with construction for urban and industrial development, roads, bridges, pipelines, or bank stabilization; agricultural activities such as plowing, discing, haying, or intensive grazing; off-road vehicle activity; and mining or drilling of wells;

(2) Any activity that results in changes in the hydrology of the unit, including construction, operation, and maintenance of levees, dams, berms, and channels; activities associated with flow control (*e.g.,* releases, diversions, and related operations); irrigation; sediment, sand, or gravel removal; and other activities resulting in the draining or inundation of a unit;

(3) Any sale, exchange, or lease of Federal land that is likely to result in the habitat in a unit being destroyed or appreciably degraded;

(4) Any activity that detrimentally alters natural processes in a unit including the changes to inputs of water, sediment and nutrients, or that significantly and detrimentally alters water quantity in the unit; and

(5) Any activity that could lead to the introduction, expansion, or increased density of exotic plant or animal species that are detrimental to the Preble's and to its habitat.

Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Previous Section 7 Consultations

Many section 7 consultations for Federal actions affecting the Preble's and its habitat have preceded this critical habitat designation, including, but not limited to:

(1) Activities on Federal lands including those of the Department of Defense, Forest Service, Department of Energy, and Bureau of Land Management;

(2) Activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Licensing or relicensing of dams by the Federal Energy Regulatory Commission;

(4) Development, operation, and maintenance of dams, canals, and other means of directing flows by the Army Corps of Engineers and the Bureau of Reclamation;

(5) Funding and regulation of highway and bridge construction, and improvements by the Federal Highway Administration;

(6) Licensing or construction of communication sites by the Federal Communications Commission;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service.

If you have any questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact Field Supervisor, Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486, DFC, Denver, CO 80225–0486 (telephone 303–236–7400; facsimile 303–236–0027).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this final rule on the best scientific and commercial data available. In order to make a final critical habitat designation, we further utilized the Draft Economic Analysis, the Addendum to the Economic Analysis, and our analysis of other relevant impacts, and considered all comments and information submitted during the public hearings and comment periods. No areas proposed as critical habitat were excluded or modified because of economic impacts. However, we have excluded areas from the final designation on the basis of a final determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat (see Relationship to sections 3(5)(A) and 4(b)(2) of the Act). In accordance with section 4(b)(2) of the Act, we cannot exclude areas from critical habitat when their exclusion will result in the extinction of the species. We prepared a Draft Economic Analysis that was available for public review and comment during the comment period for the proposed rule. You can request copies of the Draft Economic Analysis, the Addendum to the Economic Analysis, and EA from the Colorado Ecological Services Field Office (see **ADDRESSES**).

Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Executive Order 12866 defines ''significant regulatory action,'' in part, as a regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more. The Addendum to the Economic Analysis for this rule estimates that the potential economic effects could range from $7.9 to $17.8 million annually. This includes potential economic effects related to consultations, project modifications, and including those effects that may be attributed co-extensively with the listing of the species. Thus, we do not believe that the adverse modification prohibition (from critical habitat designation) will have significant economic effects such that it will have an annual economic effect of $100 million or more. We recognize, however, that while the impacts may

not be considered ''significant'' under Executive Order 12866, there will be some economic impact within Wyoming and Colorado. Additionally, the Addendum to the Economic Analysis recognizes the benefits associated with conservation of an endangered species. The Addendum to the Economic Analysis provides information on benefits associated with habitat protection for the Preble's (e.g., recreation, benefits to other species, ecosystem services, and value of open space). These benefits are described in detail in the Addendum to the Economic Analysis.

In accordance with Executive Order 12866, this document is a significant rule since the Office of Management and Budget (OMB) determined that this rule may raise novel legal or policy issues and it was reviewed by OMB. We prepared a Draft Economic Analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The Draft Economic Analysis was made available for public comment, and we considered those comments during the preparation of this rule. The draft analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Because of the potential for impacts on other Federal agencies' activities, we reviewed this action for any inconsistencies with other Federal agencies' actions. We believe that this rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, except those involving Federal agencies which would be required to ensure that their activities do not destroy or adversely modify designated critical habitat. As discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any significant economic effects such that it will have an annual economic effect of $100 million or more. OMB has determined that the critical habitat portion of this rule will raise novel legal or policy issues, and this rule was reviewed by OMB. The final rule follows the requirements for designating critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that the designation of critical habitat for the Preble's will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.,* 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.,* 175 F.3d 1027, (D.C. Cir. 1999)).

To be conservative, (*i.e.*, more likely to overstate impacts than understate them), the Preble's economic analysis assumes that a unique entity will undertake each of the projected consultations in a given year, and so the number of businesses affected is equal to the total annual number of consultations (both formal and informal).

Small businesses in the construction and related development industry could potentially be affected by section 7 protection for the Preble's if critical habitat designation leads to significant project modifications or delays. Our economic analysis assumes that 173 unique companies will consult with the Service on development projects during the next 10 years, or 17.3 businesses per year. There are approximately 335 small residential and related development companies in Boulder, El Paso, Douglas, and Larimer counties in which critical habitat units are located. Thus, according to our economic analysis, approximately 5 percent of small residential and related development companies may be affected by section 7 implementation in critical habitat annually.

Small businesses in the construction and development industries could potentially bear a per-business cost of $25,000 to $2.6 million. The annual sales that a company would require for this per-business cost to constitute a ''significant effect'' would be less than $86.7 million. Based on national

statistics, 100 percent of small developers and 100 percent of builders and general contractors in Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld Counties have annual sales less than this amount. Thus, according to our economic analysis, the expected number of small businesses likely to experience a significant effect is 100 percent of 17.3, or 17.3 businesses annually. This number represents approximately 5 percent of construction and development companies in Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld Counties.

To the extent that section 7 implementation may lead to an increase in the number of consultations and project modifications regarding agricultural operations in Wyoming, the Service estimates that approximately 54 informal and 10 formal consultations are likely to occur within critical habitat areas during the next 10 years, or 5.4 informal and 1 formal consultations per year. There are approximately 162 small farms and ranches in the Wyoming counties in which critical habitat units are located. Therefore, our economic analysis indicates that approximately 4 percent of small agricultural operations in the counties in which critical habitat units are located may be affected by section 7 implementation in critical habitat annually.

One hundred and sixty-two agriculture operations in Albany, Converse, Laramie and Platte Counties, or approximately 95 percent of all agriculture operations in the counties designated as critical habitat, are considered small. Small businesses in the agriculture industry could potentially bear a per-business cost of $4,100 per formal and $2,900 per informal consultation, respectively. The annual sales that a rancher or farmer would require for the $4,100 per-business cost and the $2,900 per-business cost to constitute a ''significant effect'' would be less than $137,000 and $97,000, respectively. Based on national statistics, approximately 86 percent of agriculture operations in the counties designated as critical habitat have annual sales less than the ''significant effect'' threshold for formal consultation, and 82 percent have annual sales less than the ''significant effect'' threshold for informal consultation. Thus, our economic analysis shows that the expected number of small agriculture businesses likely to experience a significant effect from formal consultation is 86 percent of 0.95 (95 percent of 1 formal consultation per year), or about 0.8 annually, and the number of small agriculture businesses likely to experience a significant effect from informal consultation is 82 percent of 5.1 (95 percent of 5.4 informal consultations per year), or about 4.2 annually. These 5 agriculture operations (0.8 plus 4.2) represent approximately 3 percent of the 162 small agricultural operations in the counties designated as critical habitat in Wyoming.

Small businesses in the utility industry could potentially be affected by section 7 protection for the Preble's if the designation leads to significant project modifications or delays. This analysis assumes that 79 unique companies may consult with the Service on utilities projects during the next 10 years, or 7.9 businesses per year. There are approximately 166 small utility, electric services, natural gas distribution, and water supply companies in Boulder, Douglas, El Paso, Jefferson, Larimer, Teller, and Weld in which critical habitat units are located. Thus, according to our economic analysis, approximately 5 percent of small utility companies may be affected by section 7 implementation in proposed critical habitat annually.

Small businesses in the utility industry could potentially bear a per-business cost of $9,000 to $18,600 per consultation. For utility companies with annual sales up to $1 million, 16 percent of all utility companies, this cost would be greater than or equal to 3.2 percent of annual sales. For utility companies with $1 million to $3 million in annual sales, 20 percent of all utility companies, this cost would comprise 1.1 to 1.8 percent of annual sales. For utility companies with $3 million to $5 million in annual sales, 9 percent of all utility companies, this cost would represent 0.6 percent of annual sales. For utility companies with greater than $5 million in annual sales, 55 percent of all utility companies, this cost would comprise less than 0.1 to 0.2 percent of annual sales.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211, which applies to ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' In order to ensure that Federal agencies ''appropriately weigh and consider the effects of the Federal government's regulations on the supply, distribution, and use of energy,'' the President has directed agencies to prepare and submit to the OMB's Office of Information and Regulatory Affairs a ''Statement of Energy Effects'' for their ''significant energy actions.'' The OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared with the regulatory action under consideration: (1) Reductions in crude oil supply in excess of 10,000 barrels per day; (2) Reductions in fuel production in excess of 4,000 barrels per day; (3) Reductions in coal production in excess of 5 million tons per year; (4) Reductions in natural gas production in excess of 25 million mcf; (5) Reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity; (6) Increases in energy use required by the regulatory action that exceed the thresholds above; (7) Increases in the cost of energy production in excess of one percent; (8) Increases in the cost of energy distribution in excess of one percent; or (9) Other similarly adverse outcomes.

Energy distribution via natural gas pipelines is the only activity related to this executive order where section 7 consultation regarding the Preble's appears likely. The Service has conducted consultations with the Federal Energy Regulatory Commission regarding construction of interstate gas pipelines through Preble's habitat. Efforts were made to minimize disturbance, in some cases through placing temporal limits on construction or by directional drilling under sensitive habitat, and to assure timely revegetation of areas disturbed. Costs related to required section 7 consultations represent far less than 1 percent of the cost of energy distribution. Consequently, this rule will not have a ''significant adverse effect'' on the supply, distribution, or use of energy, and no ''Statement of Energy Effects'' is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the Draft Economic Analysis and Addendum to the Economic Analysis, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights,'' March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for the Preble's meadow jumping mouse. The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the Colorado Services Field Office (see **ADDRESSES**).

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from and coordinated development of this critical habitat designation with appropriate State resource agencies in Wyoming and Colorado. We will continue to coordinate any future designation of critical habitat for the Preble's with the appropriate State agencies. The designation of critical habitat for the Preble's imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally-sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Preble's.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is required. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will complete a NEPA analysis with an EA. The range of the Preble's includes States within the Tenth Circuit; therefore, we completed a draft EA and made it available for public review and comment. A final EA and Finding of No Significant Impact have been prepared for this designation and are available from the Colorado Ecological Services Field Office (see **ADDRESSES**).

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), along with Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. We believe that no tribal lands or tribal trust resources are essential for the conservation of the Preble's.

References Cited

A complete list of all references cited in this final rule is available upon request from the Colorado Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, for the reasons we have stated in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Mouse, Preble's meadow jumping'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Mouse, Preble's meadow jumping.	*Zapus hudsonius preblei.*	U.S.A. (CO, WY)	Entire	T	636	17.95(a)	NA
*	*	*	*	*	*		*

■ 3. Amend § 17.95(a) by adding critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.* * * *

Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

(1) Critical habitat units are depicted for Wyoming and Colorado. Maps and descriptions follow.

(2) Within these areas, the primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The primary constituent elements are found in and near riparian areas located within grassland, shrubland, forest, and mixed-vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refugia from catastrophic flooding events. Primary constituent elements associated with the biological needs of dispersal and genetic exchange also are found in areas that provide connectivity or linkage between or within Preble's populations. The dynamic ecological processes that create and maintain Preble's habitat also are important primary constituent elements. Primary constituent elements include:

(i) A pattern of dense riparian vegetation consisting of grasses, forbs, and shrubs in areas along rivers and streams that provide open water through the Preble's active season;

(ii) Adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces);

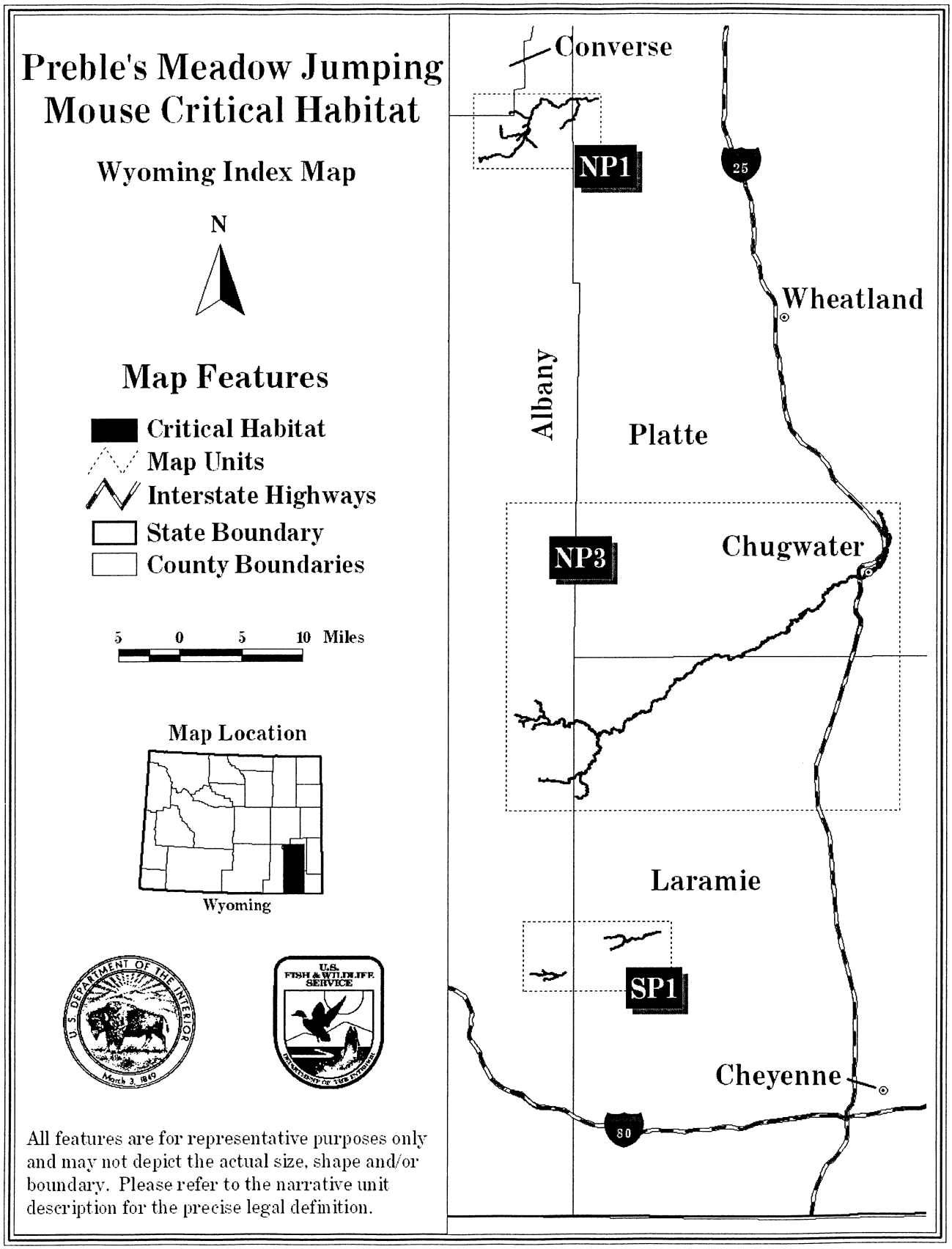
(iii) Areas that provide connectivity between and within populations (These may include river and stream reaches with minimal vegetative cover or that are armored for erosion control; travelways beneath bridges, through culverts, and along canals and ditches; and other areas that have experienced substantial human alteration or disturbance.); and

(iv) Dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.,* those processes that create and maintain river and stream channels, floodplains, and floodplain benches, and promote patterns of vegetation favorable to the Preble's.

(3) Existing features and structures within the boundaries of the mapped units, such as buildings, roads, parking lots, other paved areas, lawns, other urban and suburban landscaped areas, regularly plowed or disced agricultural areas, and other features not containing any of the primary constituent elements are not considered critical habitat.

(4) Critical Habitat Units—Wyoming Index Map Follows:

BILLING CODE 4310–55–P

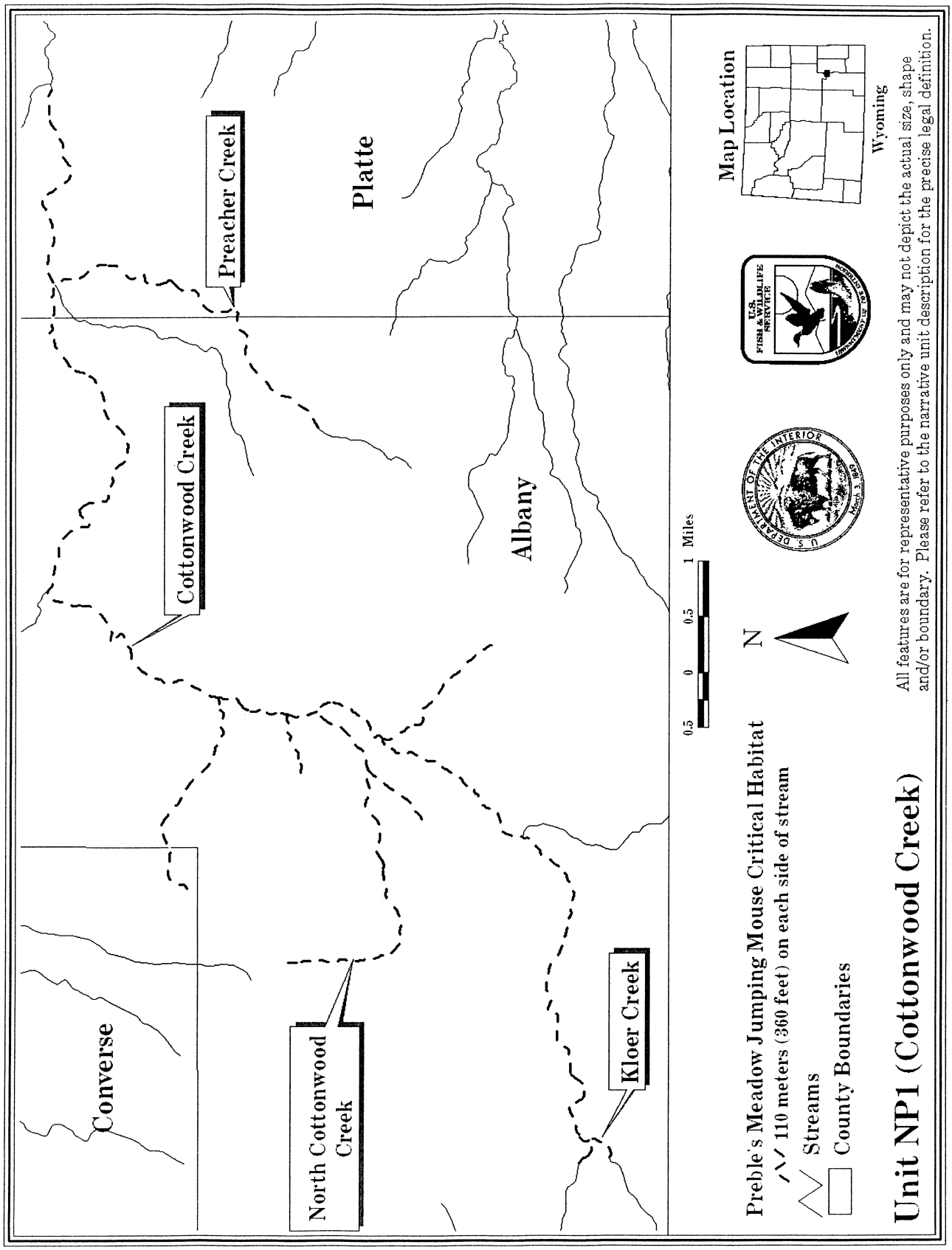

Preble's Meadow Jumping Mouse Critical Habitat
Wyoming Index Map
N
Map Features
Critical Habitat
Map Units
Interstate Highways
State Boundary
County Boundaries
5 0 5 10 Miles
Map Location
Wyoming
U.S. DEPARTMENT OF THE INTERIOR
March 3, 1849
U.S. FISH & WILDLIFE SERVICE
All features are for representative purposes only and may not depict the actual size, shape and/or boundary. Please refer to the narrative unit description for the precise legal definition.
Converse
NP1
25
Wheatland
Albany
Platte
NP3
Chugwater
Laramie
SP1
Cheyenne
80

(5) Map Unit NP1: Cottonwood Creek, Albany, Platte, and Converse Counties, Wyoming.

(i) This unit consists of the following: 43.3 km (26.9 mi) of streams. Cottonwood Creek from the confluence with Held Creek at (42 18 44N 105 14 50W, T.27N., R.70W., Sec. 16) upstream to (42 14 34N 105 26 04W, T.26N., R.72W., Sec. 12). Includes Preacher Creek from its confluence with Cottonwood Creek at (42 18 43N 105 16 51W, T.27N., R.70W., Sec. 17) upstream to (42 16 39N 105 18 22W, T.27N., R.71W., Sec. 25). Also includes an unnamed tributary from its confluence with Cottonwood Creek at (42 17 24N 105 21 12W, T.27N., R.71W., south boundary Sec. 22) upstream to (42 17 39N 105 23 13W, T.27N., R.71W., Sec. 20). Also includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 51N 105 21 23W, T.27N., R.71W., Sec. 28) upstream to (42 16 46N 105 21 59W, T.27N., R.71W., Sec. 28). Also includes North Cottonwood Creek from its confluence with Cottonwood Creek at (42 16 39N 105 21 21W, T.27N., R.71W., Sec. 28) upstream to (42 16 51N 105 23 59W, T.27N., R.71W., Sec. 30). Which includes an unnamed tributary from its confluence with North Cottonwood Creek at (42 16 15N 105 21 57W, T.27N., R.71W., Sec. 33) upstream to (42 15 48N 105 22 30W, T.27N., R.71W., Sec. 32). Cottonwood Creek includes another unnamed tributary from its confluence with Cottonwood Creek at (42 16 08N 105 21 38W, T.27N., R.71W., Sec. 33) upstream to (42 15 17N 105 20 39W, T.26N., R.71W., Sec. 3). Also includes a final tributary, Kloer Creek from its confluence with Cottonwood Creek at (42 14 30N 105 25 49W, T.26N., R.72W., Sec. 12) upstream to (42 14 20N 105 26 00W, T.26N., R.72W., Sec. 12).

(ii) Map of Unit NP1 follows:

BILLING CODE 4310–55–P

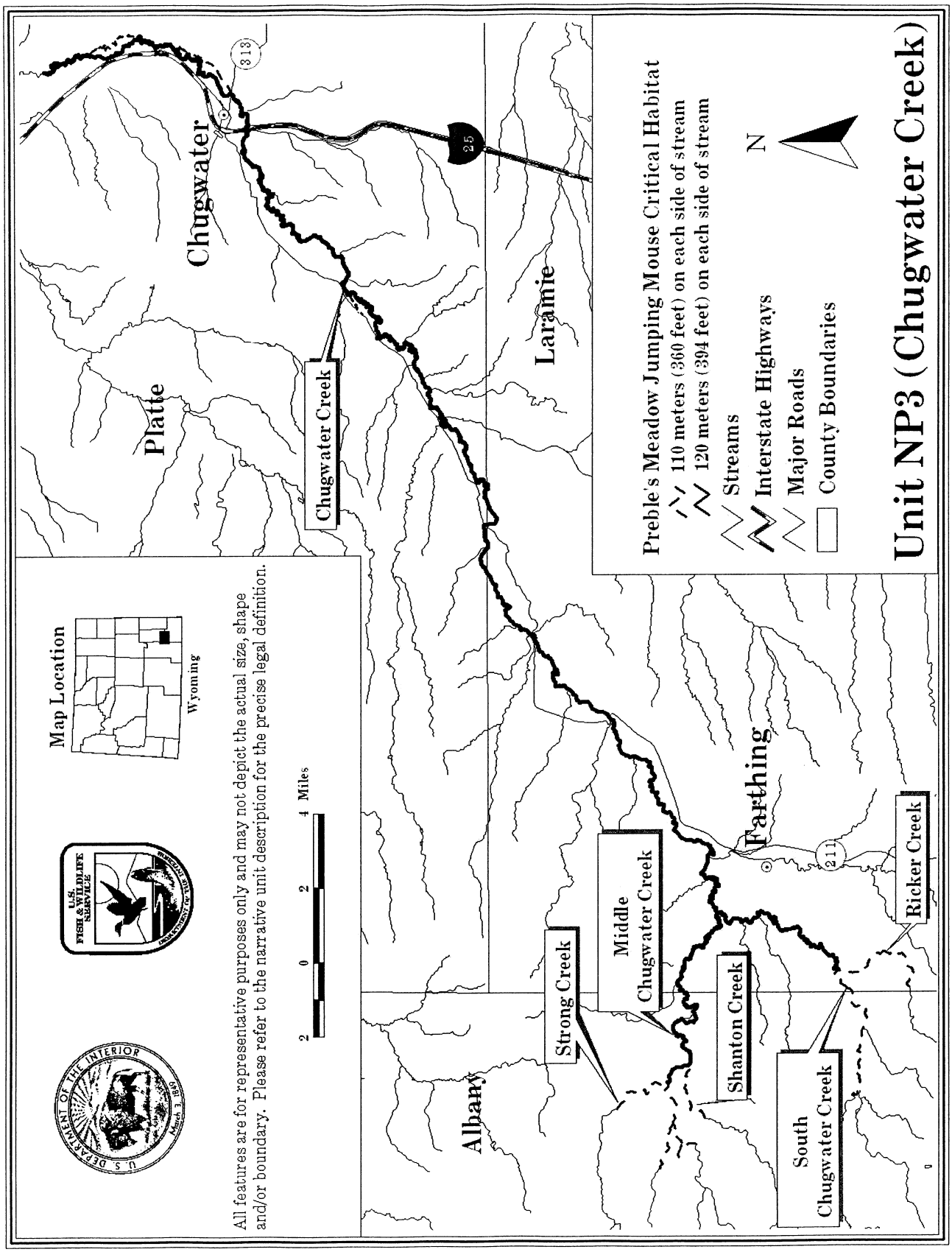

Preacher Creek
Platte
Cottonwood Creek
Albany
Converse
North Cottonwood Creek
Kloer Creek
Map Location
Wyoming
0.5 0 0.5 1 Miles
N
Preble's Meadow Jumping Mouse Critical Habitat
110 meters (360 feet) on each side of stream
Streams
County Boundaries
Unit NP1 (Cottonwood Creek)
All features are for representative purposes only and may not depict the actual size, shape and/or boundary. Please refer to the narrative unit description for the precise legal definition.

(6) Map Unit NP3: Chugwater Creek, Albany, Laramie, and Platte Counties, Wyoming.

(i) This unit consists of the following: 137.2 km (85.3 mi) of streams. Chugwater Creek from (41 49 41N 104 48 03W, T.21N., R.66W., north boundary Sec. 5) upstream to Farthing Reservoir (41 32 36N 105 14 31W, T.18N., R.70W., Sec. 9). Also includes Middle Chugwater Creek from its confluence with Chugwater Creek (41 33 55N 105 14 20W, T.18N., R.70W., Sec. 4) upstream to (41 34 23N 105 21 32W, T.19N., R.71W., Sec. 33). Which includes Shanton Creek from its confluence with Middle Chugwater Creek at (41 34 36N 105 19 05W, T.19N., R.71W., Sec. 35) upstream to (41 34 12N 105 20 41W, T.19N., R.71W., southwest corner Sec. 34). Also includes Strong Creek from its confluence with Middle Chugwater Creek at (41 35 04N 105 19 36W, T.19N., R.71W., Sec. 34) upstream to (41 36 16N 105 20 25W, T.19N., R.71W., Sec. 22). Middle Chugwater Creek also includes an unnamed tributary from its confluence with Middle Chugwater Creek at (41 34 56N 105 20 54W, T.19N., R.71W., Sec. 33) upstream to (41 35 14N 105 22 17W, T.19N., R.71W., Sec. 29). Finally, another unnamed tributary from its confluence with Middle Chugwater Creek at (41 34 43N 105 21 28W, T.19N., R.71W., Sec. 33) upstream to (41 34 47N 105 21 56W, T.19N., R.71W., Sec. 32). South Chugwater Creek is included in the unit from the ending point of Chugwater Creek at Farthing Reservoir (41 32 36N 105 14 31W, T.18N., R.70W., Sec. 9) upstream to (41 30 42N 105 20 03W, T.18N., R.71W., north boundary Sec. 27). Includes Ricker Creek from its confluence with South Chugwater Creek at (41 31 04N 105 16 07W, T.18N., R.70W., Sec. 19) upstream to (41 29 24N 105 16 39W, T.18N., R.70W., Sec. 31).

(ii) Map of Unit NP3 follows:

BILLING CODE 4310–55–P


Unit NP3 (Chugwater Creek)
Preble's Meadow Jumping Mouse Critical Habitat
110 meters (360 feet) on each side of stream
120 meters (394 feet) on each side of stream
Streams
Interstate Highways
Major Roads
County Boundaries
N
Platte
Chugwater
Laramie
Albany
Farthing
Chugwater Creek
Strong Creek
Middle Chugwater Creek
Shanton Creek
South Chugwater Creek
Ricker Creek
313
25
211
Map Location
Wyoming
2 0 2 4 Miles
All features are for representative purposes only and may not depict the actual size, shape and/or boundary. Please refer to the narrative unit description for the precise legal definition.
U.S. FISH & WILDLIFE SERVICE
U.S. DEPARTMENT OF THE INTERIOR

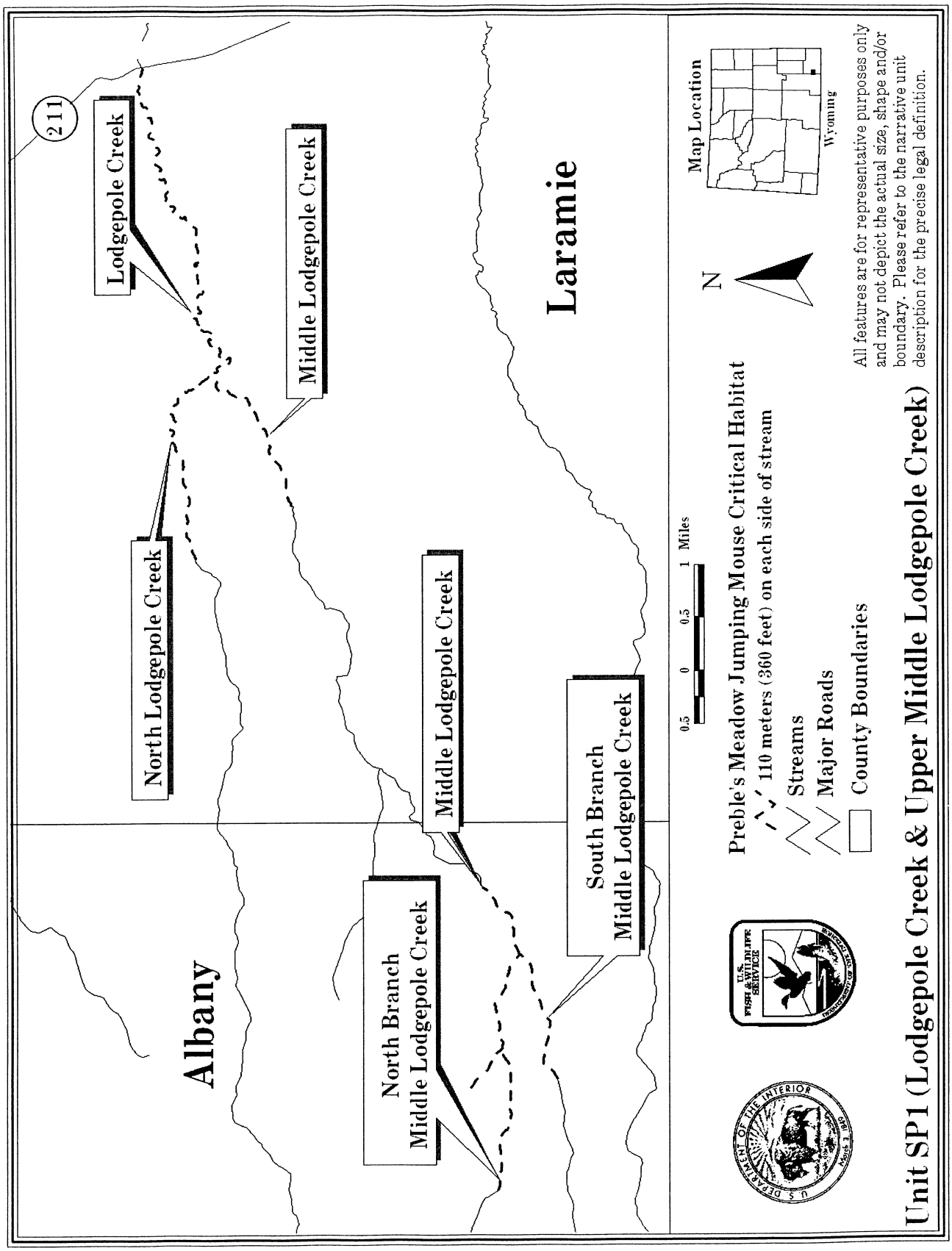
(7) Map Unit SP1: Lodgepole Creek and Upper Middle Lodgepole Creek, Laramie County, Wyoming.

(i) This unit consists of the following: 20.8 km (13 mi) of streams. Consists of 2 subunits. Subunit Lodgepole Creek, Laramie County, from Highway 211 (41 19 53N 105 08 35W, T.16N., R.69W., Sec. 29) upstream to the confluence of North Lodgepole Creek and Middle Lodgepole Creek (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26). Includes North Lodgepole Creek from the aforementioned confluence (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 19 27N 105 13 54W, T.16N., R.70W., west boundary Sec. 27). Also includes Middle Lodgepole Creek from (41 19 17N 105 11 52W, T16N., R.70W., Sec. 26) upstream to (41 18 40N 105 13 19W, T.16N., R.70W., Sec. 34).

(ii) Subunit Middle Lodgepole Creek, Albany County, includes Middle Lodgepole Creek from the boundary of Medicine Bow National Forest (41 17 06N 105 17 27W, T15N., R.71W., east boundary Sec. 12) upstream to the confluence of North Branch Middle Lodgepole Creek and Middle Branch Middle Lodgepole Creek (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12). Includes Middle Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 29N 105 19 31W, T.15N., R.71W., Sec. 14). Also includes North Branch Middle Lodgepole Creek from the aforementioned confluence (41 16 48N 105 18 10W, T.15N., R.71W., Sec. 12) upstream to (41 16 58N 105 20 43W, T.15N., R.71W., Sec. 10). Which includes an unnamed tributary from its confluence with North Branch Middle Lodgepole Creek (41 16 56N 105 19 11W, T.15N., R.71W., Sec. 11) upstream to (41 17 12N 105 19 36W, T.15N., R.71W., Sec. 11).

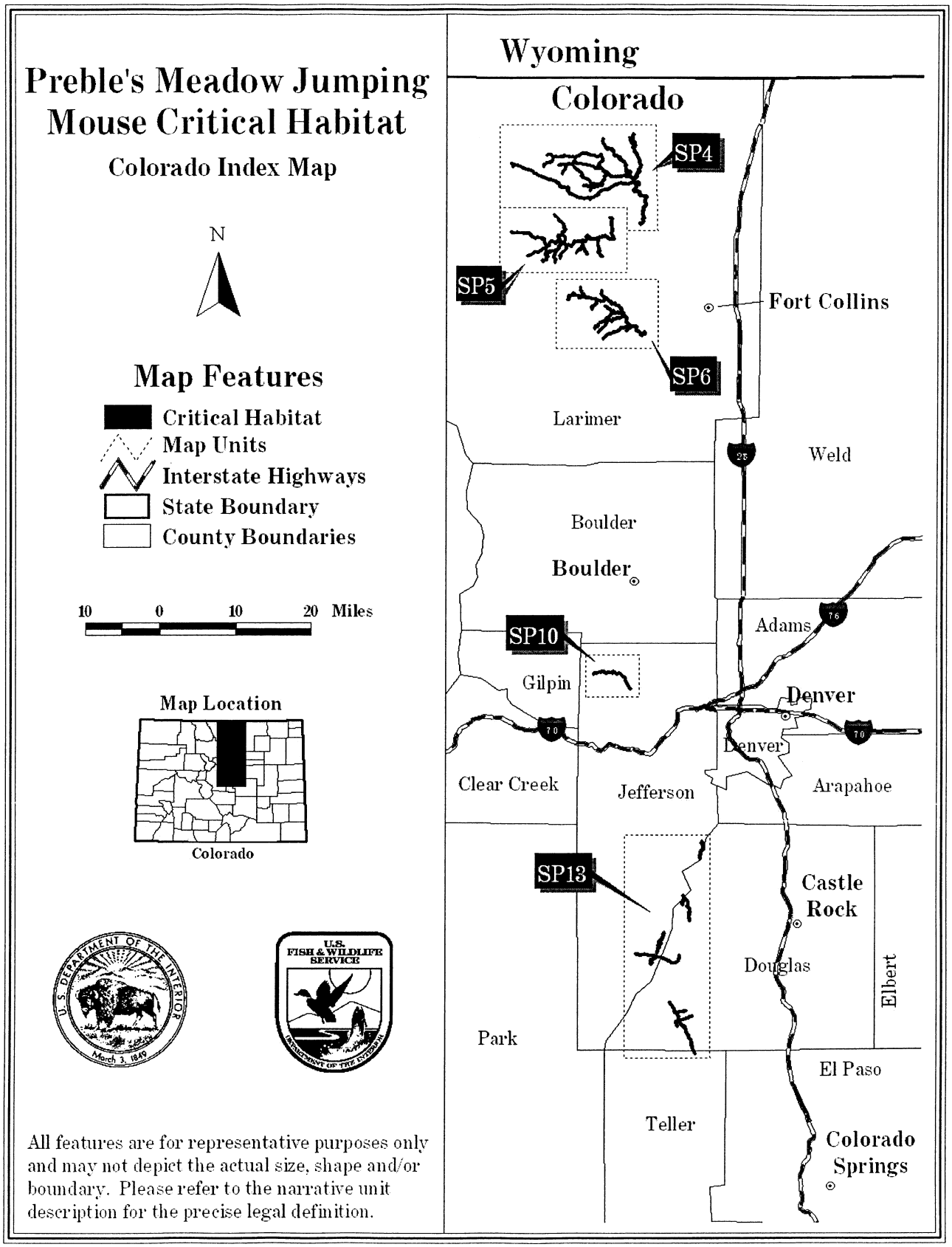
(iii) Map of Unit SP1 follows:

BILLING CODE 4310–55–P



(8) Critical Habitat Units—Colorado

Index Map Follows:

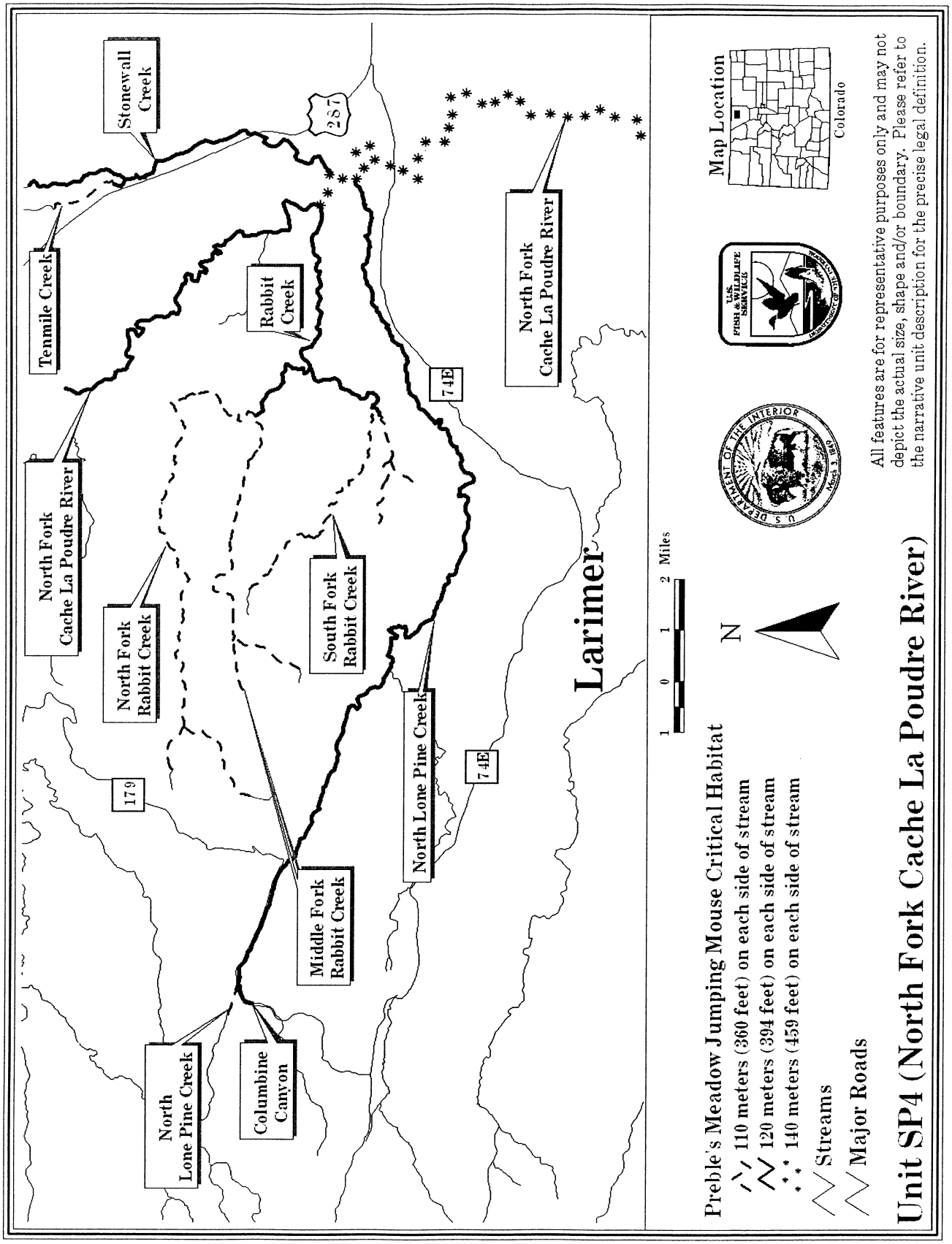

Preble's Meadow Jumping Mouse Critical Habitat
Colorado Index Map
N
Map Features
Critical Habitat
Map Units
Interstate Highways
State Boundary
County Boundaries
10 0 10 20 Miles
Map Location
Colorado
All features are for representative purposes only and may not depict the actual size, shape and/or boundary. Please refer to the narrative unit description for the precise legal definition.
Wyoming
Colorado
SP4
SP5
SP6
SP10
SP13
Fort Collins
Larimer
Weld
Boulder
Boulder
Adams
Gilpin
Denver
Denver
Clear Creek
Jefferson
Arapahoe
Castle Rock
Douglas
Elbert
Park
El Paso
Teller
Colorado Springs

(9) Map Unit SP4: North Fork Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following: 141.8 km (88.1 mi) of streams and rivers. North Fork Cache La Poudre River from Seaman Reservoir (40 43 03N 105 14 27W, T.9N., R.70W., Sec. 28) upstream to Halligan Reservoir spillway (40 52 49N 105 20 12W, T.11N., R.71W., Sec. 34). On property owned by The Nature Conservancy in T.10N., R.71W., Sec. 2, 3, and 4, the outward boundary extends to 325 ft (99m) from the centerline of the North Fork Cache La Poudre River. Includes Lone Pine Creek from its confluence North Fork Cache La Poudre River (40 47 53N 105 15 28W, T.10N., R.70W., Sec. 32) upstream and continuing upstream into North Lone Pine Creek to 2,300m (7,600 ft) elevation (40 49 58N 105 34 09W, T.01N., R.73W., Sec. 15). Which includes Columbine Canyon from its confluence with North Lone Pine Creek (40 49 48N 105 33 28W, T.10N., R.73W., Sec. 15) upstream to 2,300m (7,600 ft) elevation (40 49 33N 105 33 54W, T.10N., R.73W., Sec. 15). Also includes Stonewall Creek from its confluence with North Fork Cache La Poudre River (40 48 19N 105 15 21W, T.10N., R.70W., Sec. 29) upstream to (40 53 26N 105 15 38W, T.11N., R.70W., Sec. 29). Which includes Tenmile Creek from its confluence with Stonewall Creek (40 51 48N 105 15 30W, T.10N., R.70W., Sec. 5) upstream to Red Mountain Road (40 53 00N 105 16 09W, T.11N., R.70W., Sec. 31). Also includes Rabbit Creek from its confluence with North Fork Cache La Poudre River (40 48 30N 105 16 04W, T.10N., R.70W., Sec. 30) upstream to the confluence with North and Middle Forks of Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21). Also includes South Fork Rabbit Creek from its confluence with Rabbit Creek (40 48 40N 105 19 43W, T.10N., R.71W., Sec. 27) upstream to (40 49 39N 105 24 40W, T.10N., R.72W., north boundary Sec. 24). Which includes an unnamed tributary from its confluence with South Fork Rabbit Creek (40 47 28N 105 20 45W, T.10N., R.71W., Sec. 33) upstream to (40 47 28N 105 23 10W, T.10N., R.71W., Sec. 31). Which in turn has an unnamed tributary from their confluence at (40 47 16N 105 21 45W, T.10N., R.71W., east boundary Sec. 32) upstream to (40 46 54N 105 22 14W, T.9N., R.71W., Sec. 5). Also includes Middle Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R 71W., Sec. 21) upstream to 2,300m (7,600 ft) elevation (40 49 46N 105 26 55W, T.10N., R.72W., Sec. 15). This includes an unnamed tributary from its confluence with Middle Fork Rabbit Creek (40 49 56N 105 25 49W, T.10N., R.72W., Sec. 14) upstream to 2,300m (7,600 ft) elevation (40 48 48N 105 26 26W, T.10N., R.72W., Sec. 23). This unit includes North Fork Rabbit Creek from its confluence with Rabbit Creek (40 49 34N 105 20 47W, T.10N., R.71W., Sec. 21) upstream to 2,300m (7,600 ft) elevation (40 49 38N 105 29 17W, T.10N., R.72W., Sec. 17). Which includes an unnamed tributary from its confluence with North Fork Rabbit Creek (40 50 45N 105 27 23W, T.10N., R.72W., Sec. 9) upstream to 2,300m (7,600 ft) elevation (40 50 57N 105 28 42W, T.10N., R.72W., Sec. 9). On property owned by Al Johnson in T.10N., R.70W., Sec. 29, 30, 31, and 32, the outward boundary extends to 325 ft (99m) from the centerline of the North Fork Cache La Poudre River, Rabbit Creek, and Lone Pine Creek.

(ii) Map of Unit SP4 follows:

BILLING CODE 4310–55–P



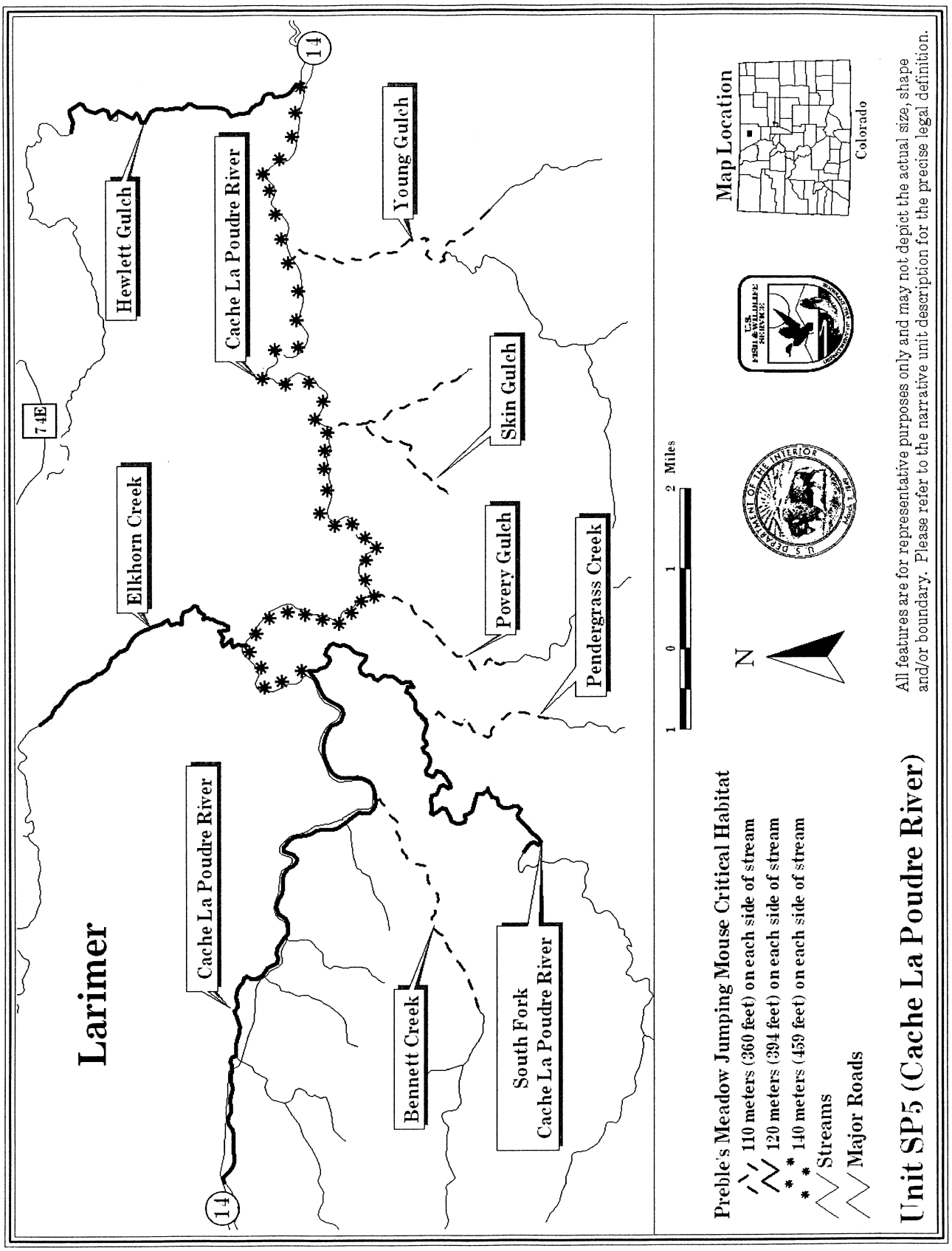
(10) Map Unit SP5: Cache La Poudre River, Larimer County, Colorado.

(i) This unit consists of the following: 82.4 km (51.2 mi) of streams and rivers. Cache La Poudre River from Poudre Park (40 41 16N 105 18 25W, T.8N.,

R.71W., Sec. 2) upstream to (40 42 02N 105 34 01W, T.9N., R.73W., west boundary Sec. 34). Includes Hewlett Gulch from its confluence with Cache La Poudre River (40 41 16N 105 18 25W, T.8N., R.71W., Sec. 2) upstream to the boundary of Arapahoe—Roosevelt National Forest (40 43 45N 105 19 06W, T.9N., R.71W., Sec. 23). Also includes Young Gulch from its confluence with Cache La Poudre River (40 41 25N 105 20 56W, T.8N., R.71W., Sec. 4) upstream to (40 39 13N 105 20 12W, T.8N., R.71W., south boundary Sec. 15). Also includes an unnamed tributary from its confluence with Cache La Poudre River at Stove Prairie Landing (40 40 58N 105 23 21W, T.8N., R.71W., Sec. 6) upstream to (40 39 32N 105 22 34W, T.8N., R.71W., Sec. 17). Which includes Skin Gulch from its confluence with the aforementioned unnamed tributary at (40 40 33N 105 23 15W, T.8N., R.71W., Sec. 7) upstream to (40 39 41N 105 24 13W, T.8N., R.72W., Sec. 13). Unit SP5 also includes Poverty Gulch from its confluence with Cache La Poudre River (40 40 28N 105 25 42W, T.8N., R.72W., Sec. 11) upstream to 2,300 m (7,600 ft) elevation (40 39 02N 105 26 38W, T.8N., R.72W., Sec. 22). Also includes Elkhorn Creek from its confluence with Cache La Poudre River (40 41 50N 105 26 24W, T.9N., R.72W., Sec. 34) upstream to (40 44 04N 105 27 32W, T.9N., R.72W., Sec. 21). Also includes South Fork Cache La Poudre River from its confluence with Cache La Poudre River (40 41 10N 105 26 46W, T.8N., R.72W., Sec. 3) upstream to 2,300 m (7,600 ft) elevation (40 38 49N 105 29 20W, T.8N., R.72W., Sec. 20). Which includes Pendergrass Creek from its confluence with South Fork Cache La Poudre River (40 39 54N 105 27 27W, T.8N., R.72W., Sec. 15) upstream to 2,300 m (7,600 ft) elevation (40 38 34N 105 27 26W, T.8N., R.72W., Sec. 22). Also included in the unit is Bennett Creek from its confluence with Cache La Poudre River (40 40 26N 105 28 37W, T.8N., R.72W., Sec. 9) upstream to 2,300 m (7,600 ft) elevation (40 39 18N 105 31 31W, T.8N., R.73W., Sec. 13).

(ii) Map Unit SP5 follows:

BILLING CODE 4310–55–P



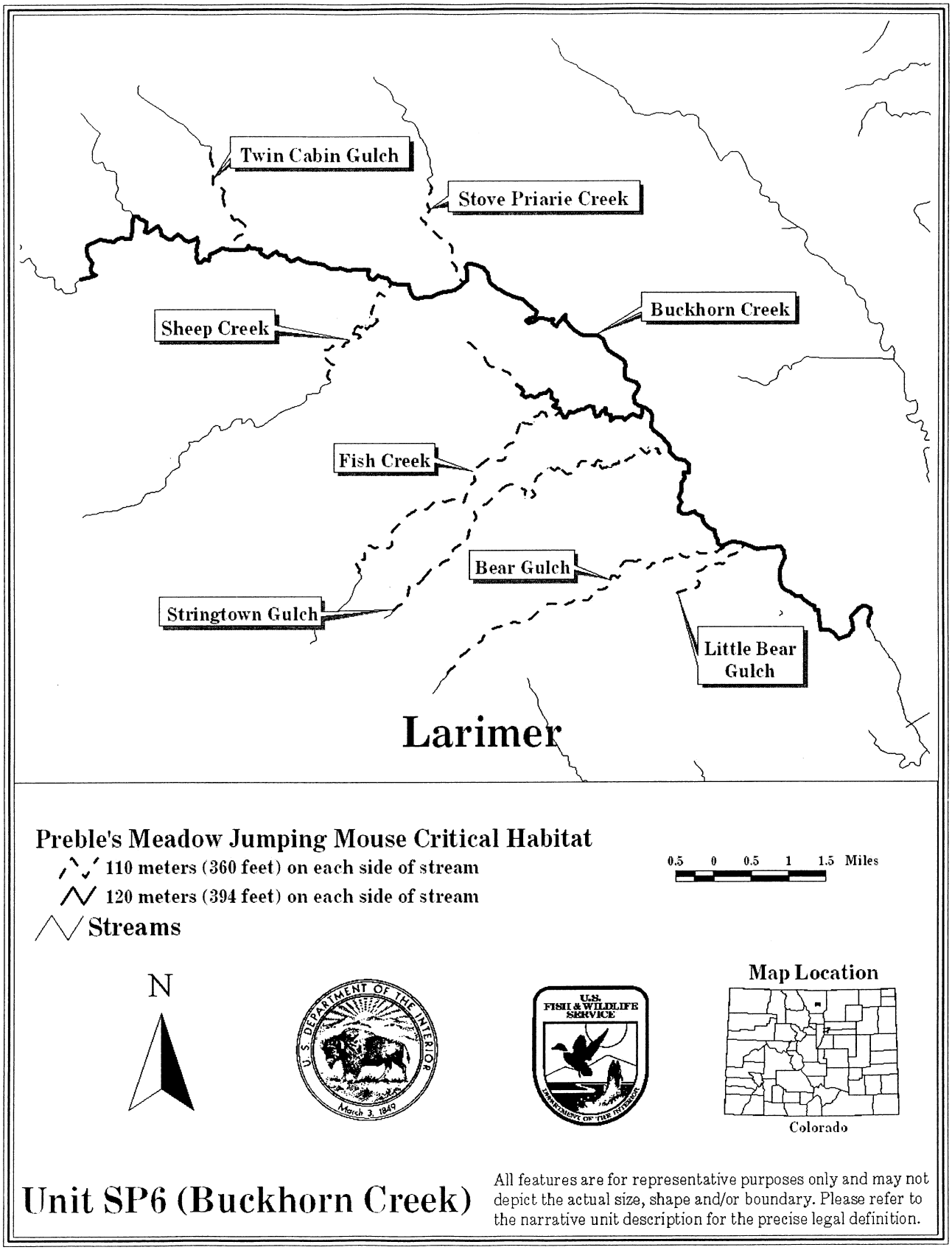
(11) Map Unit SP6: Buckhorn Creek, Larimer County, Colorado.

(i) This unit consists of the following: 69.1 km (43 mi) of streams. Buckhorn Creek from (40 30 20N 105 13 39W, T.6N., R.70W., east boundary Sec. 9)

upstream to 2,300 m (7,600 ft) elevation (40 34 17N 105 25 28W, T.7N., R.72W., Sec. 14). Includes Little Bear Gulch from its confluence with Buckhorn Creek (40 31 16N 105 15 32W, T.6N., R.70W., Sec. 5) upstream to (40 30 43N 105 16 33W, T.6N., R.70W., Sec. 6). Also includes Bear Gulch from its confluence with Buckhorn Creek (40 31 15N 105 15 51W, T.6N., R.70W., Sec. 5) upstream to 2,300 m (7,600 ft) elevation (40 29 47N 105 19 59W, T.6N., R.71W., Sec. 10). Also includes Stringtown Gulch from its confluence with Buckhorn Creek (40 32 19N 105 16 40W, T.7N., R.70W., Sec. 30) upstream to 2,300 m (7,600 ft) elevation (40 30 30N 105 20 48W, T.6N., R.71W., Sec. 4). Also includes Fish Creek from its confluence with Buckhorn Creek (40 32 50N 105 17 05W, T.7N., R.70W., Sec. 30) upstream to 2,300 m (7,600 ft) elevation (40 30 56N 105 21 19W, T.6N., R.71W., Sec. 4). Which includes North Fork Fish Creek from its confluence with Fish Creek (40 32 47N 105 18 18W, T.7N., R.71W., west boundary Sec. 25) upstream and following the first unnamed tributary northwest to (40 33 35N 105 19 42W, T.7N., R.71W., Sec. 22). Also includes Stove Prairie Creek from its confluence with Buckhorn Creek (40 34 15N 105 19 45W, T.7N., R.71W., Sec. 15) upstream to the dirt road crossing at (40 35 22N 105 20 16W, T.7N., R.71W., Sec. 10). Also includes Sheep Creek from its confluence with Buckhorn Creek (40 34 15N 105 20 51W, T.7N., R.71W., Sec. 16) upstream to 2,300 m (7,600 ft) elevation (40 33 09N 105 21 46W, T.7N., R.71W., Sec. 20). Also includes Twin Cabin Gulch from its confluence with Buckhorn Creek (40 34 38N 105 23 11W, T.7N., R.71W., Sec. 18) upstream to 2,300 m (7,600 ft) elevation (40 35 44N 105 23 33W, T.7N., R.71W., Sec. 6).

(ii) Map of Unit SP6 follows:

BILLING CODE 4310–55–P



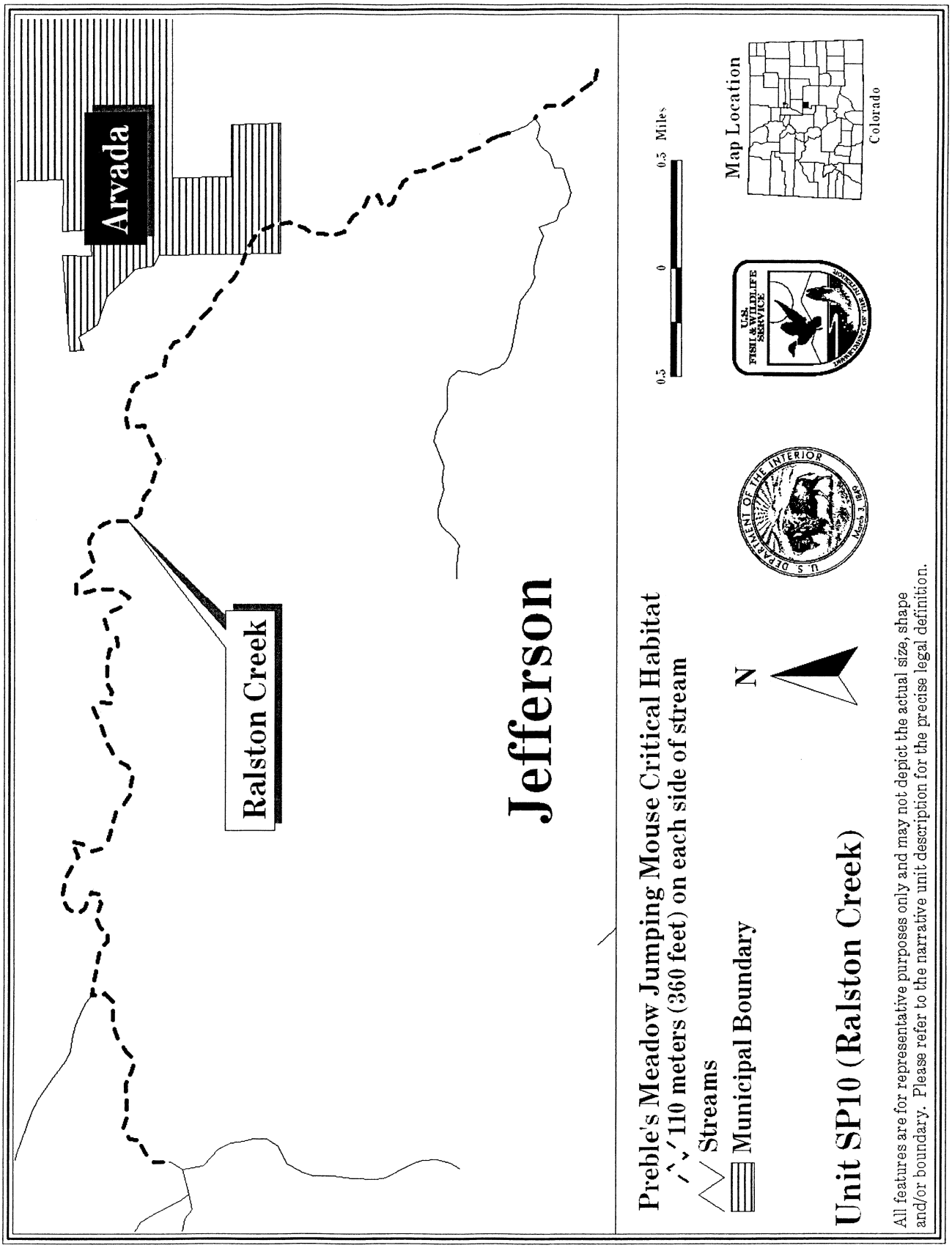
(12) Map Unit SP10: Ralston Creek, Jefferson County, Colorado.

(i) This unit consists of the following: 12.9 km (8.0 mi) of streams. Ralston Creek from Ralston Reservoir (39 49 12N 105 15 32W, T.3S., R.70W. Sec. 6)

upstream into Golden Gate Canyon State Park to 2,300 m (7,600 ft) elevation (39 50 54N 105 21 12W, T.2S., R.71W. Sec. 29) excluding 5 ha (12 ac) of property owned by Denver Water just upstream of the reservoir.

(ii) Map of Unit SP10 follows:

BILLING CODE 4310–55–P


Arvada
Ralston Creek
Jefferson
Preble's Meadow Jumping Mouse Critical Habitat
110 meters (360 feet) on each side of stream
Streams
Municipal Boundary
Unit SP10 (Ralston Creek)
N
0.5
0
0.5 Miles
Map Location
Colorado
U.S. FISH & WILDLIFE SERVICE
U.S. DEPARTMENT OF THE INTERIOR
All features are for representative purposes only and may not depict the actual size, shape and/or boundary. Please refer to the narrative unit description for the precise legal definition.

(13) Map Unit SP13: Upper South Platte River, Jefferson and Douglas Counties, Colorado.

(i) This unit consists of the following: 70.5 km (43.8 mi) of rivers and streams. Consists of 4 subunits. Non-Federal lands in Douglas County are not included in the designation. Subunit South Platte River north segment, on the border of Jefferson County and Douglas County from Chatfield Lake (39 31 35N 105 04 49W, T.6S., R.69W., Sec. 14) upstream to the boundary of U.S. Army Corps of Engineers property (39 29 33N 105 05 15W, T.6S., R.69W., south boundary Sec. 26), excluding 9 ha (22 ac) owned by Denver.

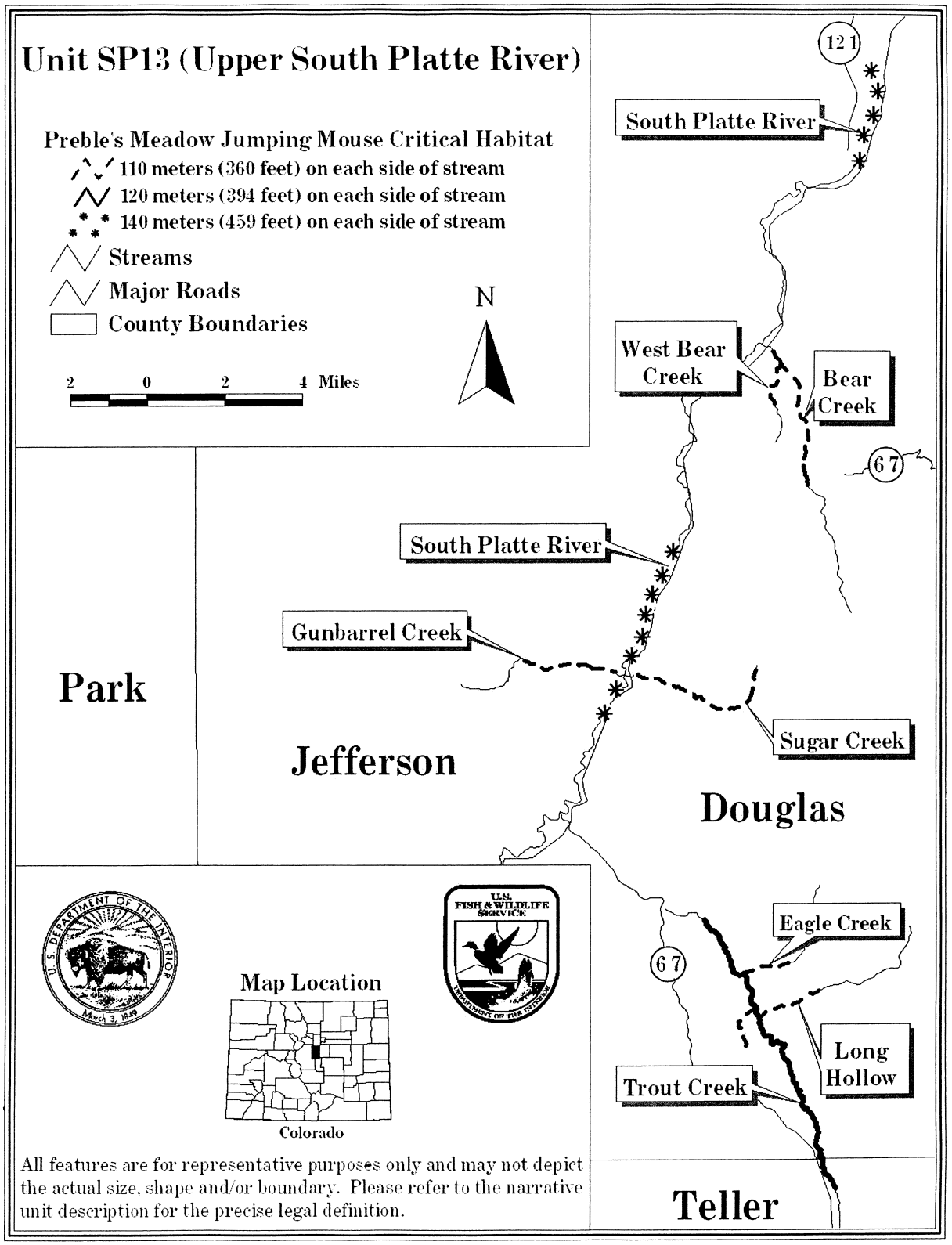
(ii) Subunit Bear Creek, Douglas County from Pike—San Isabel National Forest boundary (39 25 27N 105 07 40W, T.7S., R.69W., west boundary Sec. 21) upstream to (39 22 32N 105 06 40W, T.8S., R.69W., south boundary Sec. 4). Includes West Bear Creek from its confluence with Bear Creek (39 25 15N 105 07 30W, T.7S., R.69W., Sec. 21) upstream to a confluence with an unnamed tributary (39 24 17N 105 07 38W, T.7S., R.69W., Sec. 33).

(iii) Subunit South Platte River south segment, on the border of Jefferson County and Douglas County from the southern boundary of Denver Water property near Nighthawk (39 21 05N 105 10 23W, T.8S., R.70W., Sec. 13) upstream to the northern boundary of Denver Water property at (39 18 50N 105 11 28W, T.8S., R.70W., Sec. 35) and from the southern boundary of Denver Water property at (39 18 02N 105 12 09W, T.9S., R.70W., Sec. 2) to the northern boundary of Denver Water Property at (39 17 27N 105 12 24W, T.9S., R.70W., Sec. 3). Includes Sugar Creek, Douglas County from the eastern boundary of Denver Water lands near Oxyoke (39 18 22N 105 11 32W, T.8S., R.70W., Sec. 35) upstream to 2,300 m (7,600 ft) elevation (39 18 28N 105 08 07W, T.8S., R.69W., Sec. 32). Includes Gunbarrel Creek, Jefferson County from the western boundary of Denver Water lands near Oxyoke (39 18 37N 105 12 02W, T.8S., R.70W., Sec. 34) upstream to (39 18 41N 105 14 34W, T.8S., R.70W., Sec. 32).

(iv) Subunit Trout Creek, Douglas County upstream into Teller County from (39 13 02N 105 09 31W, T.9S., R.69W., Sec. 31) upstream to 2,300 m (7,600 ft) elevation which is 1.3 km (0.8 mi) into Teller County (39 07 13N 105 05 49W, T.11S., R.69W., Sec. 3). Includes Eagle Creek from its confluence with Trout Creek (39 11 52N 105 08 27W, T.10S., R.69W., Sec. 8) upstream to 2,300 m (7,600 ft) elevation (39 12 06N 105 07 12W, T.10S., R.69W., Sec. 9). Also including an unnamed tributary from its confluence with Trout Creek (39 11 07N 105 08 05W, T.10S., R.69W., Sec. 17) upstream to (39 10 18N 105 08 23W, T.10S., R.69W., Sec. 20). Also including Long Hollow from its confluence with Trout Creek (39 10 56N 105 08 01W, T.10S., R.69W., Sec. 17) upstream to 2,300 m (7,600 ft) elevation (39 11 30N 105 06 19W, T.10S., R.69W., Sec. 10).

(v) Map of Unit SP13 follows:

BILLING CODE 4310–55–P



* * * * *

Dated: June 4, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–14490 Filed 6–20–03; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Monday,
June 23, 2003

Part IV

Environmental Protection Agency

40 CFR Part 63

Clarifications to Existing National Emissions Standards for Hazardous Air Pollutants Delegations' Provisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7508–8]

RIN 2060–AJ26

Clarifications to Existing National Emissions Standards for Hazardous Air Pollutants Delegations' Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of the section 112(l), ''Approval of State Programs and Delegation of Federal Authorities'' rulemaking process, EPA (we) agreed to clarify which portions of the existing national emission standards for hazardous air pollutants (NESHAP) contain authorities that can be delegated to State, local, and tribal agencies (S/L/Ts) (65 FR 55810, September 14, 2000). Today's rulemaking clarifies which parts of the existing NESHAP can be delegated to S/L/Ts by adding or modifying a section in each NESHAP to describe the authorities that can be delegated to S/L/Ts and those that must be retained by us. In addition, to further clarify which portions of the NESHAP are delegable, some NESHAP standards sections were slightly reorganized or rephrased to separate delegable from non-delegable authorities. These clarifications do not change any substantive NESHAP requirements for industrial sources.

EFFECTIVE DATE: This final rule will be effective on August 22, 2003.

ADDRESSES: Docket No. A–2000–57, containing supporting information used to develop the proposed rule and the final rule, is available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday (except government holidays) at the Air and Radiation Docket and Information Center (6102T), Room B–108, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460; telephone (202) 566–1742, fax (202) 566–1741. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.*

FOR FURTHER INFORMATION CONTACT: Mr. Tom Driscoll or Ms. Robin Segall, Emissions, Moitoring Measurement and Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T. W. Alexander Drive, Research Triangle Park, North Carolina 27709, telephone (919) 541–5135 or (919) 541–0893, or electronic mail at *driscoll.tom@epa.gov* or *segall.robin@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially affected by this rule are S/L/Ts that voluntarily request delegation of section 112 rules, emissions standards, or requirements. The procedures and criteria for requesting and receiving delegation are described in § 63.90 through § 63.97, excluding § 63.96, of 40 CFR part 63, subpart E. Facilities that are subject to the individual subparts to be changed should not be affected by the final amendments, which clarify the delegation requirements between EPA and the S/L/Ts.

Outline. The information presented in this preamble is organized as follows:

I. Background
- A. How Do We Delegate Section 112 Standards to You?
- B. When a Standard is Delegated, Can You Approve Changes to Any of the Requirements?
- C. What Is the Purpose of This Rulemaking?
- D. What Are the Types of Changes We Are Making?
- E. Once NESHAP Are Delegated, Does the S/L/Ts' Enforcement Authority Replace EPA's Authority?
- F. Does Today's Rulemaking Impact Prior Delegations of These Part 63 NESHAP (Maximum Achievable Control Technology (MACT) Standards)?
- G. What Public Comments Were Received on the Proposal?

II. Overview of Changes
- A. What Categories of Changes Are We Making?
- B. What Clarifications Have We Made to Individual Subparts?

III. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

IV. Statutory Authority

V. Judicial Review

I. Background

A. How Do We Delegate Section 112 Standards to You?

The requirements in 40 CFR part 63, subpart E provide a framework for you, the S/L/Ts, to request and receive delegation of the NESHAP. Once you accept delegation, you are responsible for implementing and enforcing the NESHAP for sources in your jurisdiction.

B. When a Standard Is Delegated, Can You Approve Changes to Any of the Requirements?

In addition to the overall implementation and enforcement authority conferred by the delegation, there are separate parts of each section 112 requirement that we cannot delegate to you. Each individual NESHAP, for example, contains requirements that are considered the ''standards'' and are, therefore, not delegable in terms of your making changes to them. Because the Administrative Procedures Act requires us to approve alternative emission limitations or control requirements through Federal rulemaking, we cannot delegate our rulemaking authority to you. More specifically, any requests by sources for approval of alternative standards must be considered by us and acted upon in a notice and comment rulemaking. Additionally, we cannot delegate authorities that may alter the stringency of the standard, that require Federal oversight for national consistency, or that may require Federal rulemaking. Generally, requests by you to revise standards for a source category (or portions thereof) must be addressed through subpart E or the subpart E rulemaking process for alternative standards. Please note that nothing in the section or this rulemaking usurps your authority to have more a stringent State program or regulatory requirements, such as more stringent emission limitations, that apply to sources subject to NESHAP.

However, the authorities in other sections of the NESHAP, such as testing, monitoring, reporting, and recordkeeping, may be delegable and, if delegated, the authority to approve alternatives to these requirements may be exercised by you on a case-by-case basis once you have been delegated the NESHAP through subpart E (straight delegation, § 63.91). These delegable authorities are similar to those in 40 CFR part 63, subpart A General Provisions, which are incorporated into the majority of the NESHAP. Because

only some of the testing, monitoring, reporting, and recordkeeping requirements are delegable in subpart A, EPA has identified what authorities can be delegated in the subpart E revisions (65 FR 55810, September 14, 2000). Section 63.91(g)(1)(i) clarifies what ''Category I'' changes, including minor and intermediate changes to testing, monitoring, recordkeeping, and reporting requirements, may be considered and approved by S/L/Ts if you receive delegation for these authorities from your EPA Regional Office. For more discussion of delegable authorities, *see* 65 FR 55811 through 55814, September 14, 2000.

There are similar discretionary authorities, as mentioned above, in each NESHAP that may also be delegated to you. Please note, each NESHAP being revised in today's rulemaking will describe those authorities that will be retained by EPA. All other authorities in those NESHAP are delegable to S/L/Ts.

C. What Is the Purpose of This Rulemaking?

As a part of a larger regulatory and policy effort to clarify and streamline delegation of part 63 requirements, we agreed to clarify which portions of the existing 40 CFR part 63 NESHAP contain authorities that can be delegated to you. In order to achieve this objective, we are making slight changes to many of the existing NESHAP. These changes are clarifications that will allow you to approve alternatives to the delegable authorities, including category I authorities listed in § 63.91(g)(i), instead of requiring a rulemaking by the EPA to approve the site-specific alternatives. Many NESHAP lack a clear delegation section that this final rule remedies. We are also taking this opportunity to make the format of the existing NESHAP more consistent.

D. What Are the Types of Changes We Are Making?

Many of the existing NESHAP were promulgated before we developed a consistent rule format, so each one has slightly different content and order. In addition, the way that the delegable authorities were identified and delegated varies. Due to these variations, each NESHAP in this rulemaking needs one or more clarifications, listed below, to ease delegation:

- Addition or modification of a section (implementation and enforcement) in each NESHAP describing the authorities that can be delegated to you and those that must be retained by us;
- Reorganization of the standards sections in NESHAP to separate compliance assurance measures, such as monitoring, recordkeeping, or reporting provisions, from actual standards; or
- Minor rephrasing of work practices and other standards developed under the authority of section 112(h) of the Act to allow approval of delegable testing, monitoring, reporting, and recordkeeping authorities by S/L/Ts and without rulemaking by us.

E. Once NESHAP Are Delegated, Does the S/L/Ts' Enforcement Authority Replace EPA's Authority?

Throughout this preamble, we state that once NESHAP are delegated to you, then you will have the authority to implement and enforce those rules for sources in your jurisdiction. However, nothing in this preamble is intended to suggest that your enforcement agencies have replaced our Federal authority to enforce and implement those rules. We remain partners with you in enforcing the NESHAP.

F. Does Today's Rulemaking Affect Prior Delegations of These Part 63 NESHAP (MACT Standards)?

In many cases, you already accepted delegation of these NESHAP and, consequently, you are currently implementing and enforcing them. We do not believe that today's rulemaking adversely affects existing delegations of these NESHAP to you. For the most part, today's rulemaking clarifies which of the authorities in each existing NESHAP can, and cannot, be delegated to you.

In all prior delegations, specific authorities in each NESHAP were generally not identified as being delegated. Instead, the NESHAP have been generally delegated in their entirety. For example, when our Regional Offices delegate a NESHAP or MACT standard through straight delegation (*see* 65 FR 55810, September 14, 2000) to a S/L/T, they reference the whole NESHAP, such as subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, in any rulemaking or documents. They usually do not reference a particular authority within the NESHAP, such as § 63.324(d), ''[E]ach owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases ...'' in any delegation. Therefore, we believe that today's rulemaking will not affect your existing part 63 NESHAP delegation.

However, potential issues may have occurred where you have already acted on the authorities you believed you had been delegated. For example, in subpart HH, the delegation of authority paragraph in § 63.776 does not withhold the delegation of any of the standards' sections. Therefore, you may have exercised the authority to approve alternative emissions controls or limitations in this example. As mentioned above, you cannot approve alternatives to NESHAP's emissions controls or limitations because they must be established through national rulemaking. Only we can approve alternatives to emissions controls or limitations through national rulemaking.

If you have inadvertently approved alternatives to NESHAP's emissions controls or limitations for a specific source, then the appropriate EPA Regional Office must be notified of this approval. Our Regional Office will then work with you and our Office of Air Quality Planning and Standards, Office of Enforcement and Compliance Assurance, and Office of General Counsel to reevaluate the alternative through the process in § 63.6 or the provisions in 40 CFR part 63, subpart E. If you have any questions regarding inadvertent approvals, please contact your appropriate EPA Regional Office.

G. What Public Comments Were Received on the Proposal?

On January 16, 2002 (67 FR 2286), the proposed rule was published in the **Federal Register** and we requested written comments on the proposal. We received 4 sets of written comments on the package from the State and Territorial Air Pollution Program and Association of Local Air Pollution Control (STAPPA/ALAPCO), State of Missouri Department of Natural Resources Air Pollution Control Program (APCP), South Coast Air Quality Management District, and Safety-Kleen Corporation. Although the comments were mostly general in nature, some were specific to certain NESHAP. The Missouri APCP's comments included support for EPA's approach to clarify which authorities can be delegated and noted that the ''APCP had taken a similar approach to rulemaking.'' Copies of the comments are available in the public docket for the regulation (docket A–2000–57).

II. Overview of Changes

The EPA has made a number of changes to the proposed rule in response to the comments we received. The comments on the proposal were limited to a relatively small subset of authorities in a few NESHAP. Accordingly, EPA believes that it is not necessary to repeat the comprehensive discussion contained in the preamble to

the proposal. *See* 67 FR 2288–2298, January 16, 2002, for a more detailed discussion of today's changes to each NESHAP. Instead, EPA has limited the discussion in this preamble to issues raised by commenters, and to discuss changes made to the final rule based on those issues.

A. What Categories of Changes Are We Making?

1. Adding an ''Implementation and Enforcement'' Section

The first category of changes involves adding a section that describes non-delegable authorities or changing current delegation sections to conform to a consistent format. The new ''Implementation and enforcement'' sections cite the rule sections or requirements for which you may not approve alternatives (*i.e.*, non-delegable authorities). The authority to make changes to those sections or requirements is retained by us and includes the authority to approve any alternatives to emissions standards; including their applicability requirements. Conversely, any authority, not expressly reserved for us and included in these paragraphs, can be delegated to you.

As part of the subpart E rulemaking (65 FR 55810, September 14, 2000), we clarified which of the specific General Provisions authorities (regarding alternative requirements) could not be delegated to you. We divided the General Provisions discretionary authorities into two groups, based upon the relative significance of each type of decision. Category I contains those authorities which can be delegated. We believe that the EPA Regional Office retains the ability to request review of these decisions, although we expect that this authority will be exercised infrequently. Category II contains those authorities which cannot be delegated. For more discussion on the general provisions' delegable authorities, *see* 67 FR 2288, January 16, 2002. The changes in the individual subparts in today's rule reference the subpart E classifications to ensure that they conform with this similar framework.

2. Reorganizing Sections To Separate Compliance Assurance Measures From Actual Standards

The NESHAP contain two major types of requirements: standards and compliance assurance requirements. The standards are the essential requirements that implement EPA's authority under the Act to establish hazardous air pollutant (HAP) emission standards. These standards may be emission limitations (emission limits, operating limits, opacity limits, and visible emission limits) and/or work practice standards (design, equipment, work practices, and operational standards). The authority to approve alternatives to any of the promulgated standards must be retained by us. Requirements that are essential to ensuring that the standards are achieved as EPA intended, such as applicability requirements and compliance dates, are also retained.

The compliance assurance requirements are also essential, but they offer some flexibility in their implementation. For example, you can approve (or disapprove) minor and intermediate changes to testing, monitoring, reporting, and recordkeeping provisions, as long as they are at least as stringent (or disapprove, if they are not as stringent) as EPA requirements.

In other cases, the S/L/T is given authority to make changes in the implementation of a requirement, but not to change the actual requirement itself. For example, some NESHAP require operation and maintenance plans. Here the S/L/T agency is given the authority to approve some changes in the content of the plan, but does not have the authority to waive the requirement that the plan must be created and followed. Additionally, some newly-named operation and maintenance sections contain provisions which are similar to work practices, in that they can potentially affect emissions, such as the requirement to operate and maintain the source's equipment in keeping with good air pollution control practices, or the requirement to correct malfunctions as soon as practicable. You may not approve alternatives that are less stringent than the criteria outlined in the subpart. However, you may require more stringent provisions, such as not permitting excess emissions at all during malfunctions. Where an operations and maintenance plan is required, it usually allows the source considerable latitude in designing the plan, so long as the plan meets certain criteria. You may approve alternatives to the plan that are more stringent than the criteria listed, but you may not approve elimination of major criteria, such as specifying the process and control system monitoring equipment.

As a second example, most NESHAP include requirements to monitor certain specified control equipment operating parameters and to set enforceable operating limits for these same parameters based on data from the performance test. In this case, the S/L/T may be delegated the authority to approve changes to the ranges for the operating limits based on new performance test data and/or other relevant information submitted by the source. However, we must retain the authority to approve modifications to requirements affecting which parameters are monitored (*e.g.*, EPA would approve appropriate parameters to monitor for a control device not addressed in a NESHAP).

A more detailed discussion and additional examples of changes that may be made to the delegable requirements are presented in the preambles to the proposed and final subpart E rule (64 FR 1880, January 12, 1999) and (65 FR 55822, September 14, 2000).

In most NESHAP, the non-delegable authorities and the delegable authorities are separated into different sections of the rule. However, in a few NESHAP, these authorities are mixed within a single section or are in the standard section in some NESHAP. In this case, we identified and separated out (where possible) the paragraphs that contain requirements for which you may not approve alternatives in the ''Implementation and enforcement'' section.

In other NESHAP, the delegable and non-delegable authorities are not clearly separated into different sections or into different paragraphs within a standards section. In these cases, we restructured the standards sections to separate the delegable and non-delegable authorities. This restructuring was accomplished by moving the delegable authorities to more appropriate sections of the rule, such as ''Monitoring requirements'' or ''Recordkeeping requirements'' sections. As a result, the ''Implementation and enforcement'' section more clearly shows which authorities you may not be delegated by simply listing the sections containing those authorities.

3. Minor Work Practices' Amendments To Allow Approval of Alternatives Without EPA Rulemaking

In some MACTs, provisions for which you could or should have the authority to approve alternatives are written in a way that precludes you from approving alternatives to these practices. Authority to approve alternatives to work practice standards or any other emission limitation established under section 112(d) or (h) of the Act cannot be delegated to you. However, some work practice requirements could be written more broadly to allow alternative practices to be implemented or these work practice requirements could be

written to expressly state that you may approve alternative practices.

We have rewritten these work practice standards, where possible, to specifically state that you have the authority to approve equivalent or more stringent alternative compliance assurance measures. The sections containing these requirements are not listed as authorities retained by us in the implementation and enforcement section. These kinds of changes are necessary only for a small number of subparts.

B. What Clarifications Have We Made to Individual Subparts?

We did not receive any public comments concerning proposed changes to 37 of the subparts we included in the September 2000 proposal notice. However, upon closer review of the proposed changes, we determined that we had inadvertently and inconsistently delegated some of the standards we should have reserved to the Administrator's authority. For those subparts for which we received no public comments and which were correctly proposed, we have promulgated the final NESHAP amendments as proposed. Following is a list of the unchanged subparts:

- Subpart F, Synthetic Organic Chemical Manufacturing Industry
- Subpart I, HON for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
- Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
- Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities
- Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
- Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
- Subpart Y, National Emission Standards for Marine Tank Vessel Loading Operations
- Subpart AA, National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants
- Subpart BB, National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants
- Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries
- Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations
- Subpart II, National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
- Subpart OO, National Emission Standards for Tanks—Level 1
- Subpart PP, National Emission Standards for Containers
- Subpart QQ, National Emission Standards for Surface Impoundments
- Subpart RR, National Emission Standards for Individual Drain Systems
- Subpart GGG, National Emission Standards for Pharmaceuticals Production
- Subpart JJJ, National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
- Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production
- Subpart PPP, National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
- Subpart XXX, National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

The first correction we must make to the proposal package is to ensure that we consistently reserve the requirements in each of the NESHAP that establish the compliance dates for all new, reconstructed, and existing sources that are subject to the applicable subparts. Upon review of the proposal package, we determined that we did not consistently reserve these requirements, which was an error because they are integral to the overall standards and cannot be delegated. Following is a list of the subparts we need to modify to ensure that the compliance date of the applicable requirements are reserved. Also included is the notation for the compliance date requirements paragraphs and/or sections that are affected by this correction to the proposed amendments.

- Subpart N, chromium electroplating (§ 63.343(a))
- Subpart W, epoxy resins and non-nylon polyamides (§ 63.521)
- Subpart X, secondary lead smelting (§ 63.546)
- Subpart LL, primary aluminum production plants (§ 63.847(a))
- Subpart CCC, steel pickling (§ 63.1160(a))
- Subpart DDD, mineral wool production (§ 63.1180)
- Subpart EEE, hazardous waste combustors (§ 63.1206(a))
- Subpart III, flexible polyurethane foam production (§ 63.1291)
- Subpart LLL, portland cement (§ 63.1351)
- Subpart MMM, pesticide active ingredient production (§ 63.1364)
- Subpart NNN, wool fiberglass manufacturing (§ 63.1387)
- Subpart RRR, secondary aluminum production (§ 63.1501)
- Subpart TTT, primary lead smelting (§ 63.1545)
- Subpart VVV, publically owned treatment works (§§ 63.1584 and 63.1587).

The second correction we must make to the proposal package is to ensure that we reserve all of the relevant standards in each of the applicable subparts. Upon closer review of the proposal package, we determined that we did not reserve all of the so-called ''general requirements'' sections that we should have. In some cases it was appropriate to delegate these sections, because even though the title indicated they were ''standards'' the content of the sections was clearly related to delegable provisions such as various reporting and recordkeeping requirements. For example, in subpart CC (petroleum refineries), § 63.642, general standards, we correctly retained §§ 63.642(g) through (l). These paragraphs require the following:

- Requires existing sources to control HAP emissions to a level represented by a specified equation;
- Requires new sources to control HAP emissions to a level represented by a specified equation;
- Directs source to use specified compliance provisions;
- Describes compliance approach;
- Describes emissions averaging approach. Note, however, that we correctly delegated §§ 63.642(a) through (f) that describe the following requirements:
- Source must obtain a part 70/71 permit;
- Cross references General Provisions applicability table;
- Initial performance tests and compliance demonstrations required only as specified in this subpart;
- Recordkeeping requirements;
- Reports sent to Administrator.

However, in other subparts, we inadvertently delegated some ''general standards'' requirements. We have corrected this error in today's final rule. The affected subparts and the now-retained general standards requirements are listed below:

- Subpart DD, offsite waste (§ 63.683);
- Subpart HH, oil and natural gas production facilities (§ 63.764);
- Subpart KK, printing and publishing (§ 63.823);
- Subpart HHH, natural gas transmission and storage facilities (§ 63.1274);
- Subpart LLL, portland cement manufacturing (§ 63.1342).

We received public comments on only 11 subparts. Following is a brief description of the proposed changes, the public comments, and our response to the comments for each affected subpart. In addition, we are making revisions to the delegation provisions for Subpart LL (Primary Aluminum) based on the results of an internal review.

1. Subpart G, HON Standards for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

Proposed Rule. To clarify which authorities are delegated, we added the ''Implementation and enforcement'' section for delegation provisions to this subpart in a new section, § 63.153. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.112 through 63.113, 63.119, 63.126, 63.132 through 63.140, and 63.148 through 63.149. In addition, we retained § 63.110, which contains the applicability requirements for this rule and § 63.150(i)(1) through (4), which contains the emissions averaging provisions. Section 63.121 describes procedures that should be followed to request the use of alternative means of emissions limitation for storage vessels. To retain the intent of the original language of § 63.121, the new delegation paragraph cross-references the section identifying the procedures to follow in requesting an alternative means of emission limitation for storage vessels. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. We clarified that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where this subpart requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we clarified that those provisions should be changed accordingly and then delegated according to the delegation provisions of the referenced subpart.

Public Comments. One comment pertained to § 63.133(h) which is the requirement that ''first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification'' of improper work practices or control equipment failure. The commenter believes S/L/Ts should have the authority to approve alternatives to this requirement. The commenter also said that the requirement is vaguely defined.

Final Rule. We disagree with the comment regarding the delegation of the authority to approve alternatives to § 63.133(h). We believe that this provision is a work practice standard, and thus, it cannot be delegated to S/L/Ts. We also believe that the requirement is clear with respect to the responsibility of the source to make a ''first effort at repair'' in a specified time frame. However, the determination of whether the source's response is adequate to meet this requirement is appropriately made by the permitting authority that receives the notifications and potential requests for an extension of time. Therefore, we believe this section already provides adequate flexibility to the S/L/T in implementing the requirements of § 63.133(h).

2. Subpart H, HON for Organic Hazardous Air Pollutants for Equipment Leaks

Proposed Rule. To clarify which authorities are delegated, we added the ''Implementation and enforcement'' section in a new section, § 63.183. The section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.160, 63.162 through 63.176, and 63.178 through 63.179. These sections contain the applicability provisions, emissions standards, standards for quality improvement programs, and provisions for alternative emission limitations. There are also instructions to follow the requirements of § 63.177 to request an alternative means of emission limitation for batch processes and enclosed-vented process units.

This subpart also requires affected sources to meet specific requirements that are contained in other subparts. We clarified in the implementation and enforcement language that delegation of those requirements will occur according to the delegation provisions of the referenced subparts. Where this subpart requires that affected sources meet specific requirements that are contained in other subparts, but makes certain changes to those provisions, we clarified that those provisions should be modified accordingly and then delegated according to the delegation provisions of the referenced subpart.

Public Comments. We received several public comments regarding the proposed changes to this subpart. One commenter requested that we reconsider allowing S/L/Ts to approve alternatives to the provision in § 63.162(f)(1) that requires a weatherproof and readily visible identification number attached to equipment, such as valves and pumps, that have been identified as leaking. Another comment asked us to reconsider delegating the authority to S/L/Ts to make approvals to alternatives to § 63.163(b)(1), the requirement to monitor pumps to detect leaks on a monthly basis.

Final Rule. We agree with the comment to reconsider allowing S/L/Ts to approve alternatives to the provision in § 63.162(f)(1). This section is an implementation-related requirement and there may be other ways to achieve the intent of the standard, which is to detect and repair equipment leaks on a specified frequency. In order to clarify this distinction, we have revised the language in § 63.162(f)(1) and § 63.181, recordkeeping.

However, regarding the comment to reconsider delegating the authority to S/L/Ts to make approvals to alternatives to § 63.163(b)(1), the requirement to monitor pumps to detect leaks on a monthly basis, we believe that this requirement is an integral part of the work practice standard for subpart H because it addresses the frequency of monitoring efforts. As we said in the proposal package, the collection of subpart H leak detection and repair requirements comprise the work practice standard and cannot be delegated.

3. Subpart L, National Emission Standards for Coke Oven Batteries

Proposed Rule. To clarify which authorities are delegated, we replaced the delegation provisions' language with the ''Implementation and enforcement'' section. In the delegation section, we retained the authorities in §§ 63.300 and 63.302 through 63.308. These sections contain the applicability provisions and emissions standards for by-product and nonrecovery coke oven batteries, compliance date extensions, coke oven doors equipped with sheds, work practice standards, bypass/bleeder stacks, and collecting mains.

The original delegation provisions in § 63.313 contained language addressing failure of delegated agencies to carry out required inspections and tests. We retained this language in the revised delegation provisions, but added language to it and to § 63.309, ''Performance tests and procedures,'' explaining that the Administrator may also withdraw delegation of authority pursuant to the provisions of § 63.96.

Public Comments. We received one comment concerning the proposed revisions to this subpart. The commenter asked for S/L/Ts to be delegated the authority to approve changes to work practice plans required by § 63.306(a), the provision requiring sources subject to this subpart to prepare and submit written emission control work practice plans for each coke oven battery.

Final Rule. While we believe that the requirements to prepare a plan that

includes specified information and how that plan is implemented is a work practice standard, we agree with the commenter that the authority to request revisions to the plan and approve changes is delegable and is best conducted by the S/L/T. Therefore, we have revised §§ 63.306(a) and (d) to clarify that these activities may be conducted by the Administrator or the delegated permitting authority.

4. Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

Proposed Rule. To clarify which authorities are delegated, we replaced the delegation provisions' language with the ''Implementation and enforcement'' section. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.420 and 63.422 through 63.424. These sections contain the applicability provisions and emissions standards for loading racks, storage vessels, and equipment leaks.

To retain the intent of the original delegation provisions, the revised delegation section also retains delegation of the authority to approve major alternatives to the monitoring specified in § 63.427(a)(1) through (4) per § 63.427(a)(5), which contains provisions for monitoring an alternative operating parameter. To retain the intent of the original language of § 63.426, the revised delegation paragraph cross-references that section for procedures to follow in requesting an alternative means of emission limitation for storage vessels.

Public Comments. We received one public comment concerning the proposed changes to this subpart. The commenter asked that S/L/Ts be granted the authority to approve alternative monitoring frequencies based on the compliance history of the source under § 63.423(c) (this requirement is actually promulgated in § 63.424(a)), described as requiring monthly leak inspections for all equipment in gasoline service at gasoline terminals or pipeline breakout stations. The paragraph also says that for these inspections, detection methods incorporating sight, sound, and smell are acceptable. The commenter added that S/L/Ts should be allowed to approve an alternative leak detection method, in their example, the use of a hydrocarbon analyzer.

Final Rule. Our proposal was consistent with our view that the leak detection and repair requirements in § 63.424 constitute an integrated program and that changes to any part of the program could change the effectiveness of the entire program. Therefore, we have not changed the delegation requirements in subpart R.

5. Subpart S, National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry

Proposed Rule. In order to separate delegable authorities from non-delegable standards, we removed the monitoring and recording authorities from § 63.450(d)(1) (the Standards for enclosures and closed-vent systems section) and placed them in § 63.454(e), ''Recordkeeping requirements.'' We also added a reference in § 63.450(d)(1) that the provisions of § 63.454(e) must be followed.

To clarify which authorities are delegated, we replaced the delegation provisions' language with the ''Implementation and enforcement'' section. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.440, 63.443 through 63.447, and 63.450. These sections contain the applicability provisions and the emissions standards for pulping systems, bleaching systems, kraft pulping process condensates, clean condensate alternatives, and enclosures and closed-vent systems. This subpart also requires that provisions of another subpart be followed. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the subpart that is referenced.

Public Comments. We received one comment regarding the proposed revisions to this subpart. The commenter stated that ''State and local agencies should not have to seek individual approvals for the same alternatives.'' The commenter also said that if several facilities make the same request for alternative monitoring, EPA would still have to approve each individually.

Final Rule. The commenter's assessment that EPA still must approve each request for alternative monitoring individually is correct, if the alternative monitoring request is for a major change to monitoring. The S/L/Ts have the authority to approve alternatives to monitoring if the alternatives are considered minor or intermediate. See definitions of minor, intermediate, and major changes to monitoring in § 63.90.

The commenter is also correct that the approvals must be made on individual sources and not for more than one source per approval, unless the S/L/T chooses to approve the changes using the subpart E equivalency by permit mechanism; see § 63.94. The purpose of the delegable authorities is to approve alternatives on a case-by-case basis; the circumstances being particular to one source. Conversely, to approve alternative monitoring requirements for more than one source, a S/L/T should use a 40 CFR part 63, subpart E approval mechanism, such as a rule adjustment or rule substitution; §§ 63.92 or 63.93 respectively. Subpart E approval usually requires rulemaking (with public comment), which is required for changes to more than one source in a source category.

6. Subpart T, National Emission Standards for Halogenated Solvent Cleaning

Proposed Rule. We amended § 63.460 by removing and reserving paragraph (f). We restructured the work practices in § 63.462 and created paragraph § 63.462(e) to give S/L/Ts greater flexibility to approve alternatives that will continue to meet the intent of the standard. In addition, we amended § 63.463(e)(2)(ix)(B) to restructure the recordkeeping requirements to make it easier to delegate them.

To clarify which authorities are delegated, we added the ''Implementation and enforcement'' section in a new section, § 63.470. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.460, 63.462(a) through (d), and 63.463 through 63.464.

Section 63.469 describes procedures that must be followed to request the use of alternative equipment or an alternative work practice. Section 63.460(f) also retains the delegation of §§ 63.469 and 63.463(d)(9) to the Administrator. The delegation provisions added in § 63.470 cross-reference § 63.469 for procedures to follow in requesting an alternative means of emission limitation.

Public Comment. We received two comments regarding the proposed revisions to this subpart. One comment requested that S/L/Ts be delegated the authority to approve alternatives to § 63.463(d)(1), which generally requires sources to control air disturbances across the cleaning machine opening(s). The commenter added that this requirement is extremely vague. We also received a comment requesting us to delegate to S/L/Ts the authority to approve alternatives to § 63.463(d)(9), the requirement that each solvent cleaning machine and associated controls be maintained according to manufacturer's specifications.

Final Rule. We do not agree with the comment regarding § 63.463(d)(1), the

requirement to control air disturbances across the cleaning machine opening(s). This requirement is a work practice standard whose authority to approve alternatives cannot be delegated to S/L/Ts. However, we believe that the requirement is sufficiently broad to allow several approaches to comply with it. For example, we believe that both (1) covering the openings of cleaning machines with lids when not in use, and (2) operating the cleaning machines in an enclosed room that is vented to a control device comply with this provision. Therefore, we are not delegating this authority to S/L/Ts in the final rule.

We agree with the request to delegate to S/L/Ts the authority to approve alternatives to § 63.463(d)(9), the requirement that each solvent cleaning machine and associated controls be maintained according to manufacturer's specifications. We are revising the proposed changes to this subpart to add the delegation of this authority.

7. Subpart X, National Emissions Standards for Hazardous Air Pollutants From Secondary Lead Smelting

Proposed Rule. We restructured the work practices in § 63.545 to give S/L/Ts greater flexibility in approving alternatives that still meet the intent of the standard by adding a paragraph to explain that either the Administrator or delegated S/L/T authorities may approve alternatives to the fugitive dust reduction practices in § 63.545(c).

To clarify which authorities are delegated, we added the ''Implementation and enforcement'' section for the delegation provisions in a new section, § 63.551. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.541, and 63.543 through 63.545(a) through (e). These sections contain the applicability provisions and emissions standards for process sources, process fugitive sources, and fugitive dust sources.

Public Comments. We received one comment regarding the proposed revisions to this subpart. The commenter requested that EPA delegate the authority to approve alternatives to § 63.545(a), the requirement for each owner or operator of a secondary lead smelter to prepare and operate according to a standard operating procedures manual.

Final Rule. We agree with the comment that EPA should delegate the authority to approve alternatives to § 63.545(a), the requirement for each owner or operator of a secondary lead smelter to prepare and operate according to a standard operating procedures manual. In fact, § 63.545(b) already allows the source to submit the standard operating procedure manual to the Administrator or delegated authority for review and approval. We have revised the delegation provisions in new § 63.551 to clarify that this authority is delegable.

8. Subpart DD, National Emission Standards for Hazardous Air Pollutants From Off-Site Waste and Recovery Operations

Proposed Rule. Section 63.684, ''Standards for off-site material treatment,'' contains monitoring requirements, and § 63.693, ''Standards for closed-vent systems and control devices,'' contains monitoring and inspection requirements which are delegable authorities. We rephrased the language of § 63.684(e)(1) to remove the monitoring and reporting requirements from that section. Those requirements were added to § 63.695, ''Inspection and monitoring requirements'' in § 63.695(e), with an introductory paragraph to match the format of the section in § 63.695(a)(4). The continuous monitoring requirements and visual inspection requirements in § 63.693(b)(4)(i) and § 63.693(c)(2)(ii) were also removed and placed in § 63.695(c)(1)(ii)(C) and (D).

To clarify which authorities can be delegated, we replaced the delegation provisions' language with the ''Implementation and enforcement'' section. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.680, 63.684 through 63.691, and 63.693. These sections contain applicability provisions and the standards for off-site material treatment, tanks, oil-water and organic-water separators, surface impoundments, containers, transfer systems, process vents, equipment leaks, closed-vent systems, and control devices. In addition, this rule requires that affected sources meet specific requirements that are contained in other subparts. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of the subpart that is referenced.

Public Comments. We received one comment letter regarding the proposed revisions to this subpart. The commenter disagreed with our proposed text changes to this subpart. The commenter pointed out that the proposed changes to this subpart conflict with modifications made to this subpart on July 20, 1999 (64 FR 38970). More specifically, the commenter requested that we correct our proposal to modify § 63.693(b)(4)(i). In the proposal, we moved the continuous monitoring and visual inspection requirements in § 63.693(b)(4)(i) to a new paragraph in § 63.695(c)(1)(ii). The commenter indicated that this proposed revision is problematic because the paragraph following (b)(4)(i) is (b)(4)(ii), which is an alternate process to meeting the requirements of paragraph (b)(4)(i) which we proposed to eliminate. Another comment referred to the proposed changes to § 63.695, the Inspection and monitoring requirements. We proposed to add introductory text to § 63.695(e) that had already been added to the July 20, 1999 modifications to this subpart, *i.e.,* § 63.695(e)(1)(i).

Final Rule. We agree with the commenter. We inadvertently used an outdated version of this subpart to formulate our proposed revisions. As a result, our proposed revisions do not agree with the modifications made to this subpart on July 20, 1999.

After evaluating the current version of § 63.693(b)(4)(i), we determined that there is not any confusion remaining between the standards and otherwise delegable requirements. Thus, we are withdrawing our proposed changes to § 63.693(b)(4). We are also withdrawing our proposed changes to § 63.695(e), adding introductory text, because similar language already exists in § 63.695(e)(1)(i). We are retaining the rest of the proposed text changes to this subpart.

9. Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities

Proposed Rule. We restructured the work practices in § 63.744 to give S/L/Ts greater flexibility in approving alternatives by clarifying that either the Administrator or delegated S/L/Ts may approve alternatives to the cleaning operations measures in § 63.744(a).

To clarify which authorities are delegated, we added the ''Implementation and enforcement'' section for the delegation provisions in a new section, § 63.759. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.741, 63.743, 63.744(a)(1) through (3), 63.744(b) through (e), 63.745 through 63.748, and 63.749(a). These sections contain the applicability provisions, cleaning, primer and top-coat application, depainting, chemical milling maskant application, and waste handling and storage standards, and the compliance dates for this rule.

Public Comments. We received two comments regarding the proposed revisions to this subpart. The commenter asked that S/L/Ts be delegated the authority to approve alternatives to § 63.746(b)(4)(iii)(A), the requirement to maintain the dry particulate filter system in good working order. Another comment requested that we delegate to S/L/Ts the authority to approve alternatives to § 63.744(a)(3), the requirement to conduct the handling and transfer of cleaning solvents to or from enclosed systems * * * in such a manner to minimize spills.

Final Rule. Section 63.746(b)(4)(iii)(A), the requirement to maintain the dry particulate filter system in good working order, is a work practice standard and, as described above, cannot be delegated to S/L/Ts. However, we believe this provision is written broadly enough to allow more than one approach to maintaining the dry particulate filter system in good working order. For example, the S/L/T could specify minimum and maximum pressure drop levels and filter replacement schedule to meet the intent of the ''maintain in good working order'' provision. Similarly, the requirement to conduct the handling and transfer of cleaning solvents to or from enclosed systems * * * in such a manner to minimize spills, § 63.744(a)(3), is a work practice standard and it cannot be delegated to S/L/Ts. However, we believe this provision is written broadly enough to allow more than one approach to minimizing spills from the transfer of cleaning solvents. For example, the S/L/T could require implementation of this requirement in the form of a ''no visible leak'' provision (or numerous other specific requirements). Therefore, we are not revising the proposed changes to this subpart in today's rulemaking.

10. Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations

Proposed Rule. We clarified that § 63.803(c), ''Work practice standards,'' contains reasonably separable requirements for an inspection and maintenance plan in §§ 63.803(c)(1) through (4), that are not considered part of the standard and, thus, are delegable.

To clarify which authorities are delegated, we replaced the delegation provisions' language with the ''Implementation and enforcement'' section. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.802 and 63.803(a) through (b), (c) introductory text, and (d) through (l). These sections contain the standards for this rule. This section also shows that delegation of authority to approve alternatives cannot be given to S/L/Ts for the applicability provisions in § 63.800. To retain the intent of the original delegation provisions in § 63.808, the revised delegation section also reserves the monitoring and compliance assurance measures and test methods in §§ 63.804(f)(4)(iv)(D) and (E), 63.804(g)(4)(iii)(C), 63.804(g)(4)(vi), 63.804(g)(6)(vi), 63.805(a), 63.805(d)(2)(v), and 63.805(e)(1).

Public Comments. We received numerous public comments concerning the proposed revisions to this subpart. The commenter asked that S/L/Ts be delegated the authority to approve or disapprove alternatives to § 63.803(c), which requires an owner or operator of a facility subject to this subpart to prepare and maintain an inspection and maintenance plan. The same commenter also asked that S/L/Ts be delegated the authority to approve or disapprove proposed alternatives to § 63.803(a), which requires an owner or operator of a facility subject to this subpart to prepare and maintain a work practice implementation plan. The commenter added that ''[a] plan for implementing work practices may be unnecessary.'' Another comment was received concerning § 63.803(l), which requires a formulation assessment plan for finishing operations. The commenter said that S/L/Ts should have the authority to approve or disapprove alternatives to meet the intent of this provision. The commenter stated that S/L/Ts should be delegated the authority to approve or disapprove alternatives to § 63.803(b), which requires all owners and operators of facilities subject to this subpart to ''train all new and existing personnel, including contract personnel, who are involved in finishing, gluing, cleaning, and washoff operations, use of manufacturing equipment, or implementation of the requirements of this subpart.'' Again, the commenter stated that S/L/Ts ''should be allowed to approve alternative mechanism(s) to meet the intent of the requirement.''

Another comment was received concerning § 63.803(d), the requirement for owner or operator of an affected source to develop an organic HAP solvent accounting form to record the quantity and type of organic HAP solvents used and other pertinent information regarding organic HAP solvent use. The commenter said that S/L/Ts ''should be allowed to approve alternative mechanism(s) to meet the intent of the requirement.'' Another comment concerned § 63.803(l)(5), which requires the owner or operator to confer with the permitting authority to discuss the reason for the 15% increase (above the baseline level) of solvent use and whether there are practical and reasonable technology-based resolutions for the increase. Again, the commenter stated that S/L/Ts ''should be allowed to approve alternative mechanism(s) to meet the intent of the requirement.''

Final Rule. The commenter is correct that there are several paragraphs in § 63.803 that require the owner or operator to prepare a plan to implement the work practice standards. We have changed the final rule to clarify that the overall implementation plan in § 63.803(a), the inspection and maintenance plan in § 63.803(c), and the formulation assessment plan in § 63.803(l) are approvable by the S/L/Ts.

We disagree with the commenter that the work practice implementation plan required by § 63.803(a) may be unnecessary. This requirement is a work practice standard that ensures each owner or operator understands, plans for, and adequately implements the requirements in §§ 63.803(b) through (l). The commenter also suggested several instances where S/L/Ts should have the ability to approve alternatives to the requirements specified in § 63.803. With the exception of §§ 63.803(c)(1) through (4), we cannot delegate this authority because the requirements are work practice standards. However, S/L/Ts have the authority to determine whether the criteria in §§ 63.803 are met. For example, S/L/Ts cannot eliminate the requirement for operator training in § 63.803(b). However, S/L/Ts approve a range of implementation options to satisfy the operator training requirements, such as (but not limited to) allowing wood furniture manufacturing staff to attend a general, state-developed operator course.

11. Subpart LL, National Emission Standards for Primary Aluminum Reduction Plants.

Proposed Rule. To clarify which authorities are delegated, we replaced the delegation provisions' language with the ''Implementation and enforcement'' section. This section now shows that delegation of authority to approve alternatives cannot be given to S/L/T agencies for the requirements in §§ 63.840, 63.843 through 63.844, 63.845(b) through (e), (h) through (i), and 63.846. These sections contain the applicability provisions, emission standards for existing and new or reconstructed sources, standards for incorporation of new source performance standards for potroom groups, and emissions averaging provisions.

Final Rule. We did not receive any public comments on the proposed changes to this rule. However, subsequent internal review revealed inconsistencies in the proposed delegation provisions compared to the original rule. Because this rule has been implemented in its current form for many years and is working well, we do not want to change the role of the regulatory authority in implementing the rule. Therefore, we have revised the delegation provisions in this final rule to ensure that they are consistent with the intent of the original rule.

12. Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators

Proposed Rule. We added the ''Implementation and enforcement'' section for the delegation provisions in a new section, § 63.1050. This section indicates that delegation of authority to approve alternatives cannot be given to S/L/Ts for the requirements in §§ 63.1040 and 63.1042 through 63.1044. These sections contain the applicability provisions, the emissions standards for separators with fixed and floating roofs, and those vented to a control device. This subpart also requires provisions of subpart DD to be followed. In the implementation and enforcement language, we have clarified that delegation of those requirements will occur according to the delegation provisions of subpart DD.

Public Comments. We received one comment regarding the proposed changes to this subpart. The commenter requested that EPA delegate to S/L/Ts the authority to approve alternatives to § 63.1043(b)(3), the requirement for each opening in a floating roof be equipped with a closure device that when secured, there are no visible cracks, holes, gaps, or other open spaces in the roof or closure device. The commenter added that S/L/Ts ''should be allowed to approve alternative using hydrocarbon analyzer or gap measurement technique.''

Final Rule. We disagree with the comment that S/L/Ts should be delegated the authority to approve alternatives to § 63.1043(b)(3), the requirement for each opening in a floating roof be equipped with a closure device that when secured, there are no visible cracks, holes, gaps, or other open spaces in the roof or closure device and, thus, have not delegated this requirement to S/L/Ts. This requirement is a work practice standard which, as described above, may not be delegated to S/L/Ts. This is also a case where we do not think there is flexibility in the standard to allow different implementation methods. This is because it is not clear that a gap measurement technique or use of a hydrocarbon analyzer or other leak detection technique is equivalent to the requirement to ensure there are no visible cracks, etc. For example, a gap measurement technique may imply that some degree of crack or gap would be acceptable which is counter to our interpretation of this requirement and, therefore, we would not consider this technique to be more stringent. Similarly, without a comparison of leaks expected to occur under a ''no visible crack'' requirement to the leak detection limits of individual equipment and a leak detection schedule, we cannot determine whether the substituted method would be at least equivalent to the current requirement.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

These rule changes will not have an annual effect on the economy of $100 million or more, and therefore are not considered economically significant. In addition, we have determined that this rule is not a ''significant regulatory action'' because it does not contain novel policy issues.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's rulemaking contains changes to rules that already have approved information collection requirements and valid OMB control numbers as required by the Paperwork Reduction Act. The changes in today's rulemaking are clarifications to the relationship between EPA and the S/L/Ts that have chosen to implement and enforce the rules. Therefore, there is no change in the burden that the rules impose on sources or S/L/Ts.

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

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entity, small entity is defined as: (1) A small business as defined by the Small Business Administration: (2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact

on a substantial number of small entities. This final rule will not impose any requirements on small entities. We believe that there will be little or no impact on small entities as a result of these rule revisions. State, local, and tribal governments are the only entities affected by this action and we expect that most or all of the governments which would have the authority to accept delegation under section 112(l) of the Act are those whose populations exceed 50,000 persons and are thus, not considered ''small.'' In the case of tribal jurisdictions where population will not exceed 50,000 persons, we still believe that there will be little or no impact as a result of these revisions because none currently have air toxics programs. Furthermore, these rule revisions add flexibility and clarity to the existing NESHAP that these governments may choose to implement and enforce and, therefore, eases rather than imposes burdens.

D. Unfunded Mandates Reform Act

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

Today's rule changes contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for S/L/T governments or the private sector. Because the rule is estimated to result in the expenditure by S/L/T governments of significantly less than $100 million in any 1 year, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Moreover, this action clarifies the relationship between EPA and the S/L/Ts who have voluntarily requested delegation of the part 63 NESHAP, so it does not impose any mandates on those entities. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

E. Executive Order 13132: Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and Local governments or EPA consults with State and Local officials early in the process of developing the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and Local officials early in the process of developing the regulation.

The changes in today's rulemaking do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule only clarifies which portions of the existing NESHAP contain authorities that can be delegated to S/L/T governments and does not create any new requirements for S/L/Ts. In other words, this rulemaking only makes insignificant clarifications to existing NESHAP and is not expected to have any additional impact on the relationship between S/L/Ts and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to today's rulemaking.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' We believe that this final rule does not have tribal implications as specified in Executive Order 13175. Because it implements a voluntary program, today's rulemaking imposes no direct compliance costs on these communities. Thus, Executive Order 13175 does not apply to this rule. However, we did inform tribes of the final rulemaking through the Tribal Environmental Newsletter.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in

Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because we believe that this package as a whole will result in equal or better environmental protection than currently provided by the existing regulations, and do so in a more streamlined and effective manner.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The changes in today's rulemaking do not affect selection of technical standards that are contained in the existing subparts. Therefore, we are not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that today's rule should not raise any environmental justice issues. The intent of the rule is to clarify the delegation provisions in existing NESHAP and will not impact the emissions reductions provisions in these NESHAP. As a result, it appears unlikely that this program would permit any adverse effects on local populations. The EPA did not receive any public comments regarding this executive order.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. 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 a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on August 22, 2003.

IV. Statutory Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

V. Judicial Review

Under section 307(b)(1) of the Act, judicial review of these final rules are available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 22, 2003. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 29, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart F—[Amended]

■ 2. Section 63.106 is revised to read as follows:

§ 63.106 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to requirements in §§ 63.100, 63.102, and 63.104. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart G—[Amended]

■ 3. Section 63.153 is added to Subpart G to read as follows:

§ 63.153 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.110, 63.112 through 63.113, 63.119, 63.126, 63.132 through 63.140, 63.148 through 63.149, and 63.150(i)(1) through (4). Follow the requirements in § 63.121 to request permission to use an alternative means of emission limitation for storage vessels. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart H—[Amended]

■ 4. Section 63.162 is amended by revising paragraph (f)(1) to read as follows:

§ 63.162 Standards: General.

* * * * *

(f) * * *

(1) Clearly identify the leaking equipment.

* * * * *

■ 5. Section 63.181 is amended by adding paragraph (b)(10) to read as follows:

§ 63.181 Recordkeeping requirements.

* * * * *

(b) * * *

(10) For any leaks detected as specified in §§ 63.163 and 63.164; §§ 63.168 and 63.169; and §§ 63.172 through 63.174 of this subpart, a weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

* * * * *

■ 6. Section 63.183 is added to Subpart H to read as follows:

§ 63.183 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.160, 63.162 through 63.176, 63.178 through 63.179. Follow the applicable procedures of § 63.177 to request an alternative means of emission limitation for batch processes and enclosed-vented process units. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart I—[Amended]

■ 7. Section 63.193 is revised to read as follows:

§ 63.193 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.190 and 63.192(a) through (b), (e), and (h) through (j). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart L—[Amended]

■ 8. Section 63.306 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), and (d) to read as follows.

§ 63.306 Work practice standards.

(a) *Work practice plan.* On or before November 15, 1993, each owner or operator shall prepare and submit a written emission control work practice plan for each coke oven battery. The plan shall be designed to achieve compliance with visible emission limitations for coke oven doors, topside port lids, offtake systems, and charging operations under this subpart, or, for a coke oven battery not subject to visible emission limitations under this subpart, other federally enforceable visible emission limitations for these emission points.

(1) The work practice plan must address each of the topics specified in paragraph (b) of this section in sufficient detail and with sufficient specificity to allow the reviewing authority to evaluate the plan for completeness and enforceability.

(2) The initial plan and any revisions shall be submitted to the Administrator or the delegated State, local, or Tribal authority. The Administrator (or delegated State, local, or Tribal authority) may require revisions to the initial plan only where the Administrator (or delegated State, local, or Tribal authority) finds either that the plan does not address each subject area listed in paragraph (b) of this section for each emission point subject to a visible emission standard under this subpart, or that the plan in unenforceable because it contains requirements that are unclear.

* * * * *

(d) *Revisions to plan.* Revisions to the work practice emission control plan will be governed by the provisions in this paragraph (d) and in paragraph (a)(2) of this section. The reviewing authority is the Administrator or the delegated State, local, or Tribal authority.

(1) The reviewing authority may request the owner or operator to review and revise as needed the work practice emission control plan for a particular emission point if there are 2 exceedances of the applicable visible emission limitation in the 6-month period that starts 30 days after the owner or operator is required to implement work practices under paragraph (c) of this section. In the case of a coke oven battery subject to visual emission limitations under this subpart, the second exceedance must be independent of the criteria in paragraph (c)(1)((i) of this section.

(2) The reviewing authority may not request the owner or operator to review and revise the plan more than twice in any 12 consecutive month period for any particular emission point unless the reviewing authority disapproves the plan according to the provisions in paragraph (d)(6) of this section.

(3) If the certified observer calculates that a second exceedance (or, if applicable, a second independent exceedance) has occurred, the certified observer shall notify the owner or operator. No later than 10 days after receipt of such a notification, the owner or operator shall notify the reviewing authority of any finding of whether work practices are related to the cause or the solution of the problem. The notification is subject to review by the reviewing authority according to the provisions in paragraph (d)(6) of this section.

(4) The owner or operator shall submit a revised work practice plan within 60 days of notification from the reviewing authority under paragraph (d)(1) of this section, unless the reviewing authority grants an extension of time to submit the revised plan.

(5) If the reviewing authority requires a plan revision, the reviewing authority may require the plan to address a subject area or areas in addition to those in paragraph (b) of this section, if the reviewing authority determines that without plan coverage of such an additional subject area, there is a reasonable probability of further exceedances of the visible emission limitation for the emission point for which a plan revision is required.

(6) The reviewing authority may disapprove a plan revision required under paragraph (d) of this section if the reviewing authority determines that the revised plan is inadequate to prevent exceedances of the visible emission limitation under this subpart for the emission point for which a plan revision is required or, in the case of a battery not subject to visual emission limitations under this subpart, other federally enforceable emission limitations for such emission point. The reviewing authority may also disapprove the finding that may be submitted pursuant to paragraph (d)(3) of this section if the reviewing authority determines that a revised plan is needed to prevent exceedances of the applicable visible emission limitations.

■ 9. Section 63.309 is amended by revising paragraph (a)(5)(i) to read as follows:

§ 63.309 Performance tests and procedures.

(a) * * *

(5)(i) The EPA shall be the enforcement agency during any period of time that a delegation of enforcement authority is not in effect or a withdrawal of enforcement authority under § 63.313 is in effect, and the Administrator is responsible for performing the inspections required by this section, pursuant to § 63.313(c).

* * * * *

■ 10. Section 63.313 is revised to read as follows:

§ 63.313 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (d) of this section are retained by the Administrator and cannot be transferred to the State, local, or Tribal agency.

(c) Withdrawal of authority:

(1) Whenever the Administrator learns that a delegated agency has not fully carried out the inspections and performance tests required under § 63.309 for each applicable emission point of each battery each day, the Administrator shall immediately notify the agency. Unless the delegated agency demonstrates to the Administrator's satisfaction within 15 days of notification that the agency is consistently carrying out the inspections and performance tests required under § 63.309 in the manner specified in the preceding sentence, the Administrator shall notify the coke oven battery owner or operator that inspections and performance tests shall be carried out according to § 63.309(a)(5). When the Administrator determines that the delegated agency is prepared to consistently perform all the required inspections and performance tests each day, the Administrator shall give the coke oven battery owner or operator at least 15 days notice that implementation will revert to the previously delegated agency.

(2) In addition to the provisions in paragraph (c)(1) of this section, the Administrator may also withdraw delegation of authority pursuant to the provisions of § 63.96 of subpart E of this part.

(d) The authorities that cannot be delegated to State, local, or Tribal

agencies are as specified in paragraphs (d)(1) through (5) of this section.

(1) Approval of alternatives to the requirements in §§ 63.300 and 63.302 through 63.308 (except the authorities in 63.306(a)(2) and (d)).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of any changes to section 2 of Method 303 in appendix A of this part.

(4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart M—[Amended]

■ 11. Section 63.326 is added to Subpart M to read as follows:

§ 63.326 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.320 and 63.322(a) through (j). Follow the requirements in § 63.325 to demonstrate that alternative equipment or procedures are equivalent to the requirements of § 63.322.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart N—[Amended]

■ 12. Section 63.342 is amended:

■ a. By revising paragraph (f) introductory text.

■ b. Revising paragraph (f)(3)(i) introductory text.

■ c. Revising paragraphs (f)(3)(i)(B) and (C).

■ d. Revising the headings for Table 1 and its columns.

■ The revisions read as follows:

§ 63.342 Standards.

* * * * *

(f) *Operation and maintenance practices.* All owners or operators subject to the standards in paragraphs (c) and (d) of this section are subject to these operation and maintenance practices.

* * * * *

(3) *Operation and maintenance plan.*

(i) The owner or operator of an affected source subject to paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than the compliance date, except for hard chromium electroplaters and the chromium anodizing operations in California which have until January 25, 1998. The plan shall be incorporated by reference into the source's title V permit, if and when a title V permit is required. The plan shall include the following elements:

* * * * *

(B) For sources using an add-on control device or monitoring equipment to comply with this subpart, the plan shall incorporate the operation and maintenance practices for that device or monitoring equipment, as identified in Table 1 of this section, if the specific equipment used is identified in Table 1 of this section;

(C) If the specific equipment used is not identified in Table 1 of this section, the plan shall incorporate proposed operation and maintenance practices. These proposed operation and maintenance practices shall be submitted for approval as part of the submittal required under § 63.343(d);

* * * * *

TABLE 1 TO § 63.342.—SUMMARY OF OPERATION AND MAINTENANCE PRACTICES

Control technique	Operation and maintenance practices	Frequency
* * * * * * *		

■ 13. Section 63.343 is amended by revising paragraph (d) to read as follows:

§ 63.343 Compliance provisions.

* * * * *

(d) An owner or operator who uses an air pollution control device not listed in this section shall submit a description of the device, test results collected in accordance with § 63.344(c) verifying the performance of the device for reducing chromium emissions to the atmosphere to the level required by this subpart, a copy of the operation and maintenance plan referenced in § 63.342(f) including operation and maintenance practices, and appropriate operating parameters that will be monitored to establish continuous compliance with the standards. The monitoring plan submitted identifying the continuous compliance monitoring is subject to the Administrator's approval.

■ 14. Section 63.348 is added to Subpart N to read as follows:

§ 63.348 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.340, 63.342(a) through (e) and (g), and 63.343(a).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart O—[Amended]

■ 15. Section 63.368 is added to Subpart O to read as follows:

§ 63.368 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.360 and 63.362.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart Q—[Amended]

■ 16. Section 63.407 is added to Subpart Q to read as follows:

§ 63.407 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.400 and 63.402 through 63.403.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart R—[Amended]

■ 17. Section 63.429 is revised to read as follows:

§ 63.429 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.420, 63.422 through 63.423, and 63.424. Any owner or operator requesting to use an alternative means of emission limitation for storage vessels covered by § 63.423 must follow the procedures in § 63.426.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart, and any alternatives to § 63.427(a)(1) through (4) per § 63.427(a)(5).

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart S—[Amended]

■ 18. Section 63.450 is amended by revising paragraph (d)(1) to read as follows:

§ 63.450 Standards for enclosures and closed-vent systems.

* * * * *

(d) * * *

(1) On each bypass line, the owner or operator shall install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that is capable of taking periodic readings as frequently as specified in § 63.454(e). The flow indicator shall be installed in the bypass line in such a way as to indicate flow in the bypass line; or

* * * * *

■ 19. Section 63.454 is amended by revising paragraph (e) to read as follows:

§ 63.454 Recordkeeping requirements.

* * * * *

(e) The owner or operator shall set the flow indicator on each bypass line specified in § 63.450(d)(1) to provide a record of the presence of gas stream flow in the bypass line at least once every 15 minutes.

* * * * *

■ 20. Section 63.458 is revised to read as follows:

§ 63.458 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency.

If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.440, 63.443 through 63.447 and 63.450. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of alternatives to using §§ 63.457(b)(5)(iii), 63.457(c)(3)(ii) through (iii), and 63.257(c)(5)(ii), and any major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of alternatives using § 64.453(m) and any major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart T—[Amended]

■ 21. Section 63.460 is amended by removing and reserving paragraph (f).

■ 22. Section 63.462 is amended by adding paragraph (e) to read as follows:

§ 63.462 Batch cold cleaning machine standards.

* * * * *

(e) Each owner or operator subject to the requirements of paragraph (c)(1) through (8) of this section may request to use measures other than those described in these paragraphs. The owner or operator must demonstrate to the Administrator (or delegated State, local, or Tribal authority) that the alternative measures will result in equivalent or better emissions control compared to the measures described in paragraphs (c)(1) through (8) of this section. For example, storing solvent and solvent-laden materials in an enclosed area that is ventilated to a solvent recovery or destruction device may be considered an acceptable alternative.

■ 23. Section 63.463 is amended by revising paragraph (e)(2)(ix)(B) to read as follows:

§ 63.463 Batch vapor and in-line cleaning machine standards.

* * * * *

(e) * * *

(2) * * *

(ix) * * *

(B) Conduct the weekly monitoring required by § 63.466(a)(3). Record the results required by § 63.467(a)(6).

* * * * *

■ 24. Section 63.467 is amended by revising paragraph (a)(6) to read as follows:

§ 63.467 Recordkeeping requirements.

(a) * * *

(6) If a squeegee system is used to comply with these standards, records of the test required by § 63.466(f) to determine the maximum product throughput for the squeegees and records of both the weekly monitoring required by § 63.466(a)(3) for visual inspection and the length of continuous web product cleaned during the previous week.

* * * * *

■ 25. Section 63.470 is added to Subpart T to read as follows:

§ 63.470 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.460, 63.462(a) through (d), and 63.463 through 63.464 (except for the authorities in § 63.463(d)(9)). Use the procedures in § 63.469 to request the use of alternative equipment or procedures.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart U—[Amended]

■ 26. Section 63.507 is added to Subpart U to read as follows:

§ 63.507 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.480 through 63.481, 63.483(a) through (c), 63.484, 63.485(a) through (k), (m) through (s), (u), 63.486 through 63.487, 63.488(a), (b)(1) through (4), (5)(iv) through (v), (6) through (7), (c) through (i), 63.493 through 63.494, 63.500(a)(1) through (3), (b), 63.501, 63.502(a) through (f), (i), (k) through (m), and 63.503. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart W—[Amended]

■ 27. Section 63.529 is added to Subpart W to read as follows:

§ 63.529 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.520, 63.521, 63.523, and 63.524. Where these standards reference another rule, the cited provisions in that rule will be delegated according to the delegation provisions of that rule.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart X—[Amended]

■ 28. Section 63.545 is amended by revising paragraph (c) introductory text and adding paragraph (f) to read as follows:

§ 63.545 Standards for fugitive dust sources.

* * * * *

(c) The controls specified in the standard operating procedures manual shall at a minimum include the requirements of paragraphs (c)(1) through (c)(5) of this section, unless the owner or operator satisfies the requirements in paragraph (f) of this section.

* * * * *

(f) Demonstrate to the Administrator (or delegated State, local, or Tribal authority) that an alternative measure(s) is equivalent or better than a practice(s) described in paragraphs (c)(1) through (c)(5) of this section.

■ 29. Section 63.551 is added to Subpart X to read as follows:

§ 63.551 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.541, 63.543 through 63.544, 63.545(a) and (c) through (e), and 63.546.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart Y—[Amended]

■ 30. Section 63.562 is amended by removing paragraph (d)(3).

■ 31. Section 63.567 is amended by adding paragraph (l) to read as follows:

§ 63.567 Recordkeeping and reporting requirements.

* * * * *

(l) The owner or operator of the VMT source required by § 63.562(d)(2)(iv) to develop a program, shall submit annual reports on or before January 31 of each year to the Administrator certifying the annual average daily loading rate for the previous calendar year. Beginning on January 31, 1996, for the reported year 1995, the annual report shall specify the annual average daily loading rate over all loading berths. Beginning on January 31, 1999, for the reported year 1998, the annual report shall specify the annual average daily loading rate over all loading berths, over each loading berth equipped with a vapor collection system and control device, and over each loading berth not equipped with a vapor collection system and control device. The annual average daily loading rate under this section is calculated as the total amount of crude oil loaded during the calendar year divided by 365 days or 366 days, as appropriate.

■ 32.–33. Section 63.568 is added to Subpart Y to read as follows:

§ 63.568 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.560 and 63.562(a) through (d).

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart AA—[Amended]

■ 34. Section 63.611 is added to Subpart AA to read as follows:

§ 63.611 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.600, 63.602 through 63.604, and 63.609 through 63.610.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart BB—[Amended]

■ 35. Section 63.632 is added to Subpart BB to read as follows:

§ 63.632 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.620, 63.622 through 63.624, and 63.629 through 63.631.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart CC—[Amended]

■ 36. Section 63.655 is added to Subpart CC to read as follows:

§ 63.655 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.640, 63.642(g) through (l), 63.643, and 63.646 through 63.652. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart DD—[Amended]

■ 37. Section 63.684 is amended by revising paragraph (e)(1) to read as follows:

§ 63.684 Standards: Off-Site material treatment.

* * * * *

(e) * * *

(1) A continuous monitoring system shall be installed and operated for each treatment that measures operating parameters appropriate for the treatment process technology. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that is capable of recording either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

* * * * *

■ 38. Section 63.693 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 63.693 Standards: closed-vent systems and control devices.

* * * * *

(c) * * *

(2) * * *

(ii) If a seal or locking device is used to comply with paragraph (c)(2) of this section, the device shall be placed on the mechanism by which the bypass

device position is controlled (*e.g.*, valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve.

* * * * *

■ 39. Section 63.695 is amended by revising paragraph (a)(4) and adding paragraphs (c)(1)(ii)(C) and (D) to read as follows:

§ 63.695 Inspection and monitoring requirements.

* * * * *

(a) * * *

(4) To monitor and record off-site material treatment processes for compliance with the standards specified in 63.684(e), the monitoring procedures are specified in paragraph (e) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(C) The continuous monitoring system required by § 63.693(b)(4)(i) shall monitor and record either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

(D) The owner or operator shall visually inspect the seal or closure mechanism required by § 63.693(c)(2)(ii) at least once every month to verify that the bypass mechanism is maintained in the closed position.

* * * * *

■ 40. Section 63.698 is revised to read as follows:

§ 63.698 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.680, 63.683 through 63.691, and 63.693. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart EE—[Amended]

■ 41. Section 63.708 is revised to read as follows:

§ 63.708 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.701 and 63.703.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart GG—[Amended]

■ 42. Section 63.744 is amended:

■ a. By revising the first sentence of paragraph (a)(1).

■ b. By revising paragraph (a)(2).

■ c. Adding paragraph (a)(4).

The revisions and addition read as follows:

§ 63.744 Standards: Cleaning operations.

(a) * * *

(1) Unless the owner or operator satisfies the requirements in paragraph (a)(4) of this section, place used solvent-laden cloth, paper, or any other absorbent applicators used for cleaning in bags or other closed containers.

* * *

(2) Unless the owner or operator satisfies the requirements in paragraph (a)(4) of this section, store fresh and spent cleaning solvents, except semi-aqueous solvent cleaners, used in aerospace cleaning operations in closed containers.

* * * * *

(4) Demonstrate to the Administrator (or delegated State, local, or Tribal authority) that equivalent or better alternative measures are in place compared to the use of closed containers for the solvent-laden materials described in paragraph (a)(1) of this section, or the storage of solvents described in paragraph (a)(2) of this section.

* * * * *

■ 43. Section 63.759 is added to Subpart GG to read as follows:

§ 63.759 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.741, 63.743, 63.744(a)(3), (b) through (e), 63.745 through 63.748, and 63.649(a).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart HH—[Amended]

■ 44. Section 63.771 is amended by revising paragraphs (c)(3)(i)(A) and (B) to read as follows:

§ 63.771 Control equipment requirements.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) At the inlet to the bypass device that could divert the stream away from the control device to the atmosphere, properly install, calibrate, maintain, and operate a flow indicator that is capable of taking periodic readings and sounding an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

* * * * *

■ 45. Section 63.773 is amended by revising paragraph (c)(2) introductory text and adding paragraph (c)(2)(iv) to read as follows:

§ 63.773 Inspection and monitoring requirements.

* * * * *

(c) * * *

(2) Except as provided in paragraphs (c)(5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2)(i) and (ii) of this section, each cover shall be inspected according to the procedures and schedule specified in paragraph (c)(2)(iii) of this section, and each bypass device shall be inspected according to the procedures of paragraph (c)(2)(iv) of this section.

* * * * *

(iv) For each bypass device, except as provided for in § 63.771(c)(3)(ii), the owner or operator shall either:

(A) At the inlet to the bypass device that could divert the steam away from the control device to the atmosphere, set the flow indicator to take a reading at least once every 15 minutes; or

(B) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

* * * * *

■ 46. Section 63.776 is revised to read as follows:

§ 63.776 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.760, 63.764 through 63.766, 63.769, 63.771, and 63.777.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart II—[Amended]

■ 47. Section 63.789 is added to Subpart II to read as follows:

§ 63.789 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.780 through 63.781, and 63.783 through 63.784.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart JJ—[Amended]

■ 48. Section 63.803 is amended by revising paragraph (a) to read as follows:

§ 63.803 Work practice standards.

* * * * *

(a) *Work practice implementation plan.*

(1) Each owner or operator of an affected source subject to this subpart shall prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture operation manufacturing operation and addresses each of the work practice standards presented in paragraphs (b) through (l) of this section. The plan shall be developed no more than 60 days after the compliance date.

(2) The written work practice implementation plan shall be available for inspection by the Administrator (or delegated State, local, or Tribal authority) upon request. If the Administrator (or delegated State, local, or Tribal authority) determines that the work practice implementation plan does not include sufficient mechanisms for

ensuring that the work practice standards are being implemented, the Administrator (or delegated State, local, or Tribal authority) may require the affected source to modify the plan. Revisions or modifications to the plan do not require a revision of the source's Title V permit.

(3) The inspection and maintenance plan required by paragraph (c) of this section and the formulation assessment plan for finishing operations required by paragraph (l) of this section are also reviewable by the Administrator (or delegated State, local, or Tribal authority).

* * * * *

■ 49. Section 63.808 is revised to read as follows:

§ 63.808 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the requirements in §§ 63.800, 63.802, and 63.803(a)(1), (b), (c) introductory text, and (d) through (l).

(2) Approval of alternatives to the monitoring and compliance requirements in §§ 63.804(f)(4)(iv)(D) and (E), 63.804(g)(4)(iii)(C), 63.804(g)(4)(vi), and 63.804(g)(6)(vi).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart, as well as approval of any alternatives to the specific test methods under §§ 63.805(a), 63.805(d)(2)(v), and 63.805(e)(1).

(4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart KK—[Amended]

■ 50. Section 63.831 is revised to read as follows:

§ 63.831 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.820 through 63.821 and 63.823 through 63.826.

(2) Approval of alternatives to the test method for organic HAP content determination in § 63.827(b) and alternatives to the test method for volatile matter in § 63.827(c), and major alternatives to other test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart LL—[Amended]

■ 51. Section 63.853 is revised to read as follows:

§ 63.853 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this regulation. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.840, 63.843 (with the exception of 63.843(b)(3)), 63.844, 63.845(a) introductory text, (a)(1), (b) through (e), (h), 63.846(a) through (c), and 63.847(a)(1) and (4).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart OO—[Amended]

■ 52. Section 63.908 is added to Subpart OO to read as follows:

§ 63.908 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.900 and 63.902.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and

(f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart PP—[Amended]

■ 53. Section 63.929 is added to Subpart PP to read as follows:

§ 63.929 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.920 and 63.922 through 63.924. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart QQ—[Amended]

■ 54. Section 63.949 is added to Subpart QQ to read as follows:

§ 63.949 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.940, 63.942, and 63.943. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions of subpart DD.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart RR—[Amended]

■ 55. Section 63.967 is added to Subpart RR to read as follows:

§ 63.967 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.960 and 63.962. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions subpart DD of this part.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart VV—[Amended]

■ 56. Section 63.1050 is added to Subpart VV to read as follows:

§ 63.1050 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1040 and 63.1042 through 63.1045. Where these standards reference subpart DD, the cited provisions will be delegated according to the delegation provisions of subpart DD of this part.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart CCC—[Amended]

■ 57. Section 63.1166 is revised to read as follows:

§ 63.1166 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (8) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1155, 63.1157 through 63.1159, and 63.1160(a).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of any alternative measurement methods for HCl and CL_2 to those specified in § 63.1161(d)(1).

(4) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of any alternative monitoring requirements to those specified in §§ 63.1162(a)(2) through (5) and 63.1162(b)(1) through (3).

(6) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

(7) Waiver of recordkeeping requirements specified in § 63.1165.

(8) Approval of an alternative schedule for conducting performance tests to the requirement specified in § 63.1162(a)(1).

Subpart DDD—[Amended]

■ 58. Section 63.1195 is revised to read as follows:

§ 63.1195 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1177 through 63.1180.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart EEE—[Amended]

■ 59. Section 63.1214 is added to Subpart EEE to read as follows:

§ 63.1214 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to requirements in §§ 63.1200, 63.1203 through 63.1205, and 63.1206(a).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart GGG—[Amended]

■ 60. Section 63.1261 is revised to read as follows:

§ 63.1261 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1250 and 63.1252 through 63.1256. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart HHH—[Amended]

■ 61. Section 63.1281 is amended by revising paragraphs (c)(3)(i)(A) and (B) to read as follows:

§ 63.1281 Control equipment requirements.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) At the inlet to the bypass device that could divert the stream away from the control device to the atmosphere, properly install, calibrate, maintain, and operate a flow indicator that is capable of taking periodic readings and sounding an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device to the atmosphere; or

(B) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

* * * * *

■ 62. Section 13.1283 is amended by revising paragraph (c)(2) introductory text and adding paragraph (c)(2)(iii) to read as follows:

§ 63.1283 Inspection and monitoring requirements.

* * * * *

(c) * * *

(2) Except as provided in paragraphs (c)(5) and (6) of this section, each closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (c)(2)(i) and (ii) of this section and each bypass device shall be inspected according to the procedures of (c)(2)(iii) of this section.

* * * * *

(iii) For each bypass device, except as provided for in § 63.1281(c)(3)(ii), the owner or operator shall either:

(A) At the inlet to the bypass device that could divert the steam away from the control device to the atmosphere, set the flow indicator to take a reading at least once every 15 minutes; or

(B) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device.

* * * * *

■ 63. Section 63.1286 is revised to read as follows:

§ 63.1286 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1270, 63.1274 through 63.1275, 63.1281, and 63.1287.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart III—[Amended]

■ 64. Section 63.1309 is revised to read as follows:

§ 63.1309 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1290, 63.1291, 63.1293 through 63.1301, and 63.1305.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of alternatives to the specific monitoring requirements of § 63.1303(b)(5).

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart JJJ—[Amended]

■ 65. Section 63.1336 is added to Subpart JJJ to read as follows:

§ 63.1336 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal

agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1310 through 63.1311, 63.1313 through 63.1315(a)(1) through (9), (11) through (18), (b) through (e), 63.1316, 63.1321 through 63.1322, 63.1323(a), (b)(1) through (4), (b)(5)(iv) through (v), (b)(6) through (7), (c) through (j), and 63.1328 through 63.1332. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart LLL—[Amended]

■ 66. Section 63.1358 is revised to read as follows:

§ 63.1358 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1340, 63.1342 through 63.1348, and 63.1351.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart MMM—[Amended]

■ 67. Section 63.1362 is amended by revising paragraphs (j)(1) and (j)(2) to read as follows:

§ 63.1362 Standards.

* * * * *

(j) * * *

(1) Install, calibrate, maintain, and operate a flow indicator that is capable of determining whether vent stream flow is present and taking frequent, periodic readings. Records shall be maintained as specified in § 63.1367(f)(1). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration. Records shall be maintained as specified in § 63.1367(f)(2).

* * * * *

■ 68. Section 63.1366 is amended by revising paragraph (b)(1)(xiii) to read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(1) * * *

(xiii) *Closed-vent system visual inspections.* The owner or operator shall comply with the requirements in either paragraph (b)(1)(xiii)(A) or (B) of this section:

(A) Set the flow indicator at the entrance to any bypass line that could divert the stream away from the control device to the atmosphere to take a reading at least once every 15 minutes; or

(B) If the bypass device valve installed at the inlet to the bypass device is secured in the closed position with a car-seal or lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

* * * * *

■ 69. Section 63.1369 is revised to read as follows:

§ 63.1369 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1360 and 63.1362 through 63.1364. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart NNN—[Amended]

■ 70. Section 63.1388 is added to Subpart NNN to read as follows:

§ 63.1388 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has

delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1380, 63., and 63.1387.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart OOO—[Amended]

■ 71. Section 63.1419 is revised to read as follows:

§ 63.1419 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1400 through 63.1401 and 63.1404 through 63.1410. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart PPP—[Amended]

■ 72. Section 63.1421 is revised to read as follows:

§ 63.1421 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1420, 63.1422, 63.1424 through 63.1428, and 63.1432 through 63.1436. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart RRR—[Amended]

■ 73. Section 63.1519 is revised to read as follows:

§ 63.1519 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this regulation. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this regulation to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1500 through 63.1501 and 63.1505 through 63.1506.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart TTT—[Amended]

■ 74. Section 63.1550 is revised to read as follows:

§ 63.1550 Implementation and enforcement.

(a) This subpart will be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1541, 63.1543(a) through (c), (f) through (g), and 63.1544 through 63.1545.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart VVV—[Amended]

■ 75. Section 63.1594 is revised to read as follows:

§ 63.1594 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.1580, 63.1583 through 63.1584, and 63.1586 through 63.1587.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

Subpart XXX—[Amended]

■ 76. Section 63.1661 is revised to read as follows:

§ 63.1661 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to requirements in §§ 63.1650 and 63.1652 through 63.1654.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

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June 23, 2003

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2003–04 Hunting Season With Request for 2004 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2003–04 Hunting Season With Request for 2004 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2003–04 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces the Service Migratory Bird Regulations Committee and Flyway Council meetings; provides Flyway Council recommendations resulting from their March meetings; requests proposals for the 2004 spring/summer migratory bird subsistence season in Alaska; and finalizes regulatory alternatives for the 2003–04 duck hunting seasons.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 18 and 19, 2003, and for late-season migratory bird hunting and the 2004 spring/summer migratory bird subsistence seasons in Alaska on July 30 and 31, 2003. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by July 30, 2003, and for proposed late-season frameworks and subsistence hunting seasons in Alaska by August 30, 2003.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks in early July, late-season frameworks in early August, and subsistence seasons in Alaska in September. We will publish final regulatory frameworks for early seasons on or about August 20, 2003, for late seasons on or about September 15, 2003, and for subsistence seasons in Alaska in November 2003.

Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 18–19, 2003, to review information on the current status of migratory shore and upland game birds and develop 2003–04 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the July 30–31, 2003, meetings, the Committee will review information on the current status of waterfowl and develop 2003–04 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In addition, the Committee will develop recommendations for the 2004 spring/summer migratory bird subsistence season in Alaska.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

Atlantic Flyway Council: July 21–25, Allenberry Resort Inn, Boiling Springs, Pennsylvania.

Mississippi Flyway Council: July 23–26, Holiday Inn in Traverse City, Michigan.

Central Flyway Council: July 21–25, Quality Inn, Taos, New Mexico.

Pacific Flyway Council: July 21–23 and July 25, Vail Cascade Resort, Vail, Colorado.

Request for 2004 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring/

summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This supplemental rule calls for proposals for regulations that will expire on August 31, 2004, for the spring/summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open after March 11 and close prior to September 1.

Alaska Spring/Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring/summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR Part 92. General relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council.* (1) Proposals may be submitted by the public to the Co-management Council during the period of November 1–December 15, 2003, to be acted upon for the 2005 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES.**

(b) *Flyway councils.* (1) Proposed 2004 regulations recommended by the Co-management Council will be submitted to all Flyway Councils for review and comment. The Council's recommendations must be submitted prior to the SRC's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service regulations committee.* Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring/summer regulations for Alaska will be published in the **Federal Register** in the preceding Fall.

Because of the time required for our and public review, proposals from the Co-management Council for the 2004 spring/summer migratory bird subsistence harvest season should be submitted to the Flyway Councils and the Service by June 15, 2003, for their comments and Service action on July 30–31, 2003.

Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the May 6, 2003, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals. This supplement does not include recommendations that simply support or oppose preliminary proposals and provide no recommended alternatives. We will consider these recommendations later in the regulations-development process. We will publish responses to all proposals and written comments when we develop final frameworks. In addition, this supplemental rulemaking contains the final regulatory alternatives for the 2003–04 duck hunting seasons. We have included all Flyway Council recommendations received relating to the development of these alternatives.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the May 6, 2003, proposed rule. Only those categories requiring your attention or for which we received Flyway Council recommendations are discussed below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council recommended that selection of the appropriate regulatory alternative for the Atlantic Flyway should be based on optimal harvest strategies for eastern mallards. The Council also recommended that annual changes in regulations should be limited to no more than one step up or down among the regulatory alternatives (*e.g.*, from ''liberal'' to ''moderate,'' but not ''liberal'' to ''restrictive'').

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended limiting regulation changes to one step annually, and also that hunting seasons should remain open above the range of mallard population and pond levels where hunting seasons were open historically.

The Central Flyway Council recommended placing a constraint on the Adaptive Harvest Management (AHM) process that ensures seasons will remain open when mallard breeding populations (traditional breeding areas plus the Great Lakes region) exceed 5.5 million. The Central Flyway Council did not support limiting annual regulatory changes to one step each year.

The Pacific Flyway Council also recommended placing a constraint on the AHM process that ensures seasons will remain open when mallard breeding populations (traditional breeding areas plus the Great Lakes region) exceed 5.5 million, due to the fact that it appears to have relatively little impact on the frequency of ''moderate'' and ''liberal'' seasons. However, the Pacific Flyway Council did not support limiting annual regulatory changes to one step because it appears to make the harvest strategy more conservative overall.

Written Comments: The Illinois Department of Natural Resources and the Colorado Division of Wildlife did not support placing a limitation on changes in regulations to one step each year. Further, the Illinois Department of Natural Resources recommended that hunting seasons should remain open above the range of mallard population and pond levels where hunting seasons were open historically, and the Colorado Division of Wildlife recommended placing a constraint on the AHM process that ensures seasons will remain open when mallard breeding populations (traditional breeding areas plus the Great Lakes region) exceed 5.5 million.

Service Response: As recommended by the Atlantic Flyway Council, we will continue to select a regulatory alternative in the Atlantic Flyway based on the status of eastern mallards. However, we reiterate that this arrangement is still considered provisional, and it is important to press forward with development of an adaptive harvest strategy for the Atlantic Flyway that appropriately accounts for other key species in the harvest, such as black ducks and wood ducks.

We understand the desires of the Atlantic and Mississippi Flyway Councils to limit changes in annual

regulations to one step because it is expected to significantly reduce temporal variability in hunting regulations, as well as lower the prospect of closed hunting seasons. These benefits are expected to accrue with little or no impact to the size of the mallard population or harvest. However, the Central and Pacific Flyway Councils oppose the ''one-step'' constraint, principally because it is expected to significantly reduce the frequency of liberal seasons. We believe that further discussion of the ''one-step'' constraint is needed to develop consensus regarding the trade-offs inherent in this constraint. Consensus is necessary because it is not feasible to permit this constraint for some Flyways and not others (since all Flyways must share a common management objective for shared breeding stocks). Therefore, we will not implement the ''one-step'' constraint for the 2003–04 duck-hunting season.

There has been longstanding concern within the waterfowl management community about the prospect of closed seasons arising from the AHM process for midcontinent mallards in instances where the biological data and historical experience show that may not be necessary. Based on the management objective that has been in place since 1996, closed hunting seasons might be prescribed in about 30% of all years in the three western Flyways as a way to more rapidly increase mallard population size when it falls below the goal of the North American Waterfowl Management Plan. The Flyway Councils' recommendation would significantly reduce the frequency of closed-season prescriptions (to about 17% of all years), apparently with little biological impact. Based on current biological assessments, closed hunting seasons do not appear to be necessary from the perspective of sustainable harvesting when the midcontinent mallard population (traditional survey area plus the Great Lakes region) exceeds 5.5 million. The impact of maintaining open seasons above this level also appears to be negligible for other midcontinent duck species (scaup, gadwall, wigeon, green-winged teal, blue-winged teal, shoveler, pintail, redhead, and canvasbacks). Therefore, we intend to accept the recommendation to maintain open duck-hunting seasons when the midcontinent mallard population is above 5.5 million. However, we note that closed seasons targeted at particular species or populations could still be necessary in some situations regardless of the status of midcontinent mallards.

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council, the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended that regulatory alternatives for duck-hunting seasons remain the same as those used in 2002, with the exception that the ''very restrictive'' alternative be eliminated.

The Pacific Flyway Council supports framework-date extensions as outlined in the Service's May 6, 2003, **Federal Register**, and notes that selection of framework extensions is contingent on approval by State wildlife regulatory organizations.

Written Comments: The Illinois Department of Natural Resources and the Colorado Division of Wildlife supported elimination of the ''very restrictive'' alternative.

Service Response: We note that expected harvest rates under the ''very restrictive'' alternative do not differ significantly from those under the ''restrictive'' alternative. Moreover, the ''very restrictive'' alternative would be expected to be prescribed for only about 5% or less of all hunting seasons. Because elimination of the ''very restrictive'' alternative appears to have negligible resource impacts, we concur with the recommendation of all four Flyway Councils and intend to eliminate this alternative from consideration for the 2003–04 hunting season. All other aspects of the regulatory alternatives will remain as proposed in the May 6 **Federal Register**.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that States that have participated in the recent experimental teal season (Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia) be offered an operational September teal season beginning in 2003. They recommend that the season run for nine consecutive days during September 1–30, 2003, with a bag limit not to exceed four teal, whenever the breeding population estimate for blue-winged teal exceeds 3.3 million in the traditional survey area. Delaware, Georgia, North Carolina, and Virginia may have shooting hours between one-half hour before sunrise to sunset, while shooting hours for Maryland and South Carolina may be between sunrise and sunset.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the 16-day September teal seasons continue to be used when the blue-winged teal breeding population is at or above 4.7 million, based on the recently completed report, ''Assessment of 16-Day September Teal Seasons 1998–2000 in the Central and Mississippi Flyways.''

The Central Flyway Council recommended that Nebraska's experimental September teal season become operational.

ii. September Teal/Wood Duck Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the bag limit for Florida's special September wood duck and teal season remain at 4 wood ducks and teal in the aggregate.

iv. Canvasbacks

Council Recommendations: The Atlantic Flyway Council recommends modifying the 1994 Canvasback Harvest Strategy to allow for a limited canvasback harvest (season within a season) during years when the predicted harvest exceeds the allowable harvest, but can still be achieved by a more restrictive package (moderate, restrictive, or very restrictive). The season closure threshold would remain at a predicted spring breeding population of 500,000.

The Central Flyway Council recommended that the existing interim harvest strategy for canvasbacks be followed during the 2003–04 season.

v. Pintails

Council Recommendations: The Central Flyway Council recommended that the existing interim harvest strategy for pintails be followed during the 2003–04 season.

vii. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow all States the option of holding ''youth waterfowl hunt days'' on nonconsecutive hunting days, while maintaining the requirement that they must be held on non-school days.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service increase the September Canada goose hunting season bag limit to 8, with no possession limit beginning with the 2003–04 hunting season. They further recommended that North Carolina's Northeast Hunt Zone Special September Canada goose season

framework be extended from September 20 to September 30. They also recommended that Rhode Island's September resident Canada goose season framework dates of September 1 to September 30 be made operational.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the experimental early Canada goose season in Huron, Tuscola, and Saginaw counties in Michigan be extended for 1 year. Further, the Committees recommended that the Service grant operational status to Minnesota's Special September Canada Goose Season extension (16–22 September).

The Central Flyway Council recommended that South Dakota's 3-year experimental September Canada goose season (September 16–30) become operational for all of eastern South Dakota (east of the Missouri River) beginning in 2003.

The Pacific Flyway Council recommended that Wyoming's special season framework for the Rocky Mountain population of western Canada geese would consist of an 8-day season during September 1–15 in Bear River, Salt River, Farson-Eden Area, Bridger Valley, and Teton Counties, and the Little Snake River drainage portion of Carbon County. All participants must have a valid State permit for the special season. The number of permits may not exceed 240 in the Bear River, Salt River, Farson-Eden Area, and Bridger Valley area, and 20 permits in the Little Snake River drainage portion of Carbon County. The daily bag limit would be 3, with season and possession limits of 6. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2003. The Committees also recommended that the harvest index (quota) in Minnesota's Lac qui Parle Goose Zone be eliminated beginning in 2003.

The Central Flyway Council recommended regular season frameworks for dark geese in the west-tier States consist of a framework opening date of the Saturday nearest September 24 (September 27, 2003) and a framework closing date of the Sunday nearest February 15 (February 15, 2004). The season could be divided into 2 segments, except in Wyoming, where the season could be divided into 3 segments and evaluated in accordance with Service criteria. Season length would be 107 days, except in Colorado and Texas, where the season length would be 95 days. Daily bag limit would be 5 dark geese in the aggregate, with the following exceptions: (a) In the Western Goose Zone of Texas, the daily bag limit would be 1 white-fronted goose and 3 other dark geese (in the aggregate), and (b) in Colorado, the daily bag limit would be 3 dark geese in the aggregate. The possession limit would be twice the daily bag limit.

C. Special Late Season

Council Recommendations: The Atlantic Flyway Council recommended that Massachusetts' late Canada goose southern boundary of the coastal zone be extended from the present boundary in Duxbury, south to the Cape Cod Canal.

8. Swans

Council Recommendations: The Central Flyway Council recommended that up to 200 tundra swan permits be temporarily transferred from South Dakota to North Dakota beginning in the 2003 season.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended accepting the 2002 Rocky Mountain population of sandhill cranes harvest allocation of 668 birds as proposed by the Pacific Flyway.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program.

Endangered Species Act Consideration

Prior to issuance of the 2003–04 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat

and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite 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 understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In 1998, we analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and issued a Small Entity Flexibility Analysis (Analysis). The 1998 Analysis documented the significant beneficial economic effect on a substantial number of small entities and estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, which is conducted at 5-year intervals. The 1998 Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns. In 2002, the results from the 2001 National Hunting and Fishing Survey were released. This year, we will update the 1998 Analysis with information from the 2001 National Hunting and Fishing Survey. Copies of the 1998 Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their

own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: June 13, 2003.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2003-04 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2
Pintail	<----ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY---->											
Black Duck	1	1	1	1	1	1	-	-	-	-	-	-
Scaup (d)	<----TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION---->											
Canvasback	<----0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY---->											
Redhead	2	2	2	1	2	2	1	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	-	-	-
Whistling Ducks	1	1	1	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	3	3	3	1	1	1	-	-	-

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the restrictive alternative, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 03–15659 Filed 6–17–03; 2:54 pm]

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Federal Register

Monday,
June 23, 2003

Part VI

Office of Management and Budget

Office of Federal Financial Management; Policy Directive on Financial Assistance Program Announcements; Standard Data Elements and Government-Wide Guidance for Electronically Posting Synopses at Grants.gov FIND; Notices

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management Policy Directive on Financial Assistance Program Announcements

AGENCY: Office of Management and Budget.

ACTION: Notice of issuance of final policy directive.

SUMMARY: The Office of Federal Financial Management (OFFM) is issuing a policy directive to establish a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The purpose of the standard format is to have information organized in a consistent way in announcements for the hundreds of Federal programs that make financial assistance awards. A government-wide format will help potential applicants more easily and quickly find the information they need about Federal opportunities. The Federal awarding agencies jointly developed this format as part of their grant streamlining efforts to implement the Federal Financial Assistance Management Improvement Act of 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–3053; fax 202–395–3952; e-mail *ephillip@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a **Federal Register** notice [67 FR 52548] published on August 12, 2002, the Office of Management and Budget (OMB) proposed a standard format for announcements of funding opportunities under Federal programs that make discretionary awards of grants or cooperative agreements. The OMB notice also proposed an OFFM policy letter to establish the announcement format as the government-wide standard for Federal agency use. We received comments from 22 organizations: two State governments; one local government; five universities; one association of academic institutions; a group of universities that participate with Federal agencies in a demonstration program on research administration; a non-profit organization; two organizations representing non-profit entities; an association of auditors; and eight Federal agencies. We considered all comments in developing the final announcement format and OFFM policy letter.

We will continue to consider these comments separately from this notice because some raise questions that are beyond the scope of the announcement format and associated policy letter. Most of those comments concern electronic business practices to be used in conjunction with announcements, and these will be considered as the Grants.gov (formerly called E-Grants) Program Management Office develops the Government-wide portal for electronic grants transactions. We also received comments related to another **Federal Register** notice published on the same day [67 FR 52554], which proposed data elements for electronically posting synopses of announcements at Grants.gov FIND (formerly called FedBizOpps). Those comments are mentioned here to the extent that changes to the announcement format could affect the Grants.gov FIND proposal. Comments that are specific to the Grants.gov FIND data elements are addressed in the **Federal Register** notice establishing the final data elements, which immediately follows this notice.

Comments on this notice strongly supported the overall proposal to create a government-wide standard format. The following paragraphs summarize the major comments and our responses. The comments are grouped by the portion of the OFFM policy letter or announcement format to which they apply. In addition to the changes to the policy letter and format that are described in the following paragraphs, we made other changes to increase readability or to maintain consistency with other streamlining initiatives that are taking place in parallel with this effort.

II. Comments and Responses

A. Comments on the Office of Federal Financial Management (OFFM) Policy Letter

Comment: Three commenters recommended that we require use of the standard announcement format in agency programs that either: (1) announce their funding opportunities in the **Federal Register**; or (2) do not have announcements separate from their *Catalog of Federal Domestic Assistance* (CFDA) listings. The commenters suggested that exempting those programs from the requirement to use the standard format could discourage agencies from publishing funding opportunities more broadly.

Response: No change. The proposed policy letter did not exempt programs that announce opportunities in the **Federal Register** from the requirement to use the standard format. It applies the requirement equally to all discretionary assistance programs that issue funding opportunity announcements separate from their CFDA listings, including programs that publish announcements in the **Federal Register**.

In contrast, the proposed policy letter distinguishes agency programs that do not issue separate announcements and rely on their CFDA listings to disseminate information to prospective applicants. We understand that the specific recipient communities for these programs are accustomed to doing business in this way. The policy letter therefore continues to exempt those programs from the requirement to use the standard announcement format. Those programs will continue to be subject to the CFDA's standard formatting requirements.

Comment: One commenter suggested that all funding opportunities be available on the Internet and hyperlinked to Grants.gov FIND.

Response: Agree. We modified the OFFM policy letter to require agencies to post on the Internet funding opportunity announcements that are open to domestic applicants. An agency either will upload its announcement to Grants.gov FIND or provide an Internet address that Grants.gov FIND may use to link from the synopsis to the full announcement.

Comment: One commenter indicated that the mechanism we use to require agencies to adopt the standard announcement format will affect whether the agencies adopt it uniformly and in a timely manner. The commenter urged us to require agencies to implement the new requirement at the same time, preferably through amendments to OMB Circulars A–102 and A–110.

Response: No change. Agencies will be required to adopt the common format by means of the OFFM policy letter. We expect all agencies to issue announcements using the standard format no later than 12 months after the effective date of the policy letter, which gives any agency that must amend a regulation to implement the new requirement sufficient time to do so. Amendments to OMB circulars are not prerequisites for implementing the requirement to use the standard announcement format and would only delay implementation.

B. Comments on Announcement Format

1. General

Comment: Two commenters indicated that announcement writers' formatting and writing styles, such as the use of headlines and more space between areas of text, could make announcements more user-friendly and effective. They recommended that we try to eliminate stylistic differences by further standardizing and improving the announcement format, perhaps through a government-wide form or template that also would ensure compliance with format and content requirements.

Response: No change. The OFFM policy letter is sufficient to ensure compliance with the broad format and content requirements of the standard announcement format. A form or template is not needed for that purpose. Individuals within the agencies necessarily must write the detailed content for inclusion in the standard format, to describe agency-specific and program-specific requirements and business rules. It is beyond the scope of this effort to try to regulate the writing styles and abilities of those individuals.

2. Overview Information

Comment: Seven commenters recommended that we increase standardization by requiring every Federal agency announcement to present overview information in the same sequential order. The commenters differed on what the basis should be for determining the standard order (*e.g.*, parallelism with the full text of the announcement or with the Grants.gov FIND synopses, as discussed in comments and responses following this one). Some of the commenters also recommended that funding opportunity announcements that are issued in the **Federal Register** should be required to present overview information in the same order as announcements appearing in other places.

Response: Agree in part. These comments raise four related issues described in the following paragraphs. We significantly revised the overview segment of the format to incorporate changes discussed below and to provide a clearer explanation of the use of overviews, since we could infer from some comments that this section in the proposed format was confusing.

The first issue is whether Federal agencies should be required to include an overview in every announcement. As proposed in August, the announcement format stated that agencies must display prominently certain key information in a location preceding the full text of the announcement. In that sense, it required every announcement to include overview information. The final format retains that requirement for presentation of certain key information before the full text.

The second issue is whether to mandate a standard way that each announcement must present the overview information. The proposed format gave agencies three options: to include the overview information in an Executive Summary, to display it on the cover and/or inside cover of the announcement, or to integrate it into the standard format of a **Federal Register** notice. Due to the widely varying nature of Federal programs that will use the standard announcement format, the final format retains the three options.

The third issue is whether to specify a standard set of information that each overview must contain. The proposed format had four overview elements labeled as ''required''—the agency name, funding opportunity title, CFDA number, and key dates (such as application due dates). It listed three additional elements as optional—the program name, funding opportunity number, and CFDA title. It also gave examples of other information an agency might wish to include if it used an Executive Summary. We proposed the format with that approach after Federal agencies prepared some sample program announcements to test the viability of mandating a single set of overview elements for all announcements. The tests revealed that rigid use of a single prescription would make many program announcements harder to read and use, especially short announcements that were significantly lengthened by including a full set of overview information. Therefore, the final announcement format continues to specify some items of overview information that are required and suggest additional items that are optional.

The fourth issue is whether to specify a standard sequential order for the overview information. We revised the final announcement format to specify a standard order of presentation for required elements. We also added guidance advising agencies to present any optional elements in an order that parallels the organization of the full text of the announcement. This sequential order is the standard, whether the overview information is presented in an executive summary, on the cover or inside cover, or in the Supplementary Information section of a **Federal Register** notice. Grants.gov FIND will present synopsis information in an order paralleling this structure, to the extent that synopsis data elements are identical or similar to elements in the announcement overview.

Comment: Two commenters suggested making the overview section of the announcement identical, both in content and in sequential order, to the Grants.gov FIND synopsis of the funding opportunity.

Response: Agree in part. The Grants.gov FIND synopsis and the announcement overview should not be identical in *content.* The content of each should match its intended purpose and their purposes are not the same. The Grants.gov FIND synopsis should present only the minimum information a person needs in order to decide whether to review the full announcement. A full announcement's overview section, in contrast, is for people who have decided to review the full announcement and may be preparing applications. It therefore should have certain information elements that are not needed at Grants.gov FIND and also should include more detailed information about elements shared with Grants.gov FIND (*e.g.*, how much cost sharing is required). However, we did identify one new Grants.gov FIND data element—whether an announcement is for a new funding opportunity or modifies a previously announced opportunity—that is appropriate for the overview section of the full announcement. We therefore added it to the overview section.

While the content of the Grants.gov FIND and the announcement overview should not be identical, we agree that it would be helpful to make the *order* of presentation parallel in cases where they present identical or similar information. The order at Grants.gov FIND therefore will parallel the order in the overview.

Comment: One commenter suggested making the sequential order of the announcement's overview section identical to that of the full announcement text.

Response: Agree in principle. For elements of overview information that have corresponding sections in the full announcement text, we revised the format to make the order of overview presentation parallel that of the full text. This is not possible for other overview information, such as the agency name, that does not appear as a separate element in the full text.

Comment: Four commenters indicated that it would be helpful to add a ''keywords'' section relating to specific areas of funding, such as scientific and engineering research areas, to help people more quickly narrow their searches to announcements of interest.

Response: No change. It is extremely difficult to identify a single and unchanging set of keywords that can properly categorize the many overlapping areas across the broad spectrum of Federal programs. The use of a set of keywords that inadequately categorizes opportunities could lead a potential applicant to forego reading an announcement and thereby miss a relevant opportunity. A better approach is for program officials to ensure that each full announcement describes program areas using the current terminology that performers for that program—*e.g.*, principal investigators for a research program—would use, so potential applicants' full text searches will find opportunities of interest (note also that Grants.gov FIND synopses of funding opportunities will have full text search capabilities). We will consider adding keywords in future enhancements of the announcement format, if an appropriate set can be identified.

Comment: One research institution suggested adding an activity type classification that identifies the funding opportunity to facilitate classification of projects in the OMB Circular A–133 Schedule of Federal Expenditures and identification of R&D expenditures in the National Science Foundation (NSF) expenditure survey.

Response: No change. The information needed by a potential applicant differs significantly from the information required for either OMB Circular A–133 or the NSF expenditure survey. The CFDA number is the key for OMB Circular A–133, and the announcement format includes that number. For the NSF expenditure survey of research funding, one has the same complication described in the response to the previous comment; a recipient ultimately reports data based on researchers' actual disciplines, which frequently cannot be predicted at the time of announcement.

Comment: One commenter suggested that the overview element entitled ''Agency Name'' should not include the agency mailing address and zip code.

Response: Agree. The agency mailing address does not serve a purpose in the overview. In the full text of the announcement, mailing addresses are provided in the appropriate contexts (*e.g.*, where to submit a hard-copy application).

Comment: Four commenters recommended that the agency contact information in Section VII (including name, mailing address, e-mail address, and telephone and fax numbers) also appear in the overview section.

Response: No change. We did not include that information in the overview section because a person generally should not contact the agency after reading only the overview. If he or she has questions after reviewing the full announcement, it would be more appropriate to contact the agency at that time for clarification or further information.

Comment: Seven commenters suggested that we include additional information in the overview to help a potential applicant decide whether to review the full text of the announcement. The suggestions include information about eligible organizations; eligible expenses; whether funding will be for one year or a multi-year period; the total amount expected to be awarded; the anticipated number and average dollar amount of individual awards; types of funding instruments; geographic restrictions; cost-sharing requirements; and limits on numbers of proposals.

Response: Agree in part. We added the total amount expected to be awarded, anticipated amounts and/or numbers of awards, cost sharing, types of funding instruments, and limits on numbers of applications as examples of information that an agency might appropriately include in an overview in addition to the required elements. The proposed format already included eligible organizations as an example. We have not included the other suggested information elements for two reasons. First, an overview's primary purpose is to provide a high-level summary to help a potential applicant quickly decide whether to read the details of the full announcement. Second, the level of detail that an overview provides is much less than the level in the full announcement; trying to treat some of the suggested information in a shorthand fashion easily could mislead rather than aid the reader.

Comment: One commenter suggested that we change the description of the overview information element under the heading ''Funding Opportunity Number—Optional.'' The description in the proposed format read: ''Your agency may wish to assign identifying numbers to announcements.'' The commenter suggested changing it to: ''Required if agency has assigned one. If your agency has assigned an identifying number to an announcement, list it here so that the announcement will be easier to locate on an agency or department web site by number.''

Response: Agree with the substance of the comment and modified the language to require the information, if applicable.

Comment: One commenter said that if we use both a CFDA number and agency-based Funding Opportunity Number, we should explain the difference between the two and provide clear directions about when to use which number, or when both are required.

Response: No change to the announcement format. An agency must include the CFDA number in the announcement so that a potential applicant may consult the CFDA to obtain further information about the program. Because an agency may issue multiple announcements of funding opportunities under a given CFDA number, it may assign a number to each funding opportunity to: (1) Associate each incoming question or application with the specific announcement to which it relates; and (2) allow potential applicants to align any published changes to an announcement with the original announcement.

Comment: One commenter suggested the CFDA number and title are not necessary in the overview because that information is useful when preparing an application but not for preliminary review to determine interest in the announced opportunity as a potential source of funding.

Response: No change. The CFDA number serves the purposes described in the response to the comment immediately preceding this one.

Comment: One commenter indicated that it is reasonable to mandate an executive summary but the ''cover and/or inside cover'' seems redundant in relation to what is provided elsewhere in the overview.

Response: The executive summary and the cover/inside cover are not redundant. Rather, they are two alternative ways that an agency may present the overview information (*i.e.*, an agency could use one or the other, but would not use both). We revised the format to clarify that distinction.

Comment: One commenter asked us to clarify in the ''dates'' section whether the due date is the day the proposal must arrive at the agency or whether it is the postmark date.

Response: No change at this time. This announcement format is an interim product of the grants streamlining effort under the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). We are issuing it now so that potential applicants can begin to realize the benefits of a standard format while we continue to consider other suggestions contained in the public comments we received under Pub. L. 106–107. One of those suggestions was to establish a uniform approach to

defining what constitutes a late application. Future updates to the format will reflect any changes we make as a result of that suggestion.

3. Full Text of Announcement

i. General Comments

Comment: Four commenters recommended increased use of data elements and table-driven formats, rather than text, to make it easier to locate data needed for electronic systems. The commenters noted that this approach would allow for system-to-system exchanges, set the standards for maintaining them, and help ensure consistent data for funding opportunities. They suggested that pre-loading data (*e.g.*, agency, program, CFDA number, deadline dates, and addresses) can streamline application preparation, simplify life cycle management, reduce data entry, and lessen the possibility of data entry error. As a specific example, one commenter suggested that the table of application components shown as an illustration in Section IV.3 be required (or be communicated as bullets) along with due dates.

Response: No change at this time. We appreciate the comment and the long-term potential of electronic capabilities, particularly as technology advances and more potential applicants acquire the capability for system-to-system connectivity. We therefore will consider increased use of tables and data elements as we prepare future updates of the announcement format.

Comment: Two commenters suggested that we instruct agencies to avoid use of cross-references whenever possible. For on-line announcements, any cross-references should be hyperlinked to the referenced information.

Response: We modified the announcement format to recommend that agencies provide hyperlinks to cross-referenced sections.

Comment: One commenter stated that some items of information identified for inclusion at the agency's option are important enough to be required for all announcements. The commenter mentioned a number of different items including information on: the level of funding available; the expected number of awards; application submission, with clear references or hyperlinks to any general requirements that apply to multiple opportunities; performance standards and goals; any eligibility and co-pay requirements for beneficiaries; and details of local match funds.

Response: Agree in part. We revised Section III.3 to clarify that the section must include any eligibility criteria for beneficiaries' eligibility. Section IV.2 already requires the information on application submission; for requirements applicable to multiple programs, that section must state the requirements or provide a reference to another source for the information.

We added a second reference to two other suggested items of information but retained them as agency options. Section II of the format listed information about the level of funding and expected number of awards as examples of information a program office might include in that section. In light of the comment, we revised the final format to also give them as examples of information that an agency could include in its overview.

The final format does not include requirements for the other suggested information elements. It is neither practical nor desirable to lengthen the format by trying to make it a comprehensive list of requirements for all Federal agency programs. The format is intended primarily as a framework to be used by program officials who prepare announcements, as they are in the best position to judge what is information is needed by potential applicants for their programs. The framework will help them organize the information so that potential applicants can find similar information in the same parts of all announcements.

ii. Specific Sections of the Announcement

Comment: One commenter suggested that Section II, ''Award Information,'' include the earliest anticipated start date.

Response: No change. We expect that agencies will continue to provide information about ''earliest anticipated start dates'' when doing so is appropriate, given the agencies' business practices for the particular funding opportunities.

Comment: Two commenters suggested revising Section II as it relates to the information an agency supplies about its anticipated ''substantial involvement'' in cooperative agreements. One commenter recommended that an agency's inclusion of details on its anticipated involvement should be optional. In contrast, the other commenter thought it important for the announcement to include this information—and not refer potential applicants to other sources—because it is too important to their decisions about whether to apply.

Response: No change. The section's use of ''should,'' rather than ''must,'' already makes inclusion of the information an agency option, as recommended by the first commenter. We believe that agencies will provide this detail when they judge that it is relevant to potential applicants, both in deciding whether to apply and in preparing applications. As for allowing announcements to reference other sources for that information, doing so avoids lengthening announcements by having to fully restate information that appears elsewhere.

Comment: One commenter suggested including information concerning the eligibility requirements (if any) of the principal investigator in Section II, ''Award Information.''

Response: No change. Section III, ''Eligibility Information,'' already states that the agency should address any factors affecting the eligibility of principal investigators or project directors.

Comment: One commenter suggested that the term ''cost sharing'' in Section III.2 may confuse readers and asked that we replaced it with the term ''local match.'' The commenter stated that most non-profits use ''local match'' to refer to the type of requirement described in the announcement format and that, in some States, ''cost sharing'' refers to co-payments by beneficiaries.

Response: Agree in principle. In response to this comment, we expanded the title of the section to ''cost sharing or matching.'' The revised section title includes both terms currently used in OMB Circulars A–102 and A–110, the circulars containing the government-wide guidance on this subject for awards to States, local and tribal governments, institutions of higher education, and other nonprofit organizations. In the full text of that section, we expect that each program office will use the term that conforms best with what is predominately used by their potential applicants.

Comment: Two commenters asked for additional coverage in Section III.2 on preferences for the type of cost sharing or matching. The commenters noted that OMB Circulars A–102 and A–110 allow recipients to meet matching or cost-sharing requirements either by providing cash or in-kind contributions but added that some agencies have additional requirements on the types of cost sharing or matching that they will accept. One commenter asked that the announcement be clear about any agency requirement and how it affects the evaluation of an application. The other commenter suggested that the format require Federal agencies to describe whether cost sharing at a particular level is required by statute or, although required, is negotiable. The second commenter also questioned

whether an agency, in the absence of a statute, has the authority to express a preference for the way in which an applicant/recipient may meet a cost-sharing or matching requirement.

Response: Agree in part. The format already distinguishes between cost sharing in Section III.2 as an eligibility criterion (*i.e.*, required for an application to be eligible, and not negotiable) and in Section V.1 as a review criterion. In response to the comments, we added statements in Sections III.2 and V.1 indicating the need to clearly state any restrictions on the allowability of cash or in-kind contributions. Section III.2 includes cost sharing imposed by statute, regulation, or administrative decision of the agency; the question of an agency's statutory or regulatory authority with respect to types of cost sharing for any particular program is beyond the scope of the announcement format and appropriately is raised with the agency.

Comment: One commenter asked that we clarify in Section III.3 whether ''limiting the number of applications an applicant may submit'' pertains to the organization, the individual principal investigator, or both.

Response: We revised this section to require agencies to address how any limitation on the number of applications applies.

Comment: One commenter suggested revising the full text of the announcement format to include the agency's World Wide Web address and an electronic link where one could get a copy of the application and other materials.

Response: The format's Section IV.1 already addresses the use of an Internet address.

Comment: One commenter suggested that we replace ''should'' with ''must'' in the sentence of Section IV.1 that says the agency should provide a way for potential applicants to request paper copies of materials that they would need in order to apply, in addition to any Internet address where a potential applicant could get the materials.

Response: No change. The guidance is sufficient for program officials to exercise judgment, based on the level of electronic sophistication in the communities of potential applicants for their particular programs.

Comment: One commenter suggested that the format clearly state Institutional Review Board (IRB) requirements for human subjects and, if possible, make them uniform.

Response: Agree in part. Although the final bullet in Section IV.2 of the proposed format already mentions human subjects requirements, we added them to the second paragraph of that section as well, as an example of a requirement with which an applicant may have to assure compliance. Establishing uniform, government-wide procedures for doing so, however, is beyond the scope of the announcement format.

Comment: One commenter asked that we add to Section IV.2 information about pre-award survey requirements, such as any certifications or independent assurances that the applicant has established proper financial management systems to administer Federal awards, because of their importance in determining applicant eligibility.

Response: No change. Government-wide guidance is not needed because agencies usually require pre-award surveys only in individual cases, after receiving and reviewing applications. Should there be a program where pre-award surveys are commonly done, the program office can include information about them in the appropriate section of the announcement format.

Comment: One commenter suggested replacing ''should'' with ''must'' in the first sentence of Section IV.2, which says that the agency should identify in that section the required content of an application and the forms or formats that an applicant must use to submit it.

Response: We made the suggested change.

Comment: One commenter noted confusing and seemingly contradictory guidance in Section IV.3, which initially says that the announcement ''must'' identify due dates for applications but states in the next paragraph that the announcement ''should'' state or provide reference to the deadline. The commenter observed that the announcement must state the due date and that a potential applicant should not have to look elsewhere for this critical information.

Response: We revised the second paragraph to eliminate ''should.''

Comment: One commenter noted that Section IV.3 does not address the permissibility or impact of submitting a partial application.

Response: No change. Section IV.3 already calls for the announcement to identify submissions that are required, give deadlines for their submission, and explain the effect of missing a deadline (*e.g.*, whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances). An announcement that includes this information addresses the effect of submitting a partial application.

Comment: One commenter indicated that the announcement format should include submission and contact information for State comments under Executive Order (E.O.) 12372. The commenter suggested that this should include: a requirement to give the Internet address for the OMB's State Single Point of Contact (SPOC) list; information on requirements, with applicable citations, for State Governors' involvement in the application submission process for Federal programs that have such requirements; and language encouraging applicants to contact their State's SPOC as early in the application development process as possible.

Response: No change. Section IV.4 already is a separate section dedicated specifically to E.O. 12372 requirements, in recognition of their importance to States. We believe the guidance in that section is sufficient to accomplish the commenter's objectives.

Comment: One commenter suggested that we move the material in Section IV.5, ''Funding Restrictions'' to Section III on eligibility because restrictions on costs can make an applicant ineligible.

Response: We agree that the material in Section IV.5 relates to Section III on eligibility, as well as Section IV on application and submission information. We therefore revised Section III.1 to say that the agency must identify in that section (either directly or by cross-reference to Section IV.5) any funding restrictions that could affect the eligibility of an applicant or project.

Comment: One commenter requested inclusion in Section IV.5 of the contemplated geographic code applicable to the eventual award as well as disclosure of the legislative, statutory history, or other impediments affecting award implementation (*e.g.*, earmarks).

Response: No change. Government-wide guidance is not needed on these subjects because they arise in few announcements. Should an agency need to inform potential applicants about geographic codes or legislative restrictions, it can include information about them in the appropriate section of the announcement format.

Comment: An interagency team working on a parallel grants streamlining initiative recommended that we include language in the announcement format to address the allowability of pre-award costs.

Response: We added a sentence to Section IV.5 to address pre-award costs.

Comment: One commenter, based on difficulties with agency electronic systems, suggested that we add a requirement in Section IV.6 for agencies

to specify any legitimate circumstances in which submissions received after a published deadline date would be accepted because of technical problems. The commenter also recommended that we require agencies to have back-up systems for their electronic systems.

Response: No change. Section IV.3 already deals with the effect of missing a deadline and whether it varies based on the means of submission. The portion of the comment dealing with back-up systems is an electronic business process issue that is beyond the scope of the announcement format.

Comment: Two commenters recommended that Section V.2 address whether and how an applicant can receive a copy of the reviews of its application, especially when its application was not successful.

Response: As noted in a response to a previous comment, the announcement format is an interim product that we plan to update in the future to incorporate results of continued interagency deliberations on a number of pre-award issues. Feedback to unsuccessful applicants is one of the policy issues we will review for possible inclusion in future issuances of the format. In light of the comment, however, we added language in Section V.3 indicating that the section appropriately could include information about anticipated dates for notifying unsuccessful, as well as successful, applicants.

Comment: One commenter suggested that we move the discussion of ''other'' selection criteria from Section V.2 to Section V.1 and further revise Section V.2 to state whether reviews will be blind or double blind, if applicable.

Response: No change. ''Other'' selection criteria are appropriately included in Section V.2, which addresses selection criteria (Section V.1 addresses evaluation criteria, which are not the same thing). Section V.2 lets agency program officials describe the nature of the review.

Comment: Three commenters suggested that we require agencies to provide the information in Section V.3 on anticipated announcement and award dates.

Response: No change. Agency business practices vary widely and some current practices do not always permit the agency to provide this information at the time it issues a funding opportunity announcement. With the guidance in Section V.3, we believe that agencies will provide this information when they can do so.

Comment: One commenter suggested replacing ''should'' with ''must'' in the first sentence of Section VI.1, which says that the agency should identify in that section what a successful applicant can expect to receive following selection (*e.g.*, a notification letter prior to the official award document that authorizes the recipient to begin performance).

Response: We made the suggested change.

Comment: Two commenters suggested we add to Section VI on award administration language addressing any special requirements on intellectual property, data sharing, or security requirements (*e.g.*, access to research information, materials, or facilities).

Response: We added these items as examples in the discussion of special award terms and conditions in Section VI.2.

Comment: Two commenters suggested that Section VI.3 on post-award reporting should be required, rather than optional.

Response: We agree and revised the section accordingly.

Dated: June 17, 2003.

Linda M. Springer,

Controller.

To the Heads of Executive Departments and Establishments

Subject: Format for Financial Assistance Program Announcements

1. *Purpose.* This policy letter establishes a government-wide funding opportunity announcement format for Executive Branch departments and agencies to use in programs that make discretionary awards of grants or cooperative agreements. Program announcements include all paper and electronic issuances that Federal departments and agencies use to announce funding opportunities, whether they are called ''program announcements,'' ''notices of funding availability,'' ''broad agency announcements,'' ''research announcements,'' ''solicitations,'' or something else.

2. *Authority.* This policy letter is issued to implement the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107).

3. *Background.* The Federal Financial Assistance Management Improvement Act of 1999 required the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. It also required each Executive agency to develop, submit to the Congress, and implement a plan for that streamlining and simplification.

Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the Grants Management Committee of the Chief Financial Officers Council. The plan also identified substantive areas in which the interagency work groups had begun their review.

One of the substantive areas that the agencies identified in the plan was the form and content of program funding announcements. The agencies stated in the May 2001 plan that their preliminary analysis suggested a potential for developing a more consistent announcement format across the many Federal agencies and programs. A standard announcement format with information content organized in a consistent way lets applicants quickly and efficiently find the information they need, in order to decide whether a particular funding opportunity is of interest and to prepare an application. An interagency work group developed the format attached to this policy letter and recommended that the OMB's Office of Federal Financial Management issue it as the standard for all programs that use discretionary grants or cooperative agreements.

4. *Policy.*

a. The format attached to this policy letter is the government-wide standard format to be used by agencies when publishing announcements for funding opportunities under programs that make discretionary awards of grants or cooperative agreements, with the exception of:

(1) funding opportunities under which domestic entities are not eligible recipients; and

(2) programs that do not issue separate announcements apart from the program description in the *Catalog of Federal Domestic Assistance* (CFDA). For those excepted programs, the format will continue to conform to the guidance in OMB Circular A–89 for program information in the CFDA.

b. An agency, at its discretion, may extend the use of the attached format to programs that use forms of financial assistance other than grants and cooperative agreements.

5. *Responsibilities.* Executive Branch departments and agencies must:

a. Issue any needed direction to offices that award grants or cooperative agreements under discretionary programs, in order to establish the attached format as the standard for those programs' announcements. All announcements must include information elements that are marked ''required'' in the format, in the sequence provided. An announcement for a given program may use elements that are marked ''optional,'' as appropriate for the program. Whether or not the announcement includes any ''optional'' elements, the information that is included must be organized to conform with the standard format.

b. Post on the Internet all announcements of funding opportunities under which domestic entities are eligible recipients (note that publication in the **Federal Register** meets this requirement, since it is available on the Internet).

c. Request exceptions from this OFFM policy letter for any program announcement(s) with information organized in a way that deviates from the standard format.

6. *Information Contact.* Direct any questions regarding this policy letter to Beth Phillips, OFFM, 202–395–3993.

7. *Effective Date.* The policy letter is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 3 months of the effective date; regulatory revisions must be completed within 12 months.

Dated: June 17, 2003.

Linda M. Springer,

Controller.

Announcement Format of Federal Funding Opportunity

This document is a uniform format for Federal agencies' announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The format has two parts, the first part provides overview information, and the second part includes the full text of the announcement.

Overview Information

a. Required Overview Content

The agency must display prominently the following information, in the sequential order shown, in a location preceding the full text of the announcement:

• *Federal Agency Name(s)—Required.* Include the name of your department or agency and the specific office(s) within the agency (*e.g.*, bureau, directorate, division, or institute) that are involved in the funding opportunity.

• *Funding Opportunity Title—Required.* If your agency has a program name that is different from the Funding Opportunity Title, you also could include that name here.

• *Announcement Type—Required.* Indicate whether this is the initial announcement of this funding opportunity or a modification of a previously announced opportunity. If it modifies a previous announcement, provide the date of that announcement and identify the portions that are being modified. Note that a modification does not need to include all of the sections of the full announcement text.

• *Funding Opportunity Number—Required, if applicable.* Your agency may wish to assign identifying numbers to announcements. If you assign a number, you must include it. If it modifies a previous announcement, provide the number of that announcement.

• *Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required.* You also may wish to include the program name listed in the CFDA for each CFDA number that you give.

• *Dates—Required.* Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372 submissions, as well as any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released.

b. Optional, Additional Overview Content

Following the required overview information described above, the agency may present other information. Present any optional overview information in a sequential order that parallels the organization of the full text of the announcement. Examples of overview information that could help potential applicants decide whether to read the full announcement are: a concise description of the funding opportunity, the total amount to be awarded, the anticipated amounts and/or numbers of individual awards, the types of instruments that may be awarded, who is eligible to apply, whether cost sharing is required, and any limitations on the numbers of applications that each applicant may submit. You also may include other information that could later help applicants more quickly and easily find what they need (*e.g.*, where one can get application materials).

c. Method of Presentation

The agency may include the summary information in any of the following ways:

• *Executive summary.* An agency may wish to include an executive summary of the announcement before the full text. Especially for announcements that are long (25 pages or more in length) or complex, agencies should consider including executive summaries with at least the required overview information described above in paragraph a., as well as any additional information described in paragraph b. An executive summary should be short, preferably one page, with information in concise bullets to give an overview of the funding opportunity.

• *Cover and/or inside cover.* If the agency does not wish to include an executive summary, an alternative is to provide at least the required overview information described above in paragraph a. on the cover and/or inside cover of the announcement (or the first screen a potential applicant would see, in the case of an electronic announcement).

Federal Register *format.* For an announcement that appears as a notice in the **Federal Register**, some of the required overview information will appear with other information near the beginning of the notice, due to the **Federal Register's** standard format for notices. Nonetheless, the agency must display the required overview information (described above in paragraph a.) in a single location preceding the full text of the announcement, which would be in the SUPPLEMENTARY INFORMATION section of the **Federal Register** notice. The agency may elect to include additional information, as described above in paragraph b.

Full Text of Announcement

The full text of the announcement is organized in sections. The format indicates immediately following the title of each section whether that section is required in every announcement or is an agency option.

The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the format's sections to describe the types of information that an agency would include in that section of an actual announcement.

An agency that wishes to include information on a subject that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, and/or the reporting requirements.

Similarly, when this format calls for a type of information to be in one particular section, an agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an agency may want to include in Section I information about the types of recipients who are eligible to apply. The format specifies a standard location for that information in Section III.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections I and III.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

I. Funding Opportunity Description—Required

This section contains the full programmatic description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the agency's funding priorities or the technical or focus areas in which the agency intends to provide assistance. As appropriate, it may include any program history (*e.g.*, whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (*e.g.*, if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the agency deems necessary, such as citations for authorizing statutes and regulations for the funding opportunity.

II. Award Information—Required

Provide sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that your agency expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards.

This section also must indicate the type(s) of assistance instrument (*i.e.*, grant,

cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the ''substantial involvement'' that the agency expects to have or should reference where the potential applicant can find that information (*e.g.*, in the funding opportunity description in Section I or award administration information in Section VI). If procurement contracts also may be awarded, you must say so.

III. Eligibility Information

This section addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. You should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in your agency's returning the application without review or, even though an application may be reviewed, will preclude the agency from making an award. Key elements to be addressed are:

1. *Eligible Applicants—Required.* You must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if your program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, your announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that non-profit organizations may apply. Eligibility also can be expressed by exception, (*e.g.*, open to all types of domestic applicants other than individuals). This section should refer to any portion of Section IV specifying documentation that must be submitted to support an eligibility determination (*e.g.*, proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section IV.5 could affect the eligibility of an applicant or project, you must either restate that restriction in this section or provide a cross-reference to its description in Section IV.5.

2. *Cost Sharing or Matching—Required.* You must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, you must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.*, provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as well as those imposed by administrative decision of the agency. This section should refer to the appropriate portion(s) of Section IV stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if an award is made.

3. *Other—Required, if applicable.* If there are other eligibility criteria (*i.e.*, criteria that have the effect of making an application or project ineligible for award, whether you refer to them as ''responsiveness'' criteria, ''go-no go'' criteria, ''threshold'' criteria, or in other ways), you must clearly state them. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. In this section you also must state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. Also use this section to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

IV. Application and Submission Information

1. *Address to Request Application Package—Required.* You must tell potential applicants how to get application forms, kits, or other materials they need to apply (if this announcement contains everything they need, this section need only say so). You may give an Internet address where they can access the materials.* Since high-speed Internet access is not yet universally available for downloading documents, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD) or Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section may refer to where those requirements may be found. This section also should address any preliminary submissions that the agency requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal.

For a full application, this includes all content and forms or formats that constitute a complete application, including: general information (*e.g.*, applicant name and address), budgetary information, narrative programmatic information, biographical sketches, and all other required information (*e.g.*, documentation that an applicant meets stated eligibility criteria or certifications or assurances of compliance with applicable requirements, such as evidence of compliance with human subjects requirements). You must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

In this section, you should specifically address content and form or format requirements for:

- Pre-applications, letters of intent, or white papers that your agency requires or encourages (see Section IV.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.
- The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required,* that could include special requirements for formatting or signatures.
- Component pieces of the application (*e.g.*, if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (*e.g.*, references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).
- Information that successful applicants must submit after your agency notifies them of its intent to make awards, but prior to award. This could include evidence of compliance with human subjects requirements or information your agency needs to comply with the National Environmental Policy Act (NEPA).

3. *Submission Dates and Times—Required.* Your announcement must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.*, letters of intent, white papers, or pre-applications). It also includes any other submissions of information before award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see ''Overview Information'' segment of this format).

For each type of submission that you address, indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the agency plans more than one cycle of application submission, review, and award under the announcement). The announcement must state (or provide a reference to another document that states):

- Any deadline in terms of a date and local time.
- What the deadline means (*e.g.*, whether it is the date and time by which the agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (*e.g.*, mail, electronic, or personal/courier delivery).
- The effect of missing a deadline (*e.g.*, whether late applications are neither

reviewed nor considered or are reviewed and considered under some circumstances).

• How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt.

You should consider displaying the above information in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission. For example, a summary table might look like:

What to submit	Required content	Required form or format	When to submit it
Preapplication (optional, but encouraged).	Described in Section IV.2 of this announcement.	Format described in section _ of grants policy manual at (give URL or where to obtain the manual)*.	By (give pre-application due date).
Application:			
Cover sheet	(per required form)	Form SF–__, available from (give source).	
Budget information	(per required form)	Form SF–__, available from (give source).	By (give application due date and time).
Narrative	Described in Section IV.2 of this announcement.	Format described in Section IV.2 of this announcement.	
Assurance	(per required form)	Form SF–__, available from (give source).	
Letters from third parties contributing to cost sharing.	Third parties' affirmations of amounts of their commitments.	No specific form or format.	
Statement of intent to comply with human subjects requirements.	(per required form)	Form SF–__, available from (give source).	Prior to award, when requested by grants officer (if application is successful).

4. *Intergovernmental Review—Required, if applicable.* If the funding opportunity is subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs,'' you must say so. In alerting applicants that they must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372, you may wish to inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. *Funding Restrictions—Required.* You must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). You also must tell applicants if awards will not allow reimbursement of pre-award costs.

6. *Other Submission Requirements—Required.* This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, *i.e.*, paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this should include the name of an office, official, individual or function (*e.g.*, application receipt center) and a complete mailing address. For electronic submission, this should include the URL or e-mail address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact that will be available in the event the applicant experiences technical difficulties.*

V. Application Review Information

1. *Criteria—Required.* This section must address the criteria that your agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (*e.g.*, minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible.

The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (*e.g.*, whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section III.2), the announcement must specifically address how it will be considered (*e.g.*, to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for award (*e.g.*, geographical dispersion, program balance, or diversity).

You also may include other details you deem appropriate. For example, this section may indicate who is responsible for evaluation against the merit criteria (*e.g.*, peers external to the agency or Federal agency personnel) and/or who makes the final selections for award. If you have a multi-phase review process (*e.g.*, an external panel advising internal agency personnel who make final recommendations to the deciding official), you may describe the phases. You also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that

conflicts of interest are avoided. In addition, if you permit applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. *Anticipated Announcement and Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having awards in place. If applications are received and evaluated on a ''rolling'' basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the agency's decision.

VI. Award Administration Information

1. *Award Notices—Required.* This section must address what a successful applicant can expect to receive following selection. If your practice is to provide a separate notice stating that an application has been selected before you actually make the award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that you allow charging to awards of pre-award costs at the recipient's own risk). This section should indicate that the notice of award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants.

2. *Administrative and National Policy Requirements—Required.* This section must identify the usual administrative and national policy requirements your agency's awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before award. The announcement need not include all of the award terms and conditions, but may refer to a document (with information about how to obtain it) or Internet site* where applicants can see the terms and conditions.

If this funding opportunity will lead to awards with some special terms and conditions that differ from your agency's usual (sometimes called ''general'') terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants who have received awards from your agency previously and might not otherwise expect different terms and conditions. For the same reason, you should inform potential applicants about special requirements that could apply to particular awards after review of applications and other information, based on the particular circumstances of the effort to be supported (*e.g.*, if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. *Reporting—Required.* This section must include general information about the type (*e.g.*, financial or performance), frequency, and means of submission (paper or electronic) of post-award reporting requirements. Highlight any special reporting requirements for awards under this funding opportunity that differ (*e.g.*, by report type, frequency, form/format, or circumstances for use) from what your agency's awards usually require.

VII. Agency Contact(s)—Required

You must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so you should consider approaches such as giving:

- Points of contact who may be reached in multiple ways (*e.g.*, by telephone, FAX, and/or e-mail, as well as regular mail).
- A fax or e-mail address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- Different contacts for distinct kinds of help (*e.g.*, one for questions of programmatic content and a second for administrative questions).

VIII. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

- Indicate whether this is a new program or a one-time initiative.
- Mention related programs or other upcoming or ongoing agency funding opportunities for similar activities.
- Include Internet addresses for agency Web sites that may be useful to an applicant in understanding the program (NOTE: you should make certain that any Internet sites are current and accessible).*
- Alert applicants to the need to identify proprietary information and inform them about the way the agency will handle it.
- Include certain routine notices to applicants (*e.g.*, that the Government is not obligated to make any award as a result of the announcement or that only grants officers can bind the Government to the expenditure of funds).

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BILLING CODE 3110–01–P

* With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

OFFICE OF MANAGEMENT AND BUDGET

Standard Data Elements for Electronically Posting Synopses of Federal Agencies' Financial Assistance Program Announcements at Grants.gov FIND

AGENCY: Office of Management and Budget.

ACTION: Notice of standard data elements.

SUMMARY: The Office of Federal Financial Management (OFFM) is establishing a government-wide standard set of data elements for Federal agencies to use to electronically post, at Grants.gov FIND, synopses of announcements of funding opportunities under programs that award discretionary grants or cooperative agreements. The data elements are designed to give potential applicants: (1) Enough information about each funding opportunity to decide whether they are interested enough to look at the full announcement, which contains the detailed information they need to decide whether they wish to apply; and (2) a way to get the full announcement electronically (either directly at Grants.gov FIND or through an electronic link to another Internet site). The Federal awarding agencies jointly developed these Grants.gov FIND data elements as one part of the interagency grants streamlining effort under the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–3053; fax 202–395–3952; e-mail *ephillip@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a **Federal Register** notice on August 12, 2002 (67 FR 52555), the Office of Management and Budget (OMB) proposed standard data elements for Grants.gov FIND posting of Federal funding opportunities leading to the award of grants, cooperative agreements, and other financial assistance instruments. Grants.gov FIND is modeled after FedBizOpps, an Internet site established by the General Services Administration, as the single site for giving the public access to relevant information about procurement contract opportunities that exceed $25,000. Many of the proposed data elements

have been part of a pilot test for Grants.gov FIND, which is to serve as a single site where Federal agencies will post electronic synopses of opportunities for financial assistance awards. That function is expected to be fully operational by October 1, 2003. In response to the **Federal Register** notice, OMB received comments from 22 entities: Two State governments, two local governments; four universities; a group of universities that participate with Federal agencies in a demonstration program on research administration; one organization representing non-profit entities; two non-profit organizations; three for-profit organizations; and seven Federal agencies. All comments were considered in developing the final data elements.

We will continue to consider some of the comments separately from this notice because they address issues that are beyond the scope of the proposed data elements. Some of the comments (*e.g.,* the general ability of the public to access the Internet) relate broadly to all of the E-Government initiatives of the President's Management Agenda (of which E-Grants is one) and will be considered in that context. Other comments relate more specifically either to the E-Grants initiative's policies for, or design of, the Grants.gov FIND site. We and the E-Grants Program Management Office will address the policy issues as we establish the requirement for agencies to use the Grants.gov FIND site. We will consider comments related to system design (*e.g.,* what search capabilities the system will have) as the E-Grants Program Management Office finalizes the design of the initial system or makes plans for future enhancements. Some of these comments may be addressed in a limited way in this notice, to the extent that they relate to other comments within the scope of the proposal.

In addition to changes we made in response to comments on the proposed data elements, we made two other significant changes. First, we added a data element for ''Announcement Type'' that an agency will use to indicate whether the Grants.gov FIND synopsis relates to a new announcement or to a modification of one that the agency issued previously. Second, we eliminated the data element for ''type of help available from Federal agency contact,'' because we believe that the name of the data element ''Federal agency contact for electronic access problems'' is self-explanatory.

The following sections present a summary of the major comments grouped by subject and our responses to them. Changes to the Grants.gov FIND data elements are discussed in the responses to the comments.

II. Comments and Responses

A. General

Comment: One commenter asked us to clarify the relationship of Grants.gov FIND to the **Federal Register.** For example, the commenter asked if every announcement published in the **Federal Register** would also appear at Grants.gov FIND and vice versa.

Response: Grants.gov FIND and the **Federal Register** are complementary. Grants.gov FIND's primary purposes are to provide: (1) A synopsis of each funding opportunity, the minimum information people need in order to quickly decide whether they want to review the full announcement for that opportunity; and (2) a way to access the full announcement electronically. The **Federal Register** is one place an agency may locate the full announcement to which the synopsis links electronically.

It is our expectation that, with few exceptions, announcements of opportunities published in the **Federal Register** will appear in Grants.gov FIND. Whether a given opportunity that is synopsized at Grants.gov FIND will have its full announcement published in the **Federal Register** is a question for agencies and their program offices. Other locations they could consider include the agency's own or an alternative Internet location.

Comment: Twelve commenters suggested additional data elements, including: A point of contact for programmatic information; if collaboration is required; the population to be served; any geographic restrictions; the countries eligible to be beneficiaries; the source of funding; whether the opportunity is new; whether there are mandatory outcomes or performance standards; whether there are any special security requirements; any limit on the number of applications an organization may submit; the anticipated number of awards; the duration of awards; anticipated award amounts (suggestions included a range; upper and lower limits; or information on awards in various subranges, such as between $100,000 and $500,000); if matching is required; and, if so, whether matching may be either in cash or in-kind and at what percentage of the award amount.

Response: Agree in part. The proposal already included two of the suggested elements—whether cost sharing is required and the funding agency. Grants.gov FIND should provide the minimum summary information that potential applicants need to quickly decide whether they want to read the full announcement. As we reviewed the other suggested data elements, we considered that factor and also whether abbreviated synopsis information would be useful or could instead mislead potential applicants. Based on that analysis, we added two required data elements—any ceiling setting a maximum amount for an individual award; and any floor setting a minimum amount for an individual award. We also added two optional data elements for the estimated total program funding and expected number of awards, with a policy statement encouraging a funding agency to provide this information whenever it is possible to do so. The funding agency may include the other suggested information, and an appropriate level of additional detail, in the full announcement for the funding opportunity.

Comment: Two commenters suggested that information at Grants.gov FIND be harmonized in content and sequential order with the overview section of the standard format that we proposed for full announcements of funding opportunities (a notice at 67 FR 52548, immediately preceding the August 12, 2002, notice on the proposed Grants.gov FIND data elements).

Response: Agree in part. To the extent that the same or similar data elements appear in Grants.gov FIND and the overview portion of the full announcement, we revised the announcement overview data elements to ensure substantive consistency with Grants.gov FIND and the same sequential order. However, it is important to note that Grants.gov FIND and the overview portion of the full announcement serve different purposes and all of the information elements should not be identical. Grants.gov FIND is intended to provide sufficient information to allow a potential applicant to decide whether to read the full announcement. A full announcement's overview section provides additional, more detailed information for people who have decided to review the announcement and who may be preparing applications.

B. Specific Data Elements

Comment: One commenter asked where to find the issuing Federal agency's name.

Response: The proposed data elements included the Federal agency name within the element entitled ''Federal agency mailing address.'' The final set of data elements has an element entitled ''Federal agency name'' (see response to next comment).

Comment: Three commenters suggested alternative approaches for the Federal agency mailing and e-mail addresses. One questioned why the mailing address was needed in the Grants.gov FIND synopsis. Another asked for the complete postal mailing address, e-mail address, and telephone and fax numbers. The third asked that more than one Federal agency e-mail contact be allowed.

Response: We agree in part. We changed ''Federal agency mailing address'' to ''Federal agency name.'' Given that the purposes of Grants.gov FIND are to provide sufficient information to allow a potential applicant to decide whether to review the full announcement and to provide a link to that announcement, the only reason that potential applicants should need to contact the agency after reviewing the Grants.gov FIND synopsis is if they are having difficulty with the electronic link to the full announcement. The proposal included data elements for that purpose, including the name of a Webmaster or other technical point of contact (called ''Federal agency contact for electronic access problems'') and his or her e-mail address (called ''Federal agency contact e-mail address''). Other than that, potential applicants should not need to contact the agency before reading the announcement, where they will find points of contact for programmatic or award administration information.

Comment: Two commenters asked why the data elements allowed more than one Federal agency contact name for help with electronic access problems, but only one e-mail address. One commenter saw this as an inconsistency. The second commenter suggested that each name be associated with an e-mail address and the type of help available. In addition, this commenter asked that alternate contact information, such as a telephone number, be provided for those without e-mail.

Response: No change. ''Help desk'' activities for computer hardware or software system problems generally flow through a single, central e-mail address accessible by several people rather than through individual e-mail accounts. Therefore, agencies are given the option to provide names of multiple individuals at that e-mail address in order to provide the public with needed service. We did add, as suggested, a telephone number for contacting the agency for electronic access problems.

Comment: One commenter expressed concern that the requirement to provide a Catalog of Federal Domestic Assistance (CFDA) number in the Grants.gov FIND synopsis would prevent agencies from listing international funding opportunities. The commenter asked that an additional or alternative system be used that would include international opportunities.

Response: We revised the guidance for the CFDA data element to permit an agency to post funding opportunities under programs that are not listed in the CFDA. However, doing so does not create a requirement for agencies to post international funding opportunities at Grants.gov FIND. The types of agency programs and opportunities that will be subject to the posting requirement is an issue to be resolved during the development of the Grants.gov FIND policy document.

Comment: Two commenters requested expansion of the ''Funding instrument types'' category. One commenter suggested that it would be helpful for potential applicants to know if the intended instrument is a discretionary or formula grant. That commenter also indicated that if an agency selects ''Other,'' there should be a text field to describe the meaning of ''Other.'' The second commenter requested that we explicitly include types of assistance instruments beyond those already specified.

Response: No change. With respect to the comment about formula grants (which can be discretionary or mandatory), if the Grants.gov FIND policy document applies the posting requirement to formula grant opportunities, the Grants.gov FIND user should be able to distinguish formula programs through other data elements (*e.g.,* the funding opportunity title and description, as well as the link to additional program information through the CFDA Number). With respect to a text field to describe what is in ''other,'' the use of instruments other than ''standard'' grants, cooperative agreements, or procurement contracts currently is limited to certain agencies and programs with special authorities. We believe it is best for the reader to consult the full announcement for the funding opportunity to learn details about any additional instruments.

Comment: Seven commenters indicated that the ''categories of funding activity'' were too broad and did not adequately represent the specific aspects of many Federal programs. Several of them asked that we consider using keywords to facilitate the search with more specificity than allowed by the proposed categories. One commenter suggested that we include a text field where an agency selecting ''Other'' could provide further information.

Response: Agree in part. We adopted the suggestion to require any agency choosing the ''Other'' category to use the accompanying text box to provide additional explanation. We did not create more specific categories of funding activity. The categories in the proposed data elements, which closely mirror the categories in the CFDA, are intended only to provide an initial ''filter'' to narrow the field of opportunities to match the user's interests. It is unlikely that a fixed set of categories or keywords could cover the very broad spectrum of Federal activities and still have the necessary degree of specificity to let a user search and find only opportunities in a specific interest area. Current plans for Grants.gov FIND are to have a full-text search capability and electronic announcements would be similarly searchable. Nonetheless, we will continue to consider keyword searches for possible use in the future.

Comment: One commenter suggested the guidance for the ''categories of funding activity'' encourage agencies to use as many categories as feasible to adequately characterize the program.

Response: No change. The guidance for this data element already indicates that the agency may list as many as needed.

Comment: Eight commenters asked for additions or changes to the proposed categories of eligible applicants. One commenter suggested adding a separate category for non-profits that do not have 501(c)(3) status under the Internal Revenue Service (IRS) code. Another commenter recommended including an ''Other'' category and accompanying text field that would allow agencies to provide more specific information about eligible applicant categories than the standard list allowed. Other commenters addressed the need for greater specificity in the categories and/or requested a variety of additions.

Response: Agree in part. We changed the proposed category of ''Non-profits other than institutions of higher education [includes community action agencies and other organizations having a 501(c)(3) status with the IRS]'' to ''Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education''; and added a new category for ''non-profits that do not have 501(c)(3) status with the IRS, other than institutions of higher education.'' We changed ''All others (*e.g.,* U.S. Federal or foreign governmental entities and non-profits that do not have a 501(c)(3) status with the IRS)'' to ''Other'' and added a text field that is required if ''Other'' is selected. We also changed ''Unrestricted (*i.e.,* open to any

type of entity below)'' to ''Unrestricted (*i.e.,* open to any type of entity below), subject to any clarification in the text field entitled 'Additional information on eligibility'.'' We did not otherwise revise the proposed categories to provide greater specificity, which appropriately is found in the full announcement.

Comment: Three commenters recommended changes to the data element entitled ''cost-sharing requirement.'' One commenter suggested that non-profit organizations may be confused by the term ''cost sharing'' and that the term ''local match'' would be better. The second commenter asked that the level of cost sharing be included if cost sharing applies. The third commenter offered that the field should be expanded to include the type of cost-sharing.

Response: In response to the first comment, we expanded the term ''cost sharing requirement'' to ''cost sharing or matching requirement,'' terminology currently used in OMB Circulars A–102 and A–110, the circulars containing the government-wide guidance on this subject for awards to States, local and tribal governments, institutions of higher education, and other nonprofit organizations. We similarly changed the title of the cost sharing section in the format for the full announcement of the funding opportunity (see the **Federal Register** notice accompanying this one)—we expect that each program office, in the full text of that section, will use the term that conforms best with what is predominately used by their communities of potential applicants.

We did not expand this Grants.gov FIND data element to address the level or type of cost sharing. It is not essential that people have those details before deciding whether to review the full announcement. Moreover, as indicated in a response to a previous comment, additional information in a Grants.gov FIND data element necessarily is less detailed than an explanation in a full announcement and therefore could mislead potential applicants.

Comment: One commenter asked that we clarify that the ''due date for applications'' data element includes due dates for letters of intent or pre-proposals.

Response: Agree. We changed the description of this element to state that the pre-application due date must be provided if a pre-application is required in order to submit an application.

Comment: One commenter asked why the description of the data element ''Date of Grants.gov FIND posting'' said that an agency might post a synopsis to Grants.gov FIND after **Federal Register** publication of the full announcement. The commenter suggested that it would be in the spirit of Grants.gov FIND to have the synopsis posted there as soon as available.

Response: No change. Ideally, one could post a Grants.gov FIND synopsis simultaneously with issuing the full announcement (which could be in the electronic **Federal Register** or at an Internet site the agency selects), so that information in the Grants.gov FIND synopsis would let a user immediately find the announcement as soon as both are posted. However, perfect synchronization is not practical because one agency activates the synopsis and another usually issues the full announcement. The language in the proposal therefore recognizes that an agency might send the synopsis to Grants.gov FIND and ask that they build in a small delay before posting it, to ensure that the full announcement is available electronically as soon as the Grants.gov FIND synopsis appears. Doing so can avoid unnecessary frustration for Grants.gov FIND users, as well as trouble reports and questions to agency officials.

Dated: June 17, 2003.

Linda M. Springer,

Controller.

Data element	Description	Is agency input required?
Federal agency user identification	User ID of Federal agency representative who is authorized to post information to the Grants.gov FIND site.	One entry required.
Federal agency user password	Password of Federal agency representative who is authorized to post information to the Grants.gov FIND site.	One entry required.
Announcement type	Type of announcement to which the synopsis relates: Initial announcement. Modification to priviously issued announcement.	One entry required.
Funding opportunity title	The Federal agency's title for the funding opportunity (including program subcomponent names, as the agency deems appropriate).	One entry required.
Funding opportunity number	The number, if any, that the Federal agency assigns to its announcement. For a modification of a previously issued announcement, use the funding opportunity number of that earlier announcement.	Optional for initial announcement if you give no number, Grants.gov FIND will assign one. Agency input is required for modification.
Catalog of Federal Domestic Assistance (CFDA) number(s).	Number(s) of the CFDA listing(s) for program(s) included in the announcement (*e.g.,* 12.300).	At least one entry required (may list more than one) if the Federal agency is subject to the requirement in 31 U.S.C. chapter 61 to report to the CFDA. Federal agencies that have programs that are not domestic assistance, and therefore are not listed in the CFDA, may arrange with Grants.gov FIND to insert an alternative number that will allow listing of the funding opportunity.
Federal agency name	Name of the Federal organization responsible for the announcement, including agency name and, as applicable, specific subcomponent (*e.g.,* department, bureau, directorate, or division).	Optional. If you give no office name, Grants.gov FIND will insert the office name you gave when you initially registered and got your user ID and password.

Data element	Description	Is agency input required?
Federal agency contact for electronic access problems.	Should list name of person (*e.g.,* webmaster) to whom potential applicants should refer questions if they cannot link from Grants.gov FIND to the full announcement (this person is distinct from programmatic and other agency contacts who are listed in the full announcement).	At least one entry required. May list more than one.
E-mail address for Federal agency contact for electronic access problems.	E-mail address of Federal agency contact who can help with electronic access problems.	Required. May list only one.
Telephone number for Federal agency contact for electronic access problems.	Telephone number of Federal agency contact who can help with electronic access problems.	Required. May list only one.
Funding opportunity description	A concise description of the funding opportunity, designed to contain sufficient information for potential applicants to decide whether they are interested enough to read the full announcement.	Required.
Funding instrument types	Types of instruments that may be awarded (codes provided for system-to-system interface): Grant (G) Cooperative Agreement (CA) Procurement Contract (PC) Other (O) Note that if your announcement states that you may award procurement contracts, as well as assistance instruments, the announcement must be posted to both the procurement and assistance modules of Grants.gov FIND.	Required. Select all that apply (up to 4 codes).
Category of funding activity	Designed to allow potential applicants to narrow their searches to programs in CFDA categories of interest to them. Note that the terms are defined in the CFDA. List all categories that apply (codes provided for system-to-system interface): Agriculture (AG) Arts (AR—see ''Cultural Affairs'' in the CFDA) Business and Commerce (BC) Community Development (CD) Consumer Protection (CP) Disaster Prevention and Relief (DPR) Education (ED) Employment, Labor and Training (ELT) Energy (EN) Environment (ENV) Food and Nutrition (FN) Health (HL) Housing (HO) Humanities (HU—see ''Cultural Affairs'' in the CFDA) Income Security and Social Services (ISS) Information and Statistics (IS) Law, Justice and Legal Services (LJL) Natural Resources (NR) Regional Development (RD) Science and Technology and other Research and Development (ST) Transportation (T) Other (O—see text field entitled ''Explanation of other category of funding activity'' for clarification.)	At least one required and may list as many as needed. There is no default value. If the category of funding activity does not clearly fit in any other listed category, must select ''Other.''
Explanation of ''other'' category of funding activity.	A text description of what other category or categories of activity are eligible for support under the funding opportunity.	Required if an agency selects ''other'' as a category of funding activity, either by itself or in combination with one or more other categories.
Estimated total program funding	The total amount of funding the agency expects to make available for awards under this announcement.	Optional. Default, if agency provides no input, is ''not available.'' However, as a matter of Government-wide policy, agencies are strongly encouraged to provide this information whenever possible.
Expected number of awards	The number of individual awards the agency expects to make under this announcement.	Optional. Default, if agency provides no input, is ''not available.'' However, as a matter of Government-wide policy, agencies are strongly encouraged to provide this information whenever possible.
Ceiling, if any, on amount of individual award.	Any maximum dollar amount for an individual award under this announcement that the awarding agency will not exceed.	Required. Enter a number or ''none.''

Data element	Description	Is agency input required?
Floor, if any, on amount of individual award..	Any minimum dollar amount for an individual award under this announcement (*i.e.,* if the awarding agency will not make smaller awards under any circumstance).	Required. Enter a number or ''none.''
How to get full announcement	Hypertext stating where to get the full announcement. If it is available on the Internet, this field should include the descriptor that precedes the URL for the full announcement (*e.g.,* ''Click on the following link to see the full text of the announcement for this funding opportunity:''	Required.
Electronic link to full announcement	The URL for the full announcement, unless the announcement is uploaded in Grants.gov FIND.	Agency input is optional because there will be no URL if the agency uploads the announcement in Grants.gov FIND and does not also post it on the Internet.
Eligible applicants	Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible, although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within the categories below (codes provided for system-to-system interface). 99—Unrestricted (*i.e.,* open to any type of entity below), subject to any exceptions listed in the text field entitled ''Additional information on eligibility'' Government codes: 00—State governments 01—County governments 02—City or township governments 04—Special district governments 05—Independent school districts 06—State controlled institutions of higher education 07—Native American tribal governments (Federally recognized) 08—Public housing authorities/Indian housing authorities Non-Government organizations: 11—Native American tribal organizations (other than Federally recognized tribal governments) 12—Nonprofits with 501(c)(3) IRS status, other than institutions of higher education 13—Nonprofits without 501 (c)(3) IRS status, other than institutions of higher education 20—Private institutions of higher education 21—Individuals 22—For-profit organizations other than small businesses 23—Small businesses	Required to either select ''99'' for unrestricted or select all others that apply.
Additional information on eligibility	Explanatory information to provide any needed clarification of the meaning of ''unrestricted'' (*e.g.*, all but foreign entities), to identify types of recipients meant by ''all others,'' or to provide further information about limitations for any other categories (*e.g.*, for categories 6 and 20, a limitation to historically Black colleges and universities).	Required if agency selects either category 25 or category 99 in ''eligible applicants'' field. If agency selects category 99 and there are no further limitations, enter ''no restrictions.'' Optional for additional information related to any category other than 99 or 25.
Cost sharing or matching requirement	Answer to question: Is cost sharing ormatching required? (Y or N).	Required.
Due date for applications	Date when applications are due (or latest date when applications accepted, if announcement has multiple due dates or is a general announcement that is open for a specified period with applications accepted at any time during that period). **Note:** This field is to contain the date when pre-applications, rather than applications, are due if an applicant must submit a pre-application to be considered for an award.	Required if ''Explanation of application due dates'' field is not completed. Optional otherwise.

Data element	Description	Is agency input required?
Explanation of application due dates ...	Used by agencies wishing to post more information about due date(s) for potential applicants. For example, the field may be used to describe programs with multiple due dates or ones where applications are accepted, reviewed, and funded at any point within a broad time window. The field also may be used to add information about the time when applications are due (*e.g.*, 5 p.m. EDT on the date given in the ''Due date for applications'' field).	Optional (note ''Due date for applications'' field is required if this ''Explanation of application due dates'' text field is not completed).
Date of Grants.gov FIND posting	Month, day, and year when the agency wants the synopsis posted on Grants.gov FIND (*e.g.*, some agencies may build in delays to allow announcements to appear first in the **Federal Register** or at agency Internet sites. Format is MMDDCCYY.	Required.
Date for Grants.gov FIND to archive ...	Month, day, and year when the agency wants the synopsis archived. Format is MMDDCCYY.	Optional. Default, if agency provides no input, is 30 days after the date given in the ''Due date for applications'' field.

[FR Doc. 03–15799 Filed 6–20–03; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Government-Wide Guidance for Use of Grants.gov FIND To Post Funding Opportunity Announcement Synopses

AGENCY: Office of Federal Financial Management (OFFM), Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Notice of proposed policy guidance for use of E-Grants FIND.

SUMMARY: OMB proposes to issue a policy directive requiring Federal agencies to use the Grants.gov FIND module to electronically post synopses of funding opportunities under Federal financial assistance programs that award discretionary grants and cooperative agreements.

DATES: All comments on this proposal should be in writing, and must be received by July 23, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic mail comments may be submitted to: *sswab@omb.eop.gov.* Please include ''Grants.gov FIND Policy Directive'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Sandra Swab, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandra Swab, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–5642 (direct) or 202–395–3993 (main office) and e-mail: *sswab@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

This **Federal Register** document seeks public comment on a policy directive that requires Federal agencies to use the Grants.gov FIND module to electronically post synopses of funding opportunities under Federal financial assistance programs that award discretionary grants and cooperative agreements. The policy directive includes an attachment which contains the government-wide standard set of data elements to be used by Federal agencies in posting synopses at *www.FedGrants.gov.* These data elements were first proposed for public comment in a **Federal Register** notice on August 12, 2002, [67 FR 52555]. The consideration of comments OMB received in response to the **Federal Register** notice, and the final set of data elements is published as another notice in this section of today's **Federal Register**.

We welcome your input on any aspect of the proposal contained in this notice. Questions that you may wish to address include:

- Do you feel this policy is sufficient for getting agencies to post synopses of funding opportunities?
- Are there any shortcomings in either the posting or retrieving of synopses from the Grants.gov Web site?
- Is there additional instruction that should appear in the policy directive?

Dated: June 17, 2003.

Linda M. Springer,

Controller.

To the Heads of Executive Departments and Agencies

Subject: Requirement and Format for Federal Agencies to Post Synopses at FedGrants.gov.

1. *Purpose.* This policy directive establishes a government-wide requirement for Federal agencies to electronically post synopses of announcements of funding opportunities under financial assistance programs that award discretionary grants and cooperative agreements, using a standard set of data elements. The purpose of the data elements is to give potential applicants (1) enough information about the funding opportunity to decide whether they are interested enough to look at the full announcement; and (2) provide one or more ways (*e.g.*, an Internet site, e-mail address or telephone number) to get the full announcement with the detailed information. The data elements are the government-wide standard developed for the hundreds of Federal programs that award discretionary grants and cooperative agreements.

2. *Authority.* The policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). This policy is also designed to further implement the Grants.gov initiative, one of the twenty-four electronic government (E-Gov) initiatives under the President's Management Agenda.

3. *Background.* Public Law 106–107 requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal

financial assistance procedures for non-Federal entities. It also requires executive agencies to allow applicants to electronically apply for and report on the use of funds from any Federal financial assistance program administered by the agency.

Under the Grants.gov initiative, the Federal agencies are in the process of developing an electronic application system using standard core data elements. Part of the application process is the identification of the funding opportunity through www.FedGrants.gov. The posting of standard synopses in an electronic environment, provides government customers the opportunity to locate funding opportunities in one place and to decide whether or not to apply for the opportunity. Establishing data standards for the electronic format of the synopses and the posting of synopses on the Internet are in accordance with Public Law 106–107 and the President's Management Agenda.

4. *Policy.* The format attached to this policy directive is the government standard format for posting synopses at *http://www.FedGrants.gov* for programs that award discretionary grants and cooperative agreements. Agencies are required to post funding opportunities for all discretionary and cooperative agreement programs at *http://www.FedGrants.gov.* Agencies are also encouraged to post all types of Federal funding opportunities at *http://www.FedGrants.gov.*

a. *Applicability.* All Federal agencies will be required to post all discretionary and cooperative agreement awards at http://www.FedGrants.gov except for:

(1) A program that does not issue separate announcements apart from the program description in the Catalog of Federal Domestic Assistance (CFDA).

(2) A program that has 100 percent of potential eligible applicants who live outside the United States and who demonstrate lack of Internet access, and the agency has requested a waiver from OMB.

b. *Effective Date.* This policy directive is effective 30 days after issuance. All agencies shall begin posting announcement synopses at *http://www.FedGrants.gov* beginning October 1, 2003. For agencies that have funding opportunities which will close after October 1, 2003, and are to be posted prior to October 1, 2003, the agencies may choose to post synopses in the operational pilot which began in February 2003, and is currently available to the public.

Federal funding opportunities posted at *http://www.FedGrants.gov* will coincide with the posting and release of the full announcement information on the same day or within three business days.

c. *Exemptions.* Requests for exemptions must be directed to OMB, Office of Federal Financial Management (OFFM).

5. *Agency Responsibilities.*

a. Issue any needed direction to offices that award discretionary grant awards and cooperative agreements on the requirement and format to use to post a synopsis at *http://www.FedGrants.gov.* The synopsis must follow the format to ensure all required data elements are included.

b. Ensure the synopsis posted at *http://www.FedGrants.gov* will have full instructions regarding where to obtain the full announcement for the funding opportunity. To further satisfy the Administrative Procedures Act (APA), agencies may need to announce the funding opportunity in the **Federal Register**, by placing a short availability announcement of the opportunity with the agency contact name and telephone number in order for the public to receive the full announcement by mail and/or instructions for obtaining the information electronically (and the agency need not publish the full announcement or application package). Agency programs that are required by legislation to publish their full announcement in the **Federal Register** will have to do so until legislatively changed.

c. Obtain a Catalog of Domestic Assistance (CFDA) number for all programs that post a synopsis at *http://www.FedGrants.gov.*

6. *Information Contact.* Direct any requests for exemption or questions about this policy directive to Sandra Swab, OFFM, 202–395–5642 (direct) or 202–395–3993 (main office) or via e-mail (*sswab@omb.eop.gov*).

Linda M. Springer,
Controller.

Attachment (See previous **Federal Register** notice in this separate part).

[FR Doc. 03–15800 Filed 6–20–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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H.R. 192/P.L. 108–31

To amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance programs under those Acts, and for other purposes. (June 17, 2003; 117 Stat. 775)

S. 273/P.L. 108–32

Grand Teton National Park Land Exchange Act (June 17, 2003; 117 Stat. 779)

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43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
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136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
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48 Chapters:			
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29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
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200–399	(869–048–00200–6)	61.00	Oct. 1, 2002

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50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.