Federal Register

5–29–02 Wednesday
Vol. 67 No. 103 May 29, 2002

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(ISSN 0097-6326)

Federal Register

5–29–02 Wednesday
Vol. 67 No. 103 May 29, 2002
Pages 37319–37662

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Contents

Federal Register

Vol. 67, No. 103

Wednesday, May 29, 2002

Separate Parts In This Issue

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

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

3 CFR

Executive Orders:

12808 (See Notice of May 27, 2002).....37661
12934 (See Notice of May 27, 2002).....37661
13088 (See Notice of May 27, 2002).....37661
13192 (See Notice of May 27, 2002).....37661

Administrative Orders

Notices:
Notice of May 27, 2002.....37661
Presidential Determinations:
No. 96–7 (See Notice of May 27, 2002).....37661

7 CFR

917.....37319

14 CFR

39.....37319
71 (3 documents).....37321, 37474

Proposed Rules:

39 (2 documents).....37356, 37357
121.....37361

16 CFR

Proposed Rules:

310.....37362

17 CFR

11.....37322

25 CFR

Proposed Rules:

542.....37369

26 CFR

Proposed Rules:

1.....37369

30 CFR

948.....37610

40 CFR

52 (3 documents).....37323, 37325, 37328
70.....37325
81.....37328
180.....37332

Proposed Rules:

52 (3 documents).....37369, 37370
70.....37370
81.....37370
94.....37548

47 CFR

25.....37335

50 CFR

17 (2 documents).....37336, 37498
635.....37354

Rules and Regulations

Federal Register
Vol. 67, No. 103
Wednesday, May 29, 2002

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV02–916–1C IFR)

Nectarines and Peaches Grown in California; Correction

AGENCY: Agricultural Marketing Service.

ACTION: Interim final rule; correction.

SUMMARY: This document contains a correction to the interim final rule published on April 5, 2002 (67 FR 16286), concerning nectarines and peaches grown in California. The correction is needed to exempt Peento (Donut) varieties of peaches from the weight-count standards for round varieties of peaches. The exemption was inadvertently omitted from the rule.

EFFECTIVE DATE: April 6, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, 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 Ave, SW STOP 0237, Washington, DC 20250–0237, Telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION:

Background

The interim final regulations that are the subject of this correction revised § 917.459, but inadvertently omitted paragraph (a)(6)(iii).

Need for Correction

The interim final rule as published omits revised § 917.459, paragraph (a)(6)(iii) which exempts Peento (Donut) varieties of peaches from the weight-count standards applicable to other round varieties of peaches. The additional language is needed to ensure that newly-developed and approved weight-count standards for volume-filled containers of Peento (Donut) varieties of peaches are the sole basis for the weight-count sampling of Peento varieties of peaches.

Correction

Accordingly, in FR Doc. 02–8140, published April 5, 2002 (67 FR 16286) make the following corrections.

1. On page 16296, third column, add instruction "E" immediately following instruction "D" as stated below.

E. Paragraph (a)(6)(iii) is revised as follows.

2. On page 16298, first column, after the 5 asterisks following § 917.459 paragraph (a)(6) introductory text, paragraph (a)(6)(iii) is added to read as follows:

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(6)(i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches, or if the peaches are "well matured," not more than 73 peaches, except for Peento (Donut) varieties of peaches.

Dated: May 21, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–13378 Filed 5–28–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–19–AD; Amendment 39–12763; AD 2002–11–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to insert a temporary change into the FAA-approved Airplane Flight Manual (AFM) that adds a limitation for prohibiting flight into icing conditions and adds procedures for when an icing condition occurs. This AD is the result of reports of a manufacturing problem with the wing leading edge anti-ice system. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in icing conditions by providing procedures and limitations associated with such conditions.

DATES: This AD becomes effective on June 14, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 5, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–19–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. 2002–CE–19–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 the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–19–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused this AD?

The FAA has received reports from Raytheon that indicate during maintenance on one of the affected airplanes, it was discovered that the airflow paths of the anti-ice system between the outer skin and inner leading edge skin of the wing were obstructed. The obstruction is caused by sealant that is applied to the wing leading edge during manufacture. This condition has been found on six other affected airplanes. Obstruction of the airflow paths prevents the hot air from the anti-ice system from properly distributing heat on the wing leading edge. Heat is necessary on the wing leading edge to prevent leading edge ice formation or runback ice.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not corrected, could result in ice formation on the wing leading edges and the upper and lower wing surfaces during flight in icing conditions. Ice formation on the wings could cause symmetric or asymmetric loss of lift, degradation of handling qualities, and increased drag of the airplane.

Is There a Modification I Can Incorporate Instead of Adding the Temporary Changes to the Airplane Flight Manual (AFM)?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by temporary changes to the AFM or other special procedures. With this in mind, we will continue to work with Raytheon in collecting information to determine whether a future design change may be necessary.

The FAA's Determination and an Explanation of the Provisions of This AD—What Has FAA Decided?

The FAA has reviewed all available information and determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 390 airplanes of the same type design; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to insert a temporary change into the FAA-approved AFM that adds a limitation for prohibiting flight into icing conditions and adds procedures for when an icing condition occurs.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in ice formation on the wings, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the 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 FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–19–AD." We will date stamp and mail the postcard back to you.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is "within the next 15 calendar days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Although ice formation on the wings is only unsafe during flight, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it would be for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration

amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–11–02 Raytheon Aircraft Company: Amendment 39–12763; Docket No. 2002–CE–19–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplanes that are certificated in any category:

Model	Serial Nos.
390	RB–4 through RB–14, RB–20 through RB–22, RB–24 through RB–32, and RB–34.

(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 ice formation on the wing leading edges and the upper and lower wing surfaces during flight in icing conditions. Ice formation on the wings could cause symmetric or asymmetric loss of lift, degradation of handling qualities, and increased drag of the airplane.

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

Actions	Compliance	Procedures
Insert page 2 (Limitations Section) and page 3 (Abnormal Procedures Section) of Raytheon Temporary Change, Part Number (P/N) 390–590001–0003BTC1, dated April 29, 2002, into the FAA-approved Airplane Flight Manual (AFM).	Within the next 15 calendar days after June 14, 2002 (the effective date of this AD).	Incorporating the AFM revisions, as required by this AD, may be performed by anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

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

(h) *When does this amendment become effective?* This amendment becomes effective on June 14, 2002.

Issued in Kansas City, Missouri, on May 20, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13289 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 01–AGL–01]

Modification of Class D Airspace; Rockford, IL; Modification of Class E Airspace; Rockford, IL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects two errors in the legal descriptions of a final rule that was published in the **Federal Register** on Tuesday, April 2, 2002 (67 FR 15478). The Final Rule modified Class D and Class E airspace at Rockford, IL.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–7858 published on Tuesday, April 2, 2002 (67 FR 15478), modified Class D and Class E Airspace at Rockford, IL. The latitude and longitude was omitted for the Greater Rockford ILS localizer in the Class E legal description. In addition, runway 36 was referred to in the Class D legal description, instead of runway 1. This action corrects these errors, by adding the missing latitude and longitude, and changing the runway identifier.

Accordingly, pursuant to the authority delegated to me, the errors for the Class D and Class E Airspace, Rockford, IL, as published in the **Federal Register** Tuesday, April 2, 2002 (67 FR 15478), (FR Doc. 02–7858), are corrected as follows:

§ 71.1 [Corrected]

1. On page 15478, Column 3, correct the Class E legal description as follows:

a. Add the following immediately below:

"**Greater Rockford Airport, IL** (Lat. 42°11′43″N., long. 89°05′50″W.)":

Greater Rockford ILS Localizer (Lat. 42°12′36″N., long. 89°05′17″W.)

2. On page 15478, Column 3, correct the Class D legal description as follows:

a. Change "Runway 36 ILS localizer course" to read: "Runway 1 ILS localizer course".

Issued in Des Plaines, Illinois on April 25, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–13215 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority to the Director of the Division of Enforcement To Institute Subpoena Enforcement Proceedings

AGENCY: Commodity Future Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending regulations to delegate authority to the Director of the Division of Enforcement, with the concurrence of the General Counsel or General Counsel's delegee, to institute subpoena enforcement proceedings in federal court to seek an order compelling the attendance and testimony of witnesses and the production of documents pursuant to a validly-issued Commission subpoena and to clarify that notwithstanding the delegated authority, as he believes appropriate, the Director may submit any proposed subpoena enforcement action for Commission consideration and nothing in this delegation prohibits the Commission from exercising the delegated authority. This amendment will expedite the investigation process by enabling the staff more quickly to compel individuals or entities to comply with Commission subpoenas and conserve Commission resources. This action relates solely to the Commission's organization, procedure and practice.

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Gretchen L. Lowe, Counselor to the Director, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 2058. Telephone: (202) 418–5379.

SUPPLEMENTARY INFORMATION:

I. Rule 11.4(e)

The CFTC today announced an amendment to its rules governing investigations, and in particular, subpoenas. The Commission is authorized to promulgate this rule under sections 2a(11) and 8a(5), of the Commodity Exchange Act.[1]

The amendment to Rule 11.4,[2] adding paragraph (e), authorizes the Director of Division of Enforcement, with the concurrence of the General Counsel or General Counsel's delegee, to institute subpoena enforcement proceedings in federal court to seek an order compelling individuals or entities to comply with Commission subpoenas. This delegation will expedite the investigation process and conserve Commission resources by enabling the Division more expeditiously to seek to compel compliance with Commission subpoenas in cases where the entry of a court order is necessary. Notwithstanding this delegation of authority, in instances where potential subpoena enforcement actions raise any novel or complex issues, the Division may consult with the Commission before the action is filed in federal court.

The Commission has determined that this amendment relates solely to agency organization, procedure and practice and does not relate to a substantive rule. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rulemaking and opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make this rule effective immediately upon publication in the **Federal Register** because it will expedite the investigation process and conserve Commission resources.

II. Related Matters

A. Consideration of Costs and Benefits and Antitrust Laws

Section 15 of the Commodity Exchange Act requires the Commission to consider the costs and benefits of its action as well as the public interest to be protected by the antitrust laws before adopting a rule or regulation under the Act. Because the amendments to part 140 relate solely to agency organization, procedure and practice, they do not directly implicate the specific areas of concern identified in Section 15. In any event, the Commission has considered the costs and benefits of this amendment and has concluded that the rule is fully consistent with the public interest and with the requirements and prohibitions of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(f) and (j), 12a(5) and 13.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules in accordance with 5 U.S.C. 553, consider the impact of those rules on small businesses. The Commission has determined that the provisions of the RFA do not apply to the promulgation of this regulation since it relates solely agency organization, procedure and practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (RPA), 4 U.S.C. 3501 *et seq.*, which imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the RPA, does not apply to these rules. This rule amendment does not contain information collection requirements as defined by the RPA.

List of Subjects in 17 CFR Part 11

Administrative practice and procedure, Commodity futures, Investigations, Rules relating to investigations.

In consideration of the foregoing and pursuant to the authority contained in the Act, and in particular, Sections 2a and 8a, 7 U.S.C. 2(a) and 8a, the Commission hereby amends Part 11 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 11—RULES RELATING TO INVESTIGATIONS

1. The authority citation for Part 11 continues to read as follows:

Authority: 7 U.S.C. 2(a), 4a(j), 9 and 15, 12, 12a(5), 12(f).

2. Section 11.4 is amended by adding paragraphs (e) and (f) to read as follows:

§ 11.4 Subpoenas.

* * * * *

(e) Pursuant to the authority granted under Sections 2(a)(11) and 8a(5) of the Act, the Commission hereby delegates to the Director of the Division of Enforcement, with the concurrence of the General Counsel or General Counsel's delegee, and until such time as the Commission orders otherwise, the authority to invoke, in case of contumacy by, or refusal to obey a subpoena issued to, any person, the aid

[1] Section 2a(11), 7 U.S.C. 4a(j), authorizes the Commission to "promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission." Section 8a(5), 7 U.S.C. 12a(5) gives the Commission the authority "to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the Act.]."

[2] 17 CFR 11.4.

of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda and other records pursuant to subpoenas issued in accordance with section 6(c) of the Act for the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of the Act.

(f) Notwithstanding the delegation of authority to the Director set forth in paragraph (e) of this section, in any case in which the Director believes it appropriate the matter may be submitted to the Commission for its consideration. Nothing in this section shall prohibit the Commission from exercising the authority delegated in paragraph (e) of this section.

Issued in Washington, DC on May 22, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–13300 Filed 5–28–02; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL189–1a; FRL–7212–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to particulate matter control requirements for rural grain elevators in Illinois. On April 8, 1999, the Illinois Environmental Protection Agency (IEPA) submitted section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89–491) as a requested revision to the Illinois State Implementation Plan (SIP). The requested SIP revision exempts rural grain elevators from certain particulate matter control requirements. An air quality modeling analysis was conducted to show that this rule change would not cause or contribute to violation of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).

DATES: This rule is effective on July 29, 2002, unless EPA receives relevant adverse written comments by June 28, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: Patricia Morris, Acting Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

Table of Contents

I. What Is the EPA Approving?

EPA is approving section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89–491) as a revision to the Illinois SIP. The revised Illinois Environmental Protection Act exempts rural grain elevators from particulate matter control requirements contained in section 212.462 of Title 35 of the Illinois Administrative Code (35 IAC 212.462).

a. What Sources Are Being Exempted?

The exemption applies to "any grain elevator located outside of a major population area" provided that the elevator:

1. does not violate the pollution prohibition in subsection (a) of section 9 of the Illinois Environmental Protection Act or have a certified investigation on file with the Illinois EPA; and,

2. Is not required to obtain a Clean Air Act Permit Program permit.

"Major population areas" are defined at 35 IAC 211.3610. Generally, major population areas include Cook, Lake, DuPage, and Will Counties; portions of McHenry, Kane, and St. Clair Counties; as well as the municipalities of Kankakee, Rockford, Moline, Galesburg, Peoria, Pekin, Bloomington/Normal, Champaign/Urbana, Decatur, Springfield, and surrounding areas.

Subsection (a) of section 9 of the Illinois Environmental Protection Act states "No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the [Illinois Pollution Control Board] under this Act."

A "certified investigation" means "a report signed by Illinois Environmental Protection Agency personnel certifying whether a grain-handling operation (or portion thereof) or grain-drying operation is causing or tending to cause air pollution."

A Clean Air Act Permit Program permit is a permit required under section 39.5 of the Illinois Environmental Protection Act. For sources of particulate matter pollution, such as grain elevators, sources with a potential to emit over 100 tons of PM10 per year are required to obtain permits under this program.

b. What Requirements Are They Being Exempted From?

The revised Illinois Environmental Protection Act exempts rural grain elevators from particulate matter control requirements contained in 35 IAC 212.462. The requirements in 35 IAC 212.462 are applicable only to operations with a total annual grain throughput of 300,000 bushels or more. 35 IAC 212.462 requires sources to apply for a permit subject to 35 IAC 201. 35 IAC 212.462 also requires, among other requirements, control equipment with 90% particulate removal efficiency on cleaning and separating operations, major dump-pit areas, internal transferring areas, and watercraft loadout areas. 35 IAC 212.462 requires truck and hopper car loading to use socks, sleeves or choke loading, and for box car loading emissions to be controlled "to the fullest extent which is technically and economically feasible".

c. What Requirements Still Apply?

Illinois grain elevators exempted from the requirements of 35 IAC 212.462 continue to be regulated by 35 IAC 212.461 which includes housekeeping requirements such as maintenance and operation of existing control equipment, and requirements for cleaning and maintenance of areas such as floors, roofs, and property. No visible emissions are allowed from the head house.

Grain drying operations continue to be regulated by 35 IAC 212.463, which contains specific requirements for different types of grain dryers.

Sources exempted from 35 IAC 212.462 are also subject to the opacity limits of 35 IAC 212.123, which limit opacity of emissions to 30%, generally. 60% opacity is allowed for up to 8 minutes per hour, on no more than 3 occasions in any 24-hour period.

Additionally, New Source Performance Standards (Title 40 Code of Federal Regulations, part 60, subpart DD) apply to grain elevators constructed or modified after August 3, 1978. These Federal regulations, generally, contain limits on grain loading/unloading, grain drying, and material handling operations at grain elevators with a permanent storage capacity of more than 2.5 million bushels.

II. Analysis of the Requested SIP Revision

Section 110(l) of the Clean Air Act (Act) states that EPA shall not approve a requested SIP revision if the revision would interfere with any applicable requirement of the Act. While the requested SIP revision does not apply to any PM10 "nonattainment areas", it is a relaxation of the current SIP. Therefore, to satisfy section 110(l) of the Act, an air quality modeling analysis was conducted to determine whether the requested SIP revision would cause or contribute to violations of PM10 National Ambient Air Quality Standards (NAAQS). Illinois submitted a modeling analysis, and the EPA conducted further analyses to confirm the State's results. The modeling analyses considered a representative rural grain elevator with a throughput of 2.5 million bushels per year, using conservative emissions estimates, and including estimates of background PM10 concentrations. The analysis showed that the requested SIP revision will not cause or contribute to violations of the PM10 NAAQS. The NAAQS for PM10 are 150 and 50 micrograms per cubic meter ($\mu g/m^3$) for the 24-hour and annual standards, respectively. The final modeling analysis results showed an expected 24-hour (highest sixth-high plus background) concentration of 129 $\mu g/m^3$ and an expected annual-average concentration 41 ug/m^3. For a detailed discussion, see the Technical Support Document dated April 23, 2002.

EPA thus concludes that this submittal will not interfere with attainment or any other Act requirement. Therefore, EPA is approving the requested SIP revision.

III. What Are the Environmental Effects of This Action?

As discussed above, while this submittal allows somewhat more emissions in rural areas than was previously allowed, air quality modeling analysis shows that approval of this requested SIP revision will not result in violations of the PM10 NAAQS. (For more information *see* the Technical Support Document dated April 23, 2002.)

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to particulate matter control requirements for rural grain elevators in Illinois. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision in case adverse written comments are filed. This action will be effective without further notice unless we receive relevant adverse written comment by June 28, 2002. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on July 29, 2002.

V. Administrative Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 7, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(165) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(165) On April 8, 1999, the Illinois Environmental Protection Agency submitted revisions to particulate matter control requirements for rural grain elevators in Illinois. The revised requirements exempt rural grain elevators from certain particulate matter control requirements.

(i) *Incorporation by reference.* Revised grain elevator provisions in Section 9(f) of the Illinois Environmental Protection Act. Adopted by both Houses of the Illinois General Assembly as Public Act 89–491 (previously Senate Bill 1633) on April 25, 1996, approved by the Governor of Illinois on May 23, 1996, effective June 21, 1996.

* * * * *

[FR Doc. 02–13246 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 156–1156a; FRL–7218–2]

Approval and Promulgation of Implementation Plans and Operating Permit Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving revisions to the Nebraska State Implementation Plan (SIP), Operating Permit Program, and Air Toxics Program. These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program.

DATES: This direct final rule will be effective July 29, 2002, unless EPA receives adverse comments by June 28, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

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

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

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

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

What is a SIP?

What is the Federal Approval Process for a SIP?

What does Federal Approval of a State Regulation Mean to Me?

What is the Part 70 Operating Permit Program?

What is Being Addressed in This Action?

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

What Action is EPA Taking?

What Is a SIP?

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

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

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

What Is the Federal Approval Process for a SIP?

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

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

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52,

entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the Part 70 Operating Permit Program?

The CAA Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed in 40 CFR part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

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

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval. Because the state's operating permit rules are approved pursuant to both part 70 and section 112(l), some of the revised rules are also approved pursuant to section 112(l).

What Is Being Addressed in This Action?

The Nebraska Department of Environmental Quality (NDEQ) has adopted changes to its Title 129—*Nebraska Air Quality Regulations* and has requested that EPA approve these changes as a revision to the Nebraska SIP.

Nebraska has also asked that changes also be approved as revisions to the Title V Operating Permit Program, and § 112(l) Air Toxics Program. The changes to Title 129 were approved by the Nebraska Environmental Quality Council at its September 4, 1998, and March 23, 2000, hearings, with effective dates of December 15, 1998, and August 22, 2000, respectively. Also, on January 23, 2002, NDEQ sent EPA a letter which provided further explanation regarding a modification made to section 014 of Chapter 17, "Construction Permits—When Required."

The following is a description of the changes to Nebraska's Title 129:

1. *Applicable Requirement Definition.* The definition of applicable requirement in Chapter 1, 014.04 was revised to reference Chapter 23 emission standards for Hazardous Air Pollutants (HAPs) in addition to the already existing reference to Chapters 27 and 28.

2. *Updates to Reference-type Materials.* The version of the SIC Code Manual cited in Chapter 1, 018 was updated to 1987.

3. *Volatile Organic Compound (VOC) Exemption Update.* Chapter 1, 109 was revised to add 16 additional compounds to the list of organic compounds which have been determined to have negligible reactivity.

4. *Transferral of Stack Height Rules.* Four definitions from Chapter 1 related to Stack Height Good Engineering Practice (032, 040, 049, and 061) were transferred to new regulations added to Chapter 16 (new 004, 005, 006, 007, 008). These rules have previously been approved by EPA.

5. *Significance Levels for Landfills.* In Chapter 1, 094, a trigger level for "Municipal solid waste landfill emissions" was added to the definition of "significant" in Chapter 1.

6. *Requirements for Permit Compliance Certification.* Chapter 7, 006.02I4 was revised to replace "enhanced monitoring" with "compliance assurance or periodic monitoring" consistent with terminology used in corresponding regulations.

7. *Annual Certification of Risk Management Plans.* Chapter 8, 011.02 was revised to correct a typographical error in a citation, from Chapter 7, 002 to Chapter 7, 006.02I3.

8. *Compliance with Terms of Construction Permit.* Chapter 17, 002.01 was added to reinforce that permit non-compliance is not allowed.

9. *Modification of a Construction Permit.* Chapter 17, 014 was added to allow for modification of construction permits without public notice procedures under tightly limited circumstances. The revision allows the Director the means to address construction permit provisions which in hindsight could or should have been written differently, without undergoing a full permit revision process where there is no environmental impact. On January 23, 2002, NDEQ sent EPA a letter which responded to EPA's concerns that this change not allow sources to modify an existing construction permit which would allow significant emissions of a pollutant not previously emitted or which should require a new Best Available Control Technology (BACT) analysis. The NDEQ's letter explains its process for review of requests for changes under this section and for assuring that only modifications meeting the criteria of the rule are approved under this process.

10. *Update to CFR Citation.* The CFR citation in Chapter 19, 001 was updated to July 1, 1997, which, among other things, updates the definition of "significant" to include a trigger level for municipal solid waste landfill emissions.

11. *Opacity of Particulate Emissions.* Chapter 20, 005 was revised to allow for evaluation of opacity using an EPA-approved method other than Method 9 in Appendix A of 40 CFR part 60, as long as the alternate method is agreed upon by NDEQ and EPA.

12. *Compliance Assurance Monitoring.* Chapter 31, 001 was revised to adopt by reference the Federal compliance assurance monitoring (CAM) rule as found at 40 CFR part 64, effective July 1, 1999. Previously, EPA had not approved Chapter 31 as part of NDEQ's Title V program. Today, EPA is adding the chapter to the list of those chapters of Title 129 which are approved as part of Nebraska's Title V Operating Permit Program.

13. *Emission Sources, Testing, Monitoring.* Chapter 34, 007 was revised to require performance tests "if required" rather than every time a new or modified source becomes operational.

14. *Updates to Reference-type Materials.* The reference to the Test Methods for Evaluating Solid Waste in

Chapter 34, 002.06, was updated to 1997.

15. *Location of Federal Documents.* Chapter 41, 007 was added to clarify that copies of the substantial Federal documents (Code of Federal Regulations and **Federal Register**) adopted by reference are located and available at NDEQ's office.

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

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action is EPA Taking?

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Final Action: EPA is approving as an amendment to the Nebraska SIP regulatory changes to Title 129, Chapters 1, 7, 8, 16, 17, 19, 20, 34 and 41. EPA is also approving as an amendment to the Nebraska Title V operating permit program changes to Title 129 Chapters 1, 7, 8, 31, and 41. Finally, EPA is approving pursuant to section 112(l) revisions to Chapters 7 and 8.

Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compound.

40 CFR Part 70

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

Dated: May 16, 2002.

Karen A. Flournoy,

Acting Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart CC—Nebraska

2. In § 52.1420 the table in paragraph (c) is amended by:

a. Revising the entry for "129–1".

b. Revising the entry for "129–7".

c. Revising the entry for "129–8".
d. Revising the entry for "129–16".
e. Revising the entry for "129–17".
f. Revising the entry for "129–19".
g. Revising the entry for "129–20".
h. Revising the entry for "129–34".
i. Revising the entry for "129–41".
The revisions read as follows:

§ 52.1420 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Comments
STATE OF NEBRASKA—DEPARTMENT OF ENVIRONMENTAL QUALITY				
129–1	Definitions	8/22/2000	[May 29, 2002, and FR cite]	
*	* *	*	*	* *
129–7	Operating Permits—Application	8/22/2000	[May 29, 2002, and FR cite]	
129–8	Operating Permit Content	8/22/2000	[May 29, 2002, and FR cite]	
*	* *	*	*	* *
129–16 ...	Stack Heights; Good Engineering Practice (GEP).	12/15/1998	[May 29, 2002, and FR cite]	
129–17 ...	Construction Permits—When Required	8/22/2000	[May 29, 2002, and FR cite]	Also refer to January 23, 2002, NDEQ letter to EPA regarding change to 129–17–014.
129–19 ...	Prevention of Significant Deterioration of air Quality.	12/15/1998	[May 29, 2002, and FR cite]	
129–20 ...	Particulate Emissions; Limitations and Standards (Exceptions due to Breakdowns of Scheduled Maintenance: See Chapter 34).	8/22/2000	[May 29, 2002, and FR cite]	
*	* *	*	*	* *
129–34 ...	Emission Sources; Testing; Monitoring	8/22/2000	[May 29, 2002, and FR cite]	
*	* *	*	*	* *
129–41 ...	General Provision	12/15/1998	[May 29, 2002, and FR cite]	
*	* *	*	*	* *

PART 70—[AMENDED]

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

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

2. Appendix A to Part 70 is amended by adding under "Nebraska; City of Omaha; Lincoln-Lancaster County Health Department" paragraph (e) to read as follows:

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

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

* * * * *

(e) The Nebraska Department of Environmental Quality submitted the following program revisions on June 29, 2001; NDEQ Title 129, Chapters 1 and 41, effective December 15, 1998; and NDEQ Title 129, Chapters 1, 7, 8, and 31, effective on August 22, 2000.

* * * * *

[FR Doc. 02–13248 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI101–7332a; FRL–7206–5]

Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 17, 2000, the Wisconsin Department of Natural Resources (WDNR) submitted a request to the Environmental Protection Agency (EPA) to redesignate the villages of Rothschild and Weston and the Township of Rib Mountain, all located in central Marathon County, Wisconsin, from primary and secondary sulfur dioxide (SO_2) nonattainment areas to attainment of the SO_2 National Ambient Air Quality Standards (NAAQS). EPA identified modeling and enforceability issues during the technical review of this submittal. On October 17, 2001, WDNR sent to EPA a submittal addressing the technical deficiencies. In this action EPA is approving the state's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

IF EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This "direct final" rule is effective July 29, 2002, unless EPA receives adverse or critical comments by June 28, 2002. If EPA receives adverse comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at this Office of Air and Radiation (OAR) Docket and

Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

A. What Action is EPA Taking?
B. Why was This SIP Revision Submitted?
C. Why Can We Approve This Request?
D. What Requirements Must be Met for Approval of a Redesignation, and How Did the State Meet Them?

A. What Action is EPA Taking?

We are approving the State of Wisconsin's request to redesignate the Rothschild-Rib Mountain-Weston primary and secondary SO_2 nonattainment areas to attainment of the SO_2 NAAQS. We are also approving the maintenance plan for these areas into the Wisconsin SO_2 SIP. Further, we are incorporating the consent orders for Weyerhaeuser Company (AM–01–600) and Wisconsin Public Service Corporation's Weston Plant (AM–01–601) into the Wisconsin SO_2 SIP.

B. Why Was This SIP Revision Submitted?

WDNR believes that the Rothschild-Rib Mountain-Weston areas, located in central Marathon County, are now eligible for redesignation because EPA approved Wisconsin's SO_2 SIP in 1990 and 1993, and SO_2 monitors in the nonattainment area of Marathon County have not recorded exceedances of either the primary or secondary SO_2 air quality standards since 1986.

C. Why Can We Approve This Request?

Consistent with the Act's requirements, EPA developed procedures for redesignation of nonattainment areas that are in a September 4, 1992, memorandum from John Calcagni, EPA, titled, *Procedures for Processing Requests to Redesignate Areas to Attainment.* This EPA guidance document contains a number of conditions that a state must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's Technical Support Document set forth the rationale in support of the redesignation of the Rothschild-Rib Mountain-Weston SO_2 nonattainment areas to an attainment status.

D. What Requirements Must the State Meet for Approval of a Redesignation and How Did the State Meet Them?

1. The State Must Show That the Area Is Attaining the Applicable NAAQS

There are two components involved in making this demonstration: (1) Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and (2) EPA approved air quality modeling must show that the area in question meets the applicable standard.

The first component relies on ambient air quality data representative of the area of highest concentration. The primary 24-hour concentration limit of the SO_2 NAAQS is 365 micrograms per cubic meter ($\mu g/m^3$). The secondary 3-hour concentration limit is 1300 $\mu g/m^3$. According to 40 CFR 50.4, an area must show no more than one exceedance annually. WDNR's monitoring data indicates that there have been no exceedances of the primary 24-hour concentration limit or the secondary 3-hour concentration limit during the monitoring period of 1986–1991, therefore satisfying the first component.

The second component relies on supplemental EPA approved air quality modeling. The modeling methodology used by the WDNR followed the guidance identified in EPA's Guideline on Air Quality Models, 40 CFR part 51, appendix W. Five sources were explicitly modeled: Wisconsin Public Service Corporation Weston Plant, Weyerhaeuser Company, Foremost Farms USA, Lignotech USA, Inc., and Mosinee Paper. Weyerhaeuser Paper and Lignotech are located within the Rothschild nonattainment area. Wisconsin Public Service Corporation-Weston and Foremost Farms are located 3 to 4 kilometers to the southwest of the Rothschild area and Mosinee Paper is located about 12 kilometers to the south-southwest of the Rothschild area.

EPA's review of the modeling in the state's November 17, 2000 submittal identified several issues. WDNR's supplemental submittal sent to EPA on October 17, 2001 included revised modeling which adequately addressed those issues. To demonstrate modeled attainment, Weyerhaeuser was limited to burning fuel oil with no more than 0.05% sulfur and Wisconsin Public Service Corporation Weston Plant was limited to burning coal in Units 1 and 2 with no more than 1.2 pounds of SO_2 per million British Thermal Units and to burning fuel oil with no more than 0.3% sulfur in the three turbines. WDNR placed these limits into consent orders which were included in its October 17, 2001 submittal.

The results of the air quality modeling conducted by the WDNR for the Rothschild-Rib Mountain-Weston nonattainment areas show the total SO_2 concentration from the impact of the five modeled sources combined with a representative background SO_2 concentration are below the primary and secondary SO_2 NAAQS. Therefore, WDNR satisfied the second component by supplying a modeling demonstration showing that the area is in attainment of the SO_2 NAAQS.

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy All Requirements That Apply to the Area

WDNR submitted multiple SO_2 SIP revisions to EPA between 1985 and 1992 to fulfill the requirements of section 110 and part D of the Act. The Rothschild SO_2 SIP revision approved by EPA on March 27, 1990 (55 FR 11183), contained limits pertaining to two sources, Weyerhaeuser and Reed Lignin Company (now Lignotech). This SIP revision approved Wisconsin's SO_2 plan for the City of Rothschild and the Town of Weston. The emission limits for the Wisconsin Public Service Corporation Weston Plant, the only large SO_2 emitting source located near Rib Mountain, were submitted as part of the Wisconsin statewide SO_2 rule. EPA approved the statewide SO_2 rule on May 21, 1993 (58 FR 29537), thereby approving Wisconsin's SO_2 plan for Rib Mountain Township.

3. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Air quality improvement in the Rothschild-Rib Mountain-Weston SO_2 nonattainment areas is attributed to SO_2 emission limits and operating restrictions imposed on the facilities that contributed to the nonattainment status. These limits have been incorporated into the state SO_2 SIP and are therefore permanent and enforceable. Further, the additional limits relied upon in the modeling were placed into consent orders, which were included in WDNR's October 17, 2001 submittal. These consent orders are being incorporated into the Wisconsin SO_2 SIP, thereby making them permanent and enforceable.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans. Part D contains the general requirements applicable to all areas that are designated nonattainment based on a violation of

the NAAQS. These requirements are satisfied by EPA's March 27, 1990 and May 21, 1993 approvals of the nonattainment plans that Wisconsin submitted for the control of SO_2 emissions in the Rothschild-Rib Mountain-Weston areas.

A PSD program will replace the requirements of the Part D new source review program after redesignation of the area. To ensure that the PSD program will become fully effective immediately upon redesignation, either EPA must delegate the federal PSD program to the state or the state must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. EPA fully approved Wisconsin's PSD program, effective June 28, 1999.

5. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Section 107(d)(3)(E) of the Act states that, for an area to be redesignated, EPA must fully approve a maintenance plan that meets the requirements of Section 175A. Section 175A of the Act requires states to submit a SIP revision that provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan. EPA is approving the maintenance plan in today's action as discussed below.

a. *Attainment Inventory.* The air dispersion modeling included in the state's submittal contains the emission inventory of SO_2 sources in the Rothschild-Rib Mountain-Weston nonattainment areas.

b. *Maintenance Demonstration and Verification of Continued Attainment.* The modeling analysis submitted by WDNR on October 17, 2001, demonstrates attainment and maintenance of the SO_2 NAAQS. The SO_2 emitting sources involved in the Rothschild-Rib Mountain-Weston SO_2 redesignation are meeting the SO_2 emission limits identified in the modeling. WDNR will track the maintenance plan through the annual submittal of the air emission inventory for the SO_2 emitting facilities in the Rib Mountain-Rothschild-Weston area.

c. *Monitoring Network.* WDNR ceased air quality monitoring in this area in 1991 due to fiscal considerations. EPA has stated in the past that if a state can show attainment of the NAAQS through EPA approved air dispersion modeling, has an approvable SIP revision showing that the control strategies have been implemented, and shows that it can continue to attain the standard for a period of 10 years following the redesignation, then an SO_2 monitoring network does not need to be maintained. Because the WDNR has met these requirements, it does not need to maintain a monitoring network in the Rothschild-Rib Mountain-Weston area. WDNR, however, has committed to resume monitoring if it appears that there are significant emission increases from the SO_2 emitting sources in the area that would cause a concern for public health.

d. *Contingency Plan.* Section 175A of the Act requires that the maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. WDNR will resume SO_2 air monitoring if the reported SO_2 emissions from any of the facilities in any one year exceeds the amount identified in the modeling. Once monitoring resumes and upon verification of a violation of either the 24-hour or 3-hour SO_2 NAAQS, if any of the SO_2 emitting sources in the area is responsible for the violation, WDNR will work with one or all of these sources to ensure that the violation will not occur again. WDNR will involve EPA, Region 5, in the discussions with the company. Once WDNR identifies the problem and sets a strategy to fix the problem, WDNR will write rules to control SO_2 emissions at the company or amend the company's federal operation permit. WDNR has committed to the following schedule: (1) To identify the responsible source within 30 days after a monitored violation; (2) to take action against the responsible source within 90 days of the violation; and, if EPA determines it necessary, (3) to submit a SIP revision to EPA within 360 days after the violation.

Final Action

We have evaluated the state's submittal and have determined that it meets the applicable requirements of the Act, EPA regulations, and EPA policy. Therefore, we are approving the State of Wisconsin's request to redesignate the villages of Rothschild and Weston and the Township of Rib Mountain, all located in central Marathon County, from primary and secondary SO_2 nonattainment areas to attainment of the SO_2 NAAQS. We are also approving the maintenance plan for the Rothschild-Rib Mountain-Weston areas into the Wisconsin SO_2 SIP. Further, we are also incorporating into the Wisconsin SO_2 SIP the consent orders for Weyerhaeuser Company (AM–01–600) and Wisconsin Public Service Corporation's Weston Plant (AM–01–601).

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 29, 2002 without further notice unless we receive relevant adverse comments by June 28, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action published elsewhere in this **Federal Register**. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 29, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 4, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Section 52.2570 is amended by adding paragraph (c)(105) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(105) On November 17, 2000, WDNR submitted a request to redesignate the villages of Rothschild and Weston and the Township of Rib Mountain, all located in central Marathon County, Wisconsin from primary and secondary SO_2 nonattainment areas to attainment of the SO_2 NAAQS. EPA identified modeling and enforceability issues during the technical review of this submittal. On October 17, 2001, WDNR sent to EPA a supplemental submittal addressing the technical deficiencies.

(i) *Incorporation by reference.*

(A) A Consent Order identified as AM–01–600 for Weyerhaeuser Company, issued by WDNR and signed by Scott Mosher for the Weyerhaeuser Company on May 29, 2001, and Jon Heinrich for WDNR on August 16, 2001.

(B) A Consent Order identified as AM–01–601 for Wisconsin Public Service Corporation's Weston Plant, signed by David W. Harpole for the Wisconsin Public Service Corporation on July 12, 2001, and Jon Heinrich for WDNR on August 16, 2001.

3. Section 52.2575 is amended by adding paragraph (b)(4) to read as follows:

§ 52.2575 Control strategy: Sulfur dioxide.

* * * * *

(b) * * *

(4) An SO_2 maintenance plan was submitted by the State of Wisconsin on November 17, 2000, for the villages of Rothschild and Weston and the Township of Rib Mountain, all located in central Marathon County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

2. Section 81.350 is amended by revising the entry for Marathon County under AQCR 238 in the table entitled "Wisconsin-SO_2" to read as follows:

§ 81.350 Wisconsin.

WISCONSIN—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
*	*	*	*	*
AQCR 238:				

WISCONSIN—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Marathon County				X
* * *	*	*	*	*

* * * * *

[FR Doc. 02–13112 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0061; FRL–7176–8]

Fludioxonil; Re-establishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for residues of the fungicide fludioxonil in or on caneberries at 5 parts per million (ppm) for an additional 2 year period. This tolerance will expire and is revoked on December 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on caneberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective May 29, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0061, must be received on or before July 29, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0061 in the subject line on the first page of your respons

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**"—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0061. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of June 30, 1999 (64 FR 35037) (FRL–6086–4), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996 (Public Law 104–170), it established a time-limited tolerance for the residues of fludioxonil in or on caneberries at 5 ppm, with an expiration date of December 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be

established without providing notice or period for public comment. The tolerance was extended in the **Federal Register** of December 6, 2000 (65 FR 76169) (FRL–6756–6) until December 31, 2001.

EPA received a request to extend the use of fludioxonil on caneberries for this year's growing season due to the widespread development of pest resistance to previously-used standard fungicides benomyl, iprodione, and vinclozolin; no curently available alternatives appear to provide suitable disease control and significant economic losses are expected with moderate to severe disease pressure. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fludioxonil on caneberries for control of gray mold in Oregon and Washington.

EPA assessed the potential risks presented by residues of fludioxonil in or on caneberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of June 30, 1999 (FR 64 35037) (FRL–6086–4). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2 year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0061 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 29, 2002.

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

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0061, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

§ 180.516 [Amended]

2. In § 180.516, revise the entry in paragraph (b) for Caneberries to read as follows:

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* * * * * * *		
Caneberry	5.0	12/31/03
* * * * * * *		

* * * * *

[FR Doc. 02–13252 Filed 5–28–02; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket 92–297; FCC 01–164]

Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC) issued a document disposing of petitions for reconsideration of a previous order that established a frequency-use plan for Ka-Band satellite services. The reconsideration order eliminates a rule provision that restricted eligibility for license authority for uplink transmission in the 29.25–29.5 GHz frequency band and clarifies provisions concerning inter-system coordination in that band.

DATES: Effective May 29, 2002.

FOR FURTHER INFORMATION CONTACT: William Bell at (202) 418–0741. Internet: *bbell@fcc.gov*, International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 92–297, FCC 01–164, adopted May 22, 2001 and released on May 24, 2001. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

Summary of Memorandum Opinion and Order

Deletion of Repeating-Groundtracks Requirement

In the *First Report and Order, 61 FR 39425, July 29, 1996* in Docket No. 92–297, the Commission designated two adjacent frequency bands, 29.1–29.25 GHz and 29.25–29.5 GHz, for feeder uplinks for Mobile Satellite Service systems using non-geostationary-orbit satellites (*i.e.*, "NGSO/MSS" systems). The Commission also designated the 29.1–29.25 GHz band for hub-to-subscriber transmission by Local Multipoint Distribution Service ("LMDS") systems and the 29.25–29.5 GHz band for uplinks for Fixed Satellite Service systems using geostationary satellites (*i.e.*, "GSO/FSS" systems).

In a petition for reconsideration of the *First Report and Order*, Motorola Satellite Communications, Inc. asked for deletion of a rule provision, 47 CFR 25.258(c), that limits eligibility for NGSO/MSS feeder uplink assignments in the 29.25–29.5 GHz band to systems whose satellites retrace the same path over the earth's surface on every orbit. Motorola argued that the restriction should be eliminated because it severely constrains system design, is unnecessary for inter-system coordination, and was adopted without adequate prior notice.

The FCC concludes that there is no evidence of record that an NGSO/MSS system must operate with repeating ground tracks in order to coordination with GSO/FSS systems. The FCC therefore decides to eliminate the rule provision in question.

Geographic Separation

A petitioner requested that 47 CFR 25.258(b) be amended to allow GSO FSS licensees to rely on geographic separation for coordination of uplink transmission with NGSO FSS systems. The FCC denies the request because it has concluded that the rule already permits reliance on geographical separation for that purpose.

"Licensed"

A petitioner contended that the word "Licensed" should be stricken from § 25.258(b) because its use in that context might foster an impression that NGSO/MSS licensees need not coordinate with GSO/FSS systems proposed in pending applications. The FCC denies this amendment request. It holds that the petitioner's concern is unwarranted and, in any case, that merely deleting "Licensed" would not change the meaning of the rule provision.

Clarifying Amendments to § 25.258

Several petitioners proposed amendments to 47 CFR 25.258 to make it clear that interference should be minimized with respect to both GSO FSS and NGSO MSS systems and that NGSO applicants should demonstrate the feasibility of sharing with previously-licensed GSO systems that are not yet operational. The FCC agrees that these proposed changes should be made.

Limits on LMDS Operation

In the *First Report and Order* the FCC prohibited use of the 29.1–29.25 GHz frequency band for LMDS subscriber-to-hub links, but indicated that the limitation might be reconsidered in the future based on evidence that sharing is feasible. A petitioner sought clarification regarding the process that would be used to reach a determination in this regard. The FCC says in the reconsideration order that it sees no reason to prescribe a specific process for making such a determination at this time and that clarification of requirements for fixed service leasing of LMDS spectrum is under consideration in another proceeding.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended ("RFA") requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

First, in this Memorandum Opinion and Order we eliminate a rule provision that barred use of the 29.25–29.5 GHz frequency band for transmission from earth stations to non-geostationary-orbit (i.e., "NGSO") satellites that do not trace constant paths over the ground in successive orbits. Any applicant for a license for NGSO uplink transmission in that band is required by other provisions in the Commission's rules to demonstrate that the proposed operation (1) would not interfere with authorized operation in that band by previously-licensed systems or (2) would be conducted in accordance with coordination agreements with the licensees of such systems. With these protective measures in place, we believe that the elimination of the restriction on use of the 29.25–29.5 GHz frequency band will not have a significant economic impact on any small entities.

Second, this Memorandum Opinion and Order adopts minor revisions to other rule provisions to make it clear that: (1) the frequencies and polarity of transmission to GSO satellites in the 29.25–29.5 GHz band from fixed earth stations in the vicinity of NGSO feeder-link stations must be chosen to minimize interference with reception of uplink transmission to NGSO, as well as GSO, satellites and (2) applicants for authority to use the 29.25–29.5 GHz band for feeder uplinks must show that sharing is possible with other systems that have been previously-authorized to use that band, not just systems that are currently operational. These changes merely clarify the Commission's pertinent intentions, rather than altering its policies and therefore impose no additional burden on any small entities. We therefore certify that the adoption of this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Memorandum Opinion and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register.**

Ordering Clauses

Accordingly, that the "Petition for Partial Reconsideration" filed by Motorola Satellite Communications, Inc. on September 27, 1996 *is granted.*

The "Petition of TRW Inc. for Clarification and/or Partial Reconsideration of the First Report and Order" filed on September 24, 1996 *is granted* to the extent indicated herein and *is otherwise denied* and that the "Petition for Reconsideration of Texas Instruments, Inc." filed on August 28, 1996 *is denied* to the extent indicated herein.

Section 25.258 of the Commission's rules *is amended* as indicated in the rule changes, effective May 29, 2002. This action is taken pursuant to 47 U.S.C. 154(i) and 303(r).

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Memorandum Opinion and Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.258 is revised to read as follows:

§ 25.258 Sharing between NGSO MSS Feeder links Stations and GSO FSS services in the 29.25–29.5 GHz Bands.

(a) Operators of NGSO MSS feeder link earth stations and GSO FSS earth stations in the band 29.25 to 29.5 GHz where both services have a co-primary allocation shall cooperate fully in order to coordinate their systems. During the coordination process both service operators shall exchange the necessary technical parameters required for coordination.

(b) Licensed GSO FSS systems shall, to the maximum extent possible, operate with frequency/polarization selections, in the vicinity of operational or planned NGSO MSS feeder link earth station complexes, that will minimize instances of unacceptable interference with GSO FSS or NGSO MSS uplink reception.

(c) Applicants for authority to use the 29.25–29.5 GHz band for NGSO MSS feeder uplinks will have to demonstrate that their systems can share with GSO FSS and NGSO MSS systems that have been authorized for operation in that band.

[FR Doc. 02–13225 Filed 5–28–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH82

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Approximately 116 hectares (287 acres) of land fall within the boundaries of the critical habitat designation located in Santa Cruz County, California. We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on June 28, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe robusta var. *hartwegii* is endemic to Purisima sandstone and Santa Cruz mudstone in Scotts Valley in the Santa Cruz Mountains, Santa Cruz County, California. *C. r.* var. *hartwegii,* a short-lived annual species in the buckwheat family (Polygonaceae), is a low-growing herb with rose-pink involucral (pertaining to a circle or collection of modified leaves surrounding a flower cluster) margins confined to the basal portion of the teeth and an erect form of growth. The aggregate flowers (heads) are medium in size (1 to 1.5 centimeters (cm) (0.4 to 0.6 inches (in) in diameter) and distinctly aggregate. Each flower produces one

seed; the seeds are 3.5 to 4.0 millimeters (mm) long. Hooks on the spines of the involucre (circle or collection of modified leaves surrounding a flower cluster), which surround the seed, facilitate seed dispersal.

Chorizanthe robusta var. *hartwegii* is one of two varieties of the species *Chorizanthe robusta*. The other variety (*Chorizanthe robusta* var. *robusta*), known as robust spineflower, is restricted to sandy soils in coastal and near-coastal areas in Santa Cruz County. We are designating critical habitat for *C. r.* var. *robusta* in a separate **Federal Register** notice.

The range of *Chorizanthe robusta* var. *hartwegii* comes close to, but does not overlap with that of *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), another closely related taxon in the *Pungentes* section of the genus, in Santa Cruz County. *Chorizanthe pungens* var. *hartwegiana* is also a federally endangered species; for a detailed description of these related taxa, see the Draft Recovery Plan for the Robust Spineflower (Service 2000) and references within this plan.

Chorizanthe robusta var. *hartwegii* is known from two sites about 1.6 kilometers (km) (1 mile (mi)) apart at the northern end of Scotts Valley in Santa Cruz County, California. For the most part, it co-occurs with *Polygonum hickmanii*, a species that is proposed for Federal listing as endangered (65 FR 67335). We proposed critical habitat for *C. r.* var. *hartwegii* and *Polygonum hickmanii* at the same time; however, since the final rule for *Polygonum hickmanii* has not been published, we are only designating critical habitat for *C. r. var. hartwegii* at this time.

Chorizanthe robusta var. *hartwegii* is found on gently sloping to nearly level fine-textured, shallow soils of the Bonnydoon series over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995, Soil Conservation Service 1980, U.S. Geologic Survey 1989). *C. r.* var. *hartwegii* occurs with other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of non-native grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of non-native grasses and herbs. The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 245 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995).

Chorizanthe robusta var. *hartwegii* is associated with a number of native herbs including *Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Non-native species present include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; Randy Morgan, biological consultant, pers. comm., 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

Chorizanthe robusta var. *hartwegii* germinates during the winter months and flowers from April through June. Although pollination ecology has not been studied for this taxon, it is likely visited by a wide array of pollinators. Pollinators that have been observed on other species of *Chorizanthe* that occur in Santa Cruz County have included: leaf cutter bees (megachilids); at least 6 species of butterflies; flies; sphecid wasps; ants; and small beetles (Randy Morgan, biologist, Soquel, California, pers. comm., 2000; S. Baron, *in litt.* 2000; A. Murphy, *in litt.*, 2002). In other annual species of *Chorizanthe*, the flowers are protandrous, a reproductive strategy in which the anthers (male reproductive structures) mature and shed pollen prior to the maturation of the style (female reproductive structures) to receive pollen, with a delay of style receptivity being one or two days. Protandry facilitates cross-pollination by insects. However, if cross-pollination does not occur within 1 or 2 days, self-pollination may occur as the flower closes at the end of the day (James Reveal 2001). The relative importance of insect pollination and self-pollination to seed set is unknown; however, in the closely related Monterey spineflower (*Chorizanthe pungens* var. *pungens*), the importance of pollinator activity to production of viable seed was demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000).

The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed is mature by August and dispersal is facilitated by the hooked involucral spines, which surround the seed and attach it to passing animals. Black-tailed hares (*Lepus californicus*) have been observed to browse on the related *Chorizanthe robusta* var. robusta (S. Baron, *in litt.* 2000), and most likely act to disperse seeds as well. Other animals likely to assist in seed dispersal include, but are not limited to: mule deer (*Odocoileus hemionus*); gray foxes (*Urocyon cinereoargenteus*); coyotes (*Canis latrans*); bobcats (*Felis rufus*); ground squirrels (*Otospermophilus beecheyi*); striped skunks (*Mephitis mephitis*); opossums (*Didelphis virginiana*); racoons (*Procyon lotor*); and other small mammals and small birds.

For annual plants, maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important to its year-to-year and long-term survival (Baskin and Baskin 1978). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a give year (Given 1994). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. The extent of seed bank reserves is variable from population to population and large fluctuations in the number of standing plants at a given site may occur from one year to the next.

Depending on the vigor of the individual plant and the effectiveness of pollination, dozens, if not hundred of seeds could be produced. In one study on a closely related spineflower, *Chorizanthe robusta* var. robusta, individual plants had an average of 126 flowers, and an average seed set of 51 seeds per plant (S. Baron, pers. comm., 2001). The production of seed itself does not guarantee future reproductive individuals for several reasons: seed viability may be low, as has been found in other species of Chorizanthe (Bauder 2000); proper conditions for germination may not be present in most years; and seedling mortality may result from withering before maturity, herbivory, or uprooting by gopher activity (Baron 1998). Seedling mortalities of up to 42 percent in the related *C. r.* var. *robusta* have been caused primarily by the larval (caterpillar) life stage of moths belonging to the family Gelichiideae (Baron 2000).

For purposes of this rule, a cluster of individuals of *Chorizanthe robusta* var. *hartwegii* will be referred to as a "colony." Because of the close proximity of many of the clusters to

each other, it is uncertain whether clusters biologically represent patches within a metapopulation, true colonies, or separate populations. The general location of the colonies will be referred to as a "site."

While the sites that support large colonies or populations of *Chorizanthe robusta* var. *hartwegii* most likely also support large seed banks and can sustain the species through several years of poor weather or bouts of predation, sites that support smaller populations and smaller seed banks may be more vulnerable to extirpation. The complex of colonies of *C. r.* var. *hartwegii* in the Glenwood area are in close enough proximity to each other that their seed banks most likely are dispersed between colonies; the total number of standing individuals and the attendant seed bank most likely are of sufficient magnitude to perpetuate the species in the near term, absent significant threats to the remaining habitat. In the Polo Ranch area, the colonies of *C. r.* var. *hartwegii* are also in close enough proximity to each other that their seed banks most likely are dispersed between colonies; however, the total number of individuals and the attendant seed bank are relatively smaller in magnitude here than at the Glenwood site and, therefore, this unit may be more vulnerable to extirpation if exposed to events such as several years of poor weather or bouts of predation.

The total number of colonies of *Chorizanthe robusta* var. *hartwegii* is difficult to count for several reasons: (1) Depending on the scale at which colonies are mapped, a larger or smaller number of colonies may result, and (2) depending on the climate and other annual variations in habitat conditions, the extent of colonies may either shrink and temporarily disappear, or enlarge and merge into each other, thus appearing as larger but fewer colonies.

The distribution of colonies is generally concentrated at two sites. The Glenwood site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley (see map at end of rule) and contains a large number of colonies of *Chorizanthe robusta* var. *hartwegii* that occur on three privately owned parcels of land. Colonies of *C. r.* var. *hartwegii* are situated within a 4 hectare (ha) (9 ac) preserve on a parcel owned by the Scotts Valley Unified School District and referred to as the "School District" colony (Denise Duffy and Associates 1998). Other colonies at the Glenwood site are located approximately 0.20 km (0.13 mi) to the west of the School District colony on a parcel of land owned by the Salvation Army (CNDDB 1998) and are referred to as the "Salvation Army" colonies. Additional colonies of *C. r.* var *hartwegii* are located on a parcel owned by American Dream/Glenwood L.P. and are referred to as the "Glenwood" colonies; the parcel has been approved for development by the City of Scotts Valley (Keenan Land Company (KLC) 2001). As currently approved, the project would retain colonies on the west side of Glenwood Drive and on the east side of Glenwood Drive in portions of the parcel that are being designated as open space (Impact Sciences 2001, KLC 2001).

The first extensive effort to map the distribution and abundance of *Chorizanthe robusta* var *hartwegii* within the area included in the Glenwood unit was carried out in 1992; surveyors mapped 30 "populations/occurrences" of *C. r.* var. *hartwegii*, with occurrences comprising from a low of one individual to over 25,000, and including a total of approximately 100,000 individuals. Additionally 82 patches of "suitable habitat" were mapped (Habitat Restoration Group 1992). Construction of the Scotts Valley High School in 1999 resulted in the loss of approximately 6 populations and occurrences, 890 individuals, and 34 patches of "suitable habitat" (Denise Duffy and Associates 1997, 1998).

In addition to direct removal of habitat, habitat fragmentation affects the long-term conservation of the species by reducing connectivity among colonies and populations, by altering microsite drainage patterns, and by providing access to vectors that cause secondary impacts, such as the spread of non-native species. Because the high school is located within the central portion of the Glenwood unit, its construction significantly fragmented the grasslands that were once contiguous and that provided connectivity between the Salvation Army, School District, and Glenwood colonies. Two access roads, one on each side of Glenwood Drive, have been constructed in the last three years; one was placed between colonies of *Chorizanthe robusta* var. *hartwegii*, and the other was placed between colonies and other patches of wildflower fields. In the fall of 2001, an arson wildfire burned approximately 12 ha (5 ac) of grassland between Teacup and Cupcake Hill, coming close to, but not directly damaging individuals of *C. r.* var. *hartwegii*. This event highlighted the potential for damage to the species' habitat, not only from a fire event that is not part of a habitat management plan, but also from the vehicles dispatched to extinguish the fire (K. Lyons, consultant, Santa Cruz, CA, pers. comm., 2002).

The second site is referred to as the "Polo Ranch" site. Located just east of Highway 17 and north of Navarra Drive in northern Scotts Valley, this site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. Colonies within the Polo Ranch site occur on a parcel of land owned by Greystone Homes (Lyons *in litt.* 1997); a number of these colonies of *Chorizanthe robusta* var. *hartwegii* occur within 0.2 km (0.1 mi) of each other (Lyons *in litt.* 1997, Impact Sciences 2000). In 1997 surveys, *C. r.* var. *hartwegii* was found at 25 locations and comprised approximately 8,000 individuals; the abundance and distribution was similar to that recorded in 1990 (Lyons *in litt.* 1997). We believe that the abundance and distribution of *C. r.* var. *hartwegii* has been reduced by disturbance to the site by illegal off-highway vehicle use since that time (Service *in litt.* 2000).

Chorizanthe robusta var. *hartwegii* is threatened with extinction by habitat alteration due to secondary impacts of urban development. Urban development includes the recent construction and operation of a high school; installation and maintenance of water delivery pipelines, access roads, and water tanks; and currently existing and proposed housing. Over the last decade a variety of housing proposals have been considered for two of the parcels; the Glenwood development was approved by the City of Scotts Valley in late 2001 (Keenan Land Company 2001), and the proposed Polo Ranch development is currently on hold due to other legal issues.

The small range of this taxon makes it vulnerable to edge effects from adjacent human activities. The kinds of habitat alterations expected to impact *Chorizanthe robusta* var. *hartwegii* as a result of development include changes in soil characteristics such as surface and subsurface water flow and soil compaction; increased disturbance due to trampling from humans, pets, and bicycle traffic; the inadvertent application of herbicides and pesticides; over-spray from landscape irrigation, dumping of yard wastes; and the introduction and spread of non-native species (Conservation Biology Institute 2000). Due to their small size, the proposed preserves and open space areas intended to protect *C. r.*var. *hartwegii* are inadequate for maintaining viable populations of this species (Service *in litt.* 1998). Studies on habitat fragmentation and preserves established in urbanized settings have shown that these preserves gradually become destabilized from external forces (*i.e.*, changes in the hydrologic conditions,

soil compaction, etc.), resulting in preserves that are no longer able to support the species that they were established to protect (Kelly and Rotenberry 1993).

The chance of random extinction for *Chorizanthe robusta* var. *hartwegii* is also increased due to the limited area of habitat available for this species (Shaffer 1981). Because the colonies are concentrated at only a few sites, a random environmental event (*e.g.*, fire) or human disturbance potentially could destroy all colonies occurring on a parcel, thus diminishing the likelihood of long-term persistence.

Previous Federal Action

On May 16, 1990, we received a petition from the Santa Cruz Chapter of the California Native Plant Society to list *Chorizanthe robusta* var. *hartwegii* as endangered. Based on a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted (55 FR 46080), we initiated a status review of this taxon. During this time, we also reviewed the status of *Chorizanthe robusta*. var. *robusta*. On October 24, 1991 (56 FR 55107), we published a proposal to list both varieties of *Chorizanthe robusta* as endangered species. On February 4, 1994, we published a final rule that listed *C. robusta* as endangered, inclusive of *C. r.* var. *hartwegii* and *C. r.* var. robusta (59 FR 5499). Proposed designation of critical habitat for these taxa was believed prudent but not determinable at the time of listing. A Recovery Plan covering two insect species and four plant species from the Santa Cruz Mountains, including *C. r.* var. *hartwegii*, was published in 1998 (Service 1998).

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe robusta*, inclusive of var. *hartwegii* and var. *robusta*, within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity* v. *Babbitt* (Case No. C99–3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (court) directed us to publish a proposed critical habitat designation within 60 days of the court's order, and a final critical habitat designation no later than 120 days after the proposed designation was published. On October 16, 2000, the court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, the Service agreed to propose critical habitat for *C. r.* var. *hartwegii* by January 15, 2001, and to sign a final rule by October 19, 2001. The plaintiffs subsequently agreed to an extension, approved by the court, until May 17, 2002 to complete the final rule.

Because the two varieties of *Chorizanthe robusta* are geographically and ecologically separated, critical habitat designations were developed separately. The proposed rule to designate critical habitat for *Chorizanthe robusta* var. *hartwegii* was sent to the **Federal Register** on January 16, 2001, and was published in the **Federal Register** February 15, 2001 (66 FR 10469). In the proposal, we determined that it was prudent to designate approximately 125 ha (310 ac) of lands in Santa Cruz County as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on April 16, 2001. On September 19, 2001, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *C. r.* var. *hartwegii*, and a notice of availability of the draft economic analysis on the proposed determination (66 FR 48227). This second public comment period closed on October 19, 2001. On February 1, 2002, the Office of the Secretary of the Interior published a notice reopening the comment period until February 15, 2002 (67 FR 4940). The comment period was reopened to allow individuals to resubmit comments that we may not have received due to the Department's Internet access, including the receipt of outside e-mail, being shut down.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a notice in the Santa Cruz Sentinel on February 24, 2001. We received individually written letters from seven parties, including three designated peer reviewers, and two environmental groups. Approximately 800 additional letters were submitted as part of a mailing campaign. Of the seven parties responding individually, five supported the proposed designation, one was neutral, and one was opposed. Of the 800 additional letters, 23 were opposed, 1 was neutral, and the remaining were in support of the critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat and *Chorizanthe robusta* var. *hartwegii*. Similar comments were grouped into three general issues relating specifically to biological issues, procedural and legal issues, and economic issues. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

Comment 1: The proposed designation is not properly supported by the best scientific information available. In particular, the Service makes "numerous and unsupported assertions regarding the biology and habitat requirements" of the species, and did not use the data available to them.

Service Response: As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Chorizanthe robusta* var. *hartwegii*. This information included data from the California Natural Diversity Data Base (CNDDB 2000), geologic and soil survey maps (USGS 1989, SCS 1980), recent biological surveys and reports, our recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that were proposed for designation.

Comment 2: One peer reviewer suggested expanding the list of primary constituent elements to include such factors as seed germination requirements, substrate salinity, microreliefs and microclimates within local habitats, seasonal and yearly groundwater levels, and bird populations that migrate within the range of *Chorizanthe robusta* var. *hartwegii*.

Our Response: While we recognize that these factors may be important components of the habitats within which *Chorizanthe robusta* var. *hartwegii* is found, we do not have sufficient information at this time that leads us to believe they are the primary factors essential to the conservation of *C. r.* var. *hartwegii* throughout its range.

Comment 3: One commenter submitted a map portraying a recommended revision to the proposed critical habitat covering the parcel owned by American Dream/Glenwood L.P. which would reduce the extent of critical habitat on that parcel. The commenter suggested that the swath of low-elevation grasslands that occur along Carbonera Creek in the middle of the Glenwood Unit could be eliminated from critical habitat, as well as a portion of the Carbonera Creek watershed above

them, because the low-level grasslands do not support the primary constituent elements, and the presence of existing residential development and the Scotts Valley High School along Glenwood Drive makes this area a less desirable movement corridor for wildlife functioning as dispersal agents.

Our Response: The low-elevation grasslands along Carbonera Creek do support some of the primary constituent elements, including; a grassland community, area to allow for adequate seed dispersal between existing colonies and other suitable sites, and areas that allow pollinator activity between existing colonies. In particular, the low-level grasslands along Carbonero Creek provide an important corridor for dispersers and pollinators between the colonies on the west and east sides of Glenwood Drive. The recent development of the Scotts Valley High School has reduced the extent of the corridor between the east and west sides of Carbonero Creek, and has therefore increased the conservation value and importance of the remaining corridor for pollinators and seed dispersers. In the background section of this final rule, we have expanded the discussion of potential seed dispersers and pollinators, which are part of the primary constituent elements, to clarify the role that these elements play in the long-term conservation of the species.

The recovery plan for the species states that to downlist the species from endangered to threatened, all known sites would have to be in protected status, a habitat conservation plan would have to be in place with the City of Scotts Valley, and population numbers would have to be stable or increasing (Service 1998). The limited range of the species, the limited opportunities for conservation, and the existence of threats on all locations where it occurs, makes conservation of the species very difficult. Further loss of habitat or compromising the ecological processes on which the species depends may eliminate the ability of the species to persist.

Issue 2: Legal and Procedural Issues

Comment 4: The proposed designation fails to designate specific areas as critical habitat; rather, it uses a landscape approach.

Service Response: The critical habitat designation delineates areas which contain locations of known individuals of *Chorizanthe robusta* var. *hartwegii* and areas with the constituent elements that we believe are necessary for the long-term conservation of *C. r.* var. *hartwegii*. The distribution of *C. r.* var. *hartwegii* is so restricted that direct and indirect threats to its habitat may preclude our ability to recover the species. Given the limited distribution of the species, we were able to map critical habitat for it with a high level of precision.

Comment 5: The proposed designation improperly includes areas not essential to the conservation of *Chorizanthe robusta* var. *hartwegii*.

Service Response: We recognize that not all parcels of land proposed and designated as critical habitat contain the habitat components essential to the conservation of *Chorizanthe robusta* var. *hartwegii*. Some lands included in the proposed designation have not been included in this final designation. In developing the final designation, we modified boundary lines to exclude areas that obviously did not contain the primary constituent elements, and for which we were unable to draw more precise boundaries at the time of the proposed designation. The use of recently acquired high-resolution aerial photographs dating from April 2000 enabled us to undertake this more precise mapping. However, due to our mapping scale, some areas not essential to the conservation of *C. r.* var. *hartwegii* were included within the boundaries of final critical habitat. Certain features, such as, buildings, roads, other paved areas and urban landscaped areas do not contain the primary constituent elements for the species. Service staff at the contact numbers provided are available to assist landowners in discerning whether or not lands within the critical habitat boundaries actually possess the primary constituent elements for the species.

Comment 6: The proposed designation fails to delineate between occupied and unoccupied habitat areas.

Service Response: In this final designation all of the critical habitat units are occupied by either standing plants or support a *Chorizanthe robusta* var. *hartwegii* seed bank, but each of the units probably contains areas that are considered currently unoccupied by the species. "Occupied" is defined here as an area that may or may not have an above-ground standing mass of *C. r.* var. *hartwegii* during current surveys, but if no standing mass is apparent, the site likely contains a below-ground seed bank of indefinite boundary. All occupied sites contain some or all of the primary constituent elements and are essential to the conservation of the species, as described below. "Unoccupied" is defined here as an area that contains no above-ground standing mass of *C. r.* var. *hartwegii* and the unlikely existence of a viable seed bank. The inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms.

The commenter also cited that there is a lack of data to show that colonies may temporarily disappear or expand into areas surrounding the immediate vicinity of the current year's colony. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The way the current distribution of *Chorizanthe robusta* var. *hartwegii* is mapped can be variable, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch) and (2) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by *C. r.* var. *hartwegii* .

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Because of the very limited range of *Chorizanthe robusta* var. *hartwegii*, designating only occupied areas would not meet the conservation requirements of the species. Occupied areas, as well as the grassland areas around them within the designated units of critical habitat which may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of *C. r.* var. *hartwegii*. We are designating critical habitat for *C. r.* var. *hartwegii* in all areas that are known to currently be occupied by the species. Even so, we believe that the small amount of critical habitat that we are designating for *C. r.* var. *hartwegii* will be insufficient to provide for its recovery because of the development projects that are proposed and the secondary impacts that will result from

the development. At this time, we are not aware of additional populations of *C. r.* var. *hartwegii* nor additional areas that can be occupied by the species in the future.

Comment 7: The Service should review the endangered status of *Chorizanthe robusta* var. *hartwegii*. Since the listing of the species, no new information about the habitats essential to the species had been obtained.

Service Response: Since the time of listing in 1994, we have reviewed new information from the CNDDB, biological surveys, botanists in the field familiar with the species, and made numerous visits to field sites. From this information, we believe that the range of the species is limited to the Scotts Valley area. Since the species was listed as endangered in 1994, habitat for the species has been destroyed due to several development projects, and additional habitat has been altered due to secondary impacts resulting from development. According to a review of the socioeconomic information available about the geographic area presented in the draft economic analysis, pressure on the remaining suitable habitat for the species from residential and commercial development and recreation, has increased steadily since the species was listed in 1994. The increased pressure on the limited area currently available for this species reinforces its endangered status and the need to designate critical habitat.

Comment 8: The Service has failed to properly consider the economic and other impacts of designating particular areas as critical habitat.

Service Response: The Service published the economic analysis for designating the critical habitat for *Chorizanthe robusta* var. *hartwegii* on September 19, 2001 (66 FR 48227). There was a 30-day public comment period associated with this publication. Comments received on the economic analysis are incorporated with the comments received on the other portions of the proposed designation in this final rule. In addition, an addendum to the economic analysis, incorporating the comments received on the economic analysis, has been completed and is available upon request (*see* **ADDRESSES** section).

Comment 9: The Service has improperly bifurcated its consideration of economic impacts and other factors.

Service Response: Pursuant to section 4(b)(2) of the Act, we are to evaluate, among other relevant factors, the potential economic effects of the designation of critical habitat for *Chorizanthe robusta* var. *hartwegii*. We published our proposed designation in the **Federal Register** on February 15, 2001 (66 FR 10469). At that time, our Division of Economics and their consultants, Industrial Economics, Inc., initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on September 19, 2001 (66 FR 48227). Following a 30-day public comment period on the proposal and draft economic analysis, a final addendum to the economic analysis was developed. Both the draft economic analysis and final addendum were used in the development of this final designation of critical habitat for *C. r.* var. *hartwegii*. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

Comment 10: The Service has not provided a fair and meaningful opportunity for comment on its proposed designation.

Service Response: We published a proposed rule to designate critical habitat for *Chorizanthe robusta* var. *hartwegii* on February 15, 2001 (66 FR 10469), and accepted comments from the public for 60 days, until April 16, 2001. The comment period was reopened from September 19, 2001, to October 19, 2001 (66 FR 48227) and February 1, 2002, to February 15, 2002 (67 FR 4940), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a notice in the Santa Cruz Sentinel on February 24, 2001. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. Additionally, the public had the opportunity to request a public hearing, but none was requested.

Comment 11: The Service should prepare and consider an environmental impact statement in keeping with NEPA.

Service Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). Also, the public involvement and notification requirements under both the Endangered Species Act and the Administrative Procedure Act provide ample opportunity for public involvement in the process, similar to the opportunities for public involvement and economic analysis of effects that would be provided in the NEPA process.

Issue 3: Economic Comments

Comment 12: Some commenters expressed concern that the economic analysis fails to adequately describe the potential social welfare benefits of the rule such as the averted cost to society if, absent the rule, the areas identified in this rule are developed or somehow used in a manner that leads to the extinction of the species.

Our Response: We recognize,that social welfare generally benefits from the conservation and recovery of endangered and threatened species and their habitat as numerous studies have shown that society values open space and biodiversity. Benefits to social welfare are composed of direct and passive use benefits. Examples of direct use benefits, as it may relate to species protection, include such activities as commercial cultivation of a species for medicinal purposes (*e.g.*, the Pacific yew tree) and tourism associated with a species' presence (*e.g.*, traveling to a certain part of the country just to see protected species and their habitat). Passive use benefits may include such values as option, bequest, and existence values that include, respectively, the value to society of future direct use benefits, the value of conserving species and their habitat for future generations, and the value gained by society from simple acknowledgment that a species continues to exist in its natural habitat.

While we have acknowledged the potential for society to experience such benefits in our economic analyses for critical habitat rulemakings, our ability to actually measure these benefits in any meaningful way is difficult and imprecise at best. While we are aware of many studies that attempt to identify the social benefits of open space, the use of public lands for recreational purposes, the cost of sprawl, *etc.*, few of these studies provide any meaningful information that can be used to develop estimates associated with critical habitat designation. The designation of critical habitat does not necessarily inhibit development of private property, which makes it difficult to draw upon the literature of the economic values of open space to identify potential benefits

of critical habitat designation. Also, while some economic studies attempt to measure the social value of protecting endangered species, the species that are often valued are well known and easy to identify (*e.g.*, bighorn sheep) in contrast to less high profile species. Furthermore, the values identified in these studies would be most closely associated with the listing of a species as endangered or threatened because the listing serves to provide the majority of protection and conservation benefits under the Act.

While we will continue to explore ways that will allow us to provide more meaningful descriptions of the potential social benefits associated with critical habitat designation, we believe that due to the current lack of available data specific to these rulemakings, along with the time and resource constraints imposed upon the Service, the benefits of critical habitat designation can best be expressed in biological terms that can then be weighed against the expected social costs of the rulemaking.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from three knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. All three of the peer reviewers supported the proposal, and provided us with comments which were summarized in the previous section and incorporated into the final rule.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat, we reevaluated our proposed designation and made several changes to the final designation of critical habitat. These include the following:

(1) The description of the primary constituent elements was modified and clarified. One peer reviewer suggested expanding the list of primary constituent elements (*see comment 2* in *Summary of Comments* above). However, we took some of these additional elements suggested by the peer reviewer, and included discussion of them as features of the landscape that needed special management or protections.

(2) One element ("physical processes. * * * that support natural dune dynamics") was erroneously included in the proposed rule; it has been removed from this final rule.

(3) We added a section describing the Special Management Needs or Protections that *Chorizanthe robusta* var. *hartwegii* may require. We believe that this new section will assist land managers in developing management strategies for *C. r.* var. *hartwegii* on their lands.

(4) We made minor revisions to the boundary lines on both units. The purpose for these minor changes was to remove areas that do not contain the primary constituent elements. The use of recently acquired high-resolution aerial photographs dating from April, 2000 enabled us to undertake this more precise mapping. These changes reduced the Glenwood Unit by 4 percent and Polo Ranch Unit was reduced 15 percent by eliminating some of the riparian gallery forest at the western edge of the unit that borders Carbonero Creek because the area does not support any of the primary constituent elements.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification critical habitat. Section 7 of the Act also requires conferences 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 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 would not afford any additional protections under the Act against such activities.

In order 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 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. 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 essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will attempt to not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species. However, we may be restricted by our minimum mapping unit or mapping scale.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when

the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our 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, at a minimum, 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 and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of 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 to the regulatory protections afforded by the Act's section 7(a)(2) jeopardy standard and the section 9 of the Act prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12 we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Chorizanthe robusta* var. *hartwegii*. This information included information from the CNDDB 2000, geologic and soil survey maps (USGS 1989, SCS 1979), recent biological surveys and reports, our recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that are being designated as critical habitat.

We also reviewed the goals for downlisting *Chorizanthe robusta* var. *hartwegii* included in our recovery plan that addresses this species and other taxa from the Santa Cruz Mountains (Service 1998).

The plan calls for the following recovery actions: (1) Secure and protect habitat for *Chorizanthe robusta* var. *hartwegii* through HCPs, conservation easements, or acquisition; (2) manage habitat for the species through such actions as control of non-native species, reducing impacts from recreation, restoring degraded sites, and regular monitoring; (3) learn more about the life history, ecology, and population dynamics of the species that will contribute to developing appropriate management strategies; (4) increase public awareness of the species and its associated habitats through various outreach efforts; and (5) use an adaptive management approach to revise management strategies over time. Critical habitat alone is not expected to recover the species, and it is only one of many strategies that can assist in such recovery.

Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *Chorizanthe robusta* var. *hartwegii* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may or may not favor the growth of *C. r.* var. *hartwegii* above ground; (2) the way the current distribution of *C. r.* var. *hartwegii* is mapped can be variable, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by *C. r.* var. *hartwegii*. Therefore, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Chorizanthe robusta* var. *hartwegii* is described in the Background section of this final rule. Based on the best available information at this time, we believe the long-term probability of the conservation of *C. r.* var. *hartwegii* is dependent upon the protection of existing population sites, and the maintenance of ecologic functions within these sites, including connectivity between colonies within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example, fire disturbance) that maintain the openness of plant cover on which the species

depends. In addition, the small range of this species makes it vulnerable to edge effects from adjacent human activities, including disturbance from trampling and recreational use, the introduction and spread of non-native species, and the application of herbicides, pesticides, and other contaminants (Conservation Biology Institute 2000).

The primary constituent elements of critical habitat for *Chorizanthe robusta* var. *hartwegii* are:

(1) Thin soils in the Bonnydoon series that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(2) "Wildflower field" habitat that has developed on these thin-soiled sites;

(3) A grassland plant community that supports the "wildflower field" habitat, that is stable over time and in which nonnative species are absent or are at a density that has little or no adverse effect on resources available for growth and reproduction of *Chorizanthe robusta* var. *hartwegii*;

(4) Sufficient areas around each population to allow for recolonization to adjacent suitable microhabitat sites in the event of catastrophic events;

(5) Pollinator activity between existing colonies of *Chorizanthe robusta* var. *hartwegii;*

(6) Seed dispersal mechanisms between existing colonies and other potentially suitable sites; and

(7) Sufficient integrity of the watershed above habitat for *Chorizanthe robusta* var. *hartwegii* to maintain soil and hydrologic conditions that provide the seasonally wet substrate for growth and reproduction of *C. r.* var. *hartwegii.*

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for *Chorizanthe robusta* var. *hartwegii* within the units being designated as critical habitat. In some cases, protection of existing habitat and current ecologic processes may be sufficient to ensure that populations of *C. r.* var. *hartwegii* are maintained at those sites and have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for *C. r.* var. *hartwegii.* We have outlined below the most likely kinds of special management and protection that *C. r.* var. *hartwegii* may require.

(1) The soils on which *Chorizanthe robusta* var. *hartwegii* is found should be maintained to optimize conditions for its persistence. Physical properties of the soil, such as its chemical composition, surface crust, and drainage capabilities would best be maintained by limiting or restricting the use or application of herbicides, fertilizers, or other soil amendments.

(2) Overspray from irrigation or saturation of soils beyond the normal season should also be avoided, as this may alter the structure and composition of the grassland community, or render the native species more vulnerable to pathogens found in wetter soil regimes.

(3) The associated plant communities must be maintained to ensure that the habitat needs of pollinators and seed dispersal agents are maintained. For pollinators, the use of pesticides should be limited or restricted so that healthy populations of pollinators are present to effect seed set in *Chorizanthe robusta* var. *hartwegii.* For dispersal agents, the fragmentation of habitat through construction of roads and certain types of fencing should be limited so that these agents may disperse seed of *C. r.* var. *hartwegii* throughout the unit.

(4) Within the grassland community where *Chorizanthe robusta* var. *hartwegii* occurs, invasive, non-native species such as bromes and other species may need to be actively managed to maintain the patches of open habitat that *C. r.* var. *hartwegii* needs.

(5) Certain areas where *Chorizanthe robusta* var. *hartwegii* occurs may need to be fenced to protect it from accidental or intentional trampling by humans and livestock. While *C. r.* var. *hartwegii* appears to withstand light to moderate disturbance, heavy disturbance may be detrimental to its persistence. Seasonal exclusions may work in certain areas to protect *C. r.* var. *hartwegii* during its critical season of growth and reproduction.

Criteria Used To Identify Critical Habitat

In delineating the critical habitat units, we selected areas that provide for the conservation of *Chorizanthe robusta* var. *hartwegii* at the only two sites where it is known to occur. We believe it is important to preserve all areas that currently support native populations of *C. r.* var. *hartwegii* because the current range of the species is so restricted that it places great importance on the conservation of all the known remaining sites. The species is currently growing on less than 0.4 ha (1 ac) of land. However, habitat is not restricted solely to the area where standing individuals can be observed. Habitat for the species must include an area that is large enough to maintain the ecological functions upon which the species depends (*e.g.,* the hydrologic and soil conditions for seed germination and establishment, pollinators and seed dispersers). We believe it is important to designate an area of sufficient size to maintain landscape scale processes that maintain the patches of wildflower field habitat, and to minimize the alteration of habitat, such as invasions of non-native species and recreation-caused erosion, that result from human occupancy and human activities occurring in adjacent areas.

We delineated the critical habitat units by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of Chorizanthe robusta var. *hartwegii* using information from the California Natural Diversity Data Base (CNDDB 2000) and the other information sources listed above. These data layers were created on a base of USGS 7.5′ quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. Because the areas within proposed critical habitat boundaries were portions of the San Augustin Spanish Land Grant, they have not been surveyed according to the State Plan Coordinate System. Therefore, instead of defining proposed critical habitat boundaries using a grid of township, range, and section, we defined the boundaries for the proposed critical habitat units using known landmarks and roads.

During preparation of the final rule, we found several discrepancies between the legal description of the boundaries of the critical habitat units and the boundaries of the units as depicted in the maps accompanying the proposed rule. The discrepancies resulted primarily through our use of data layers created at a small scale (for example 1:100,000 scale USGS mapping) during preparation of the maps of proposed critical habitat. For the final rule, we corrected the mapped boundaries of critical habitat first to be consistent with the boundaries as described in the proposed rule. We then modified the boundaries of proposed critical habitat using information on the location of existing developed areas from recent (April 2000) aerial imagery, additional information from botanical experts, and comments on the proposed rule. The boundaries of the final critical habitat units are defined by Universal Transverse Mercator (UTM).

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as housing developments, which are unlikely to contribute to the conservation of *Chorizanthe robusta* var. *hartwegii.* For the final rule, we attempted to map critical habitat in sufficient detail to exclude all

developed areas (buildings), or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. r.* var. *hartwegii*. Note that other areas within the boundaries of the mapped units, such as roads, parking lots, and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 of the Act consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment at this time of the areas essential for the species' conservation. Critical habitat for *Chorizanthe robusta* var. *hartwegii* is being designated at the only two sites where it is known to occur and both units are currently occupied with known occurrences of *C. r.* var. *hartwegii*. These areas provide the essential life cycle needs of the species and the habitat components essential for the survival of *C. r.* var. *hartwegii*. The two units are primarily within the city limits of Scotts Valley in Santa Cruz County, with a small portion within an unincorporated area of Santa Cruz County, California, and include the grassland habitat that contains the "wildflower field" patches on which the species depends. Given the threats to the habitat of *C. r.* var. *hartwegii* discussed above, we believe that these areas are likely to require special management considerations and protection.

Because we consider maintaining hydrologic and soil conditions so important in these grasslands, the critical habitat area extends outward to the following limits—(1) Upslope from the occurrences of *Chorizanthe robusta* var. *hartwegii* to include the upper limit of the immediate watershed; (2) downslope from the occurrences of *C. r.* var. *hartwegii* to the point at which grassland habitat is replaced by forest habitats (oak forest, redwood forest, or mixed conifer-hardwood forest); and (3) to the boundary of existing development.

Unit Descriptions

We are designating the following general areas as critical habitat (*see* legal descriptions for exact critical habitat boundaries).

Unit 1: Glenwood Site

Unit 1 consists of approximately 87 ha (214 acres) to the west of Glenwood Drive and north and northwest of Casa Way, in the City of Scotts Valley, including land owned and managed by the Salvation Army, land owned and managed by the Scotts Valley High School District as a preserve, but excluding the rest of the High School, and to the east of Glenwood Drive, encompassing the parcel known as the Glenwood Development. Most of the land being designated within this unit is privately owned, with a small portion (4 ha (9 ac)) owned by a local agency. This unit is essential because it supports approximately 90 percent of the known numbers of individuals of *Chorizanthe robusta* var. *hartwegii*, as well as other suitable patches of wildflower field habitat that could be colonized by the species; intervening habitat which supports the grassland community necessary for pollinators and seed dispersers; and a contiguous extent of the watershed that is necessary to maintain the hydrologic and soil conditions suitable for *C. r.* var. *hartwegii*.

Unit 2: Polo Ranch Site

The Polo Ranch site consists of approximately 30 ha (73 ac) to the east of Carbonera Creek on the east side of Highway 17 and north and northeast of Navarra Drive, in the City of Scotts Valley, known as the Polo Ranch, in the County of Santa Cruz, California. All of the land being designated as critical habitat is privately owned. This unit is essential because it supports approximately 10 percent of the known numbers of individuals of *Chorizanthe robusta* var. *hartwegii*, as well as other suitable patches of wildflower field habitat that could be colonized by the species; intervening habitat which supports the grassland community necessary for pollinators and seed dispersers; and a contiguous extent of the watershed that is necessary to maintain the hydrologic and soil conditions suitable for *C. r.* var. *hartwegii*.

TABLE 1.—APPROXIMATE CRITICAL HABITAT AREA (HA (AC)) BY AND LAND OWNERSHIP

[Estimates reflect the total area within critical habitat unit boundaries]

Unit name	Local agency	Private	Total
1. Glenwood Unit	4ha (9 ac)	83 ha (205 ac)	87 ha (214 ac)
2. Polo Ranch Unit	0 ha (0 ac)	30 ha (73 ac)	30 ha (73 ac)
Total	4 ha (9 ac)	113 ha (278 ac)	117 ha (287 ac)

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify its critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7 (a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal

conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10 (d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Chorizanthe robusta* var. *hartwegii* or its critical habitat will be subject to the section 7 of the Act consultation process. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 of the Act consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 of the Act consultation.

To properly portray the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Because both of the units we are designating are occupied by either standing plants or a *Chorizanthe robusta* var. *hartwegii* seed bank, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as section 404 of the Clean Water Act permits from the U.S. Army Corps of Engineers;

(2) Restoration projects sponsored by the Natural Resources Conservation Service;

(3) Pest control projects undertaken by the Animal and Plant Health Inspection Service, permits from Housing and Urban Development, or authorization of Federal grants or loans.

Such activities would be subject to the section 7 of the Act consultation process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit according to section 10(a)(1)(B) of the Act would be subject to the section 7 of the Act consultation process. The Ohlone tiger beetle (*Cicindela ohlone*), a federally endangered species, occurs in close proximity to *Chorizanthe robusta* var. *hartwegii* within grasslands on the east side of Carbonero Creek on land owned by American Dream/Glenwood L.P.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Chorizanthe robusta* var. *hartwegii* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain natural grassland communities and the wildflower field habitat. Such activities adverse to *Chorizanthe robusta* var. *hartwegii* could include, but are not limited to: vegetation manipulation such as chaining or harvesting timber in the watershed upslope from *C. r.* var. *hartwegii*; maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchards, viticulture (the cultivation of grapes), row crops, and livestock grazing; and

(2) Activities that appreciably degrade or destroy native grassland communities, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

If you have questions about whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, there are no HCPs that include *Chorizanthe robusta* var. *hartwegii* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although "take" of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *Chorizanthe robusta* var. *hartwegii* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished 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 would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *C. r.* var. *hartwegii*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify appropriate management for lands essential for the long-term conservation of *C. r.* var. *hartwegii*. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for review on September 19, 2001. We accepted comments on the draft analysis until October 19, 2001.

Our draft economic analysis evaluated the potential future effects associated with the listing of *Chorizanthe robusta* var. *hartwegii* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 of the Act consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 of the Act consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits. The most likely economic effects of critical habitat designation are on private landowners carrying out development activities funded or authorized by a Federal agency.

Based on our draft analysis, we concluded that the designation of critical habitat would have little significant additional regulatory burden or associated significant additional costs because of critical habitat above and beyond those attributable to the listing of *Chorizanthe robusta* var. *hartwegii*. Our economic analysis does take into account that unoccupied habitat is being designated and that there may be some cost associated with new section 7 consultations that would not have occurred but for critical habitat being designated. Our economic analysis also recognizes that there may be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be temporarily lowered due to perceived increase in the regulatory burden. However, we believe these impacts will be short-term or minimal in cost.

The draft economic analysis concludes that, over the next 10 years the total costs to all landowners attributable to the designation are expected to be approximately $16,000 to $56,000 annually, however, we anticipate the costs will be even less because the costs of preparing Environmental Impact Reports for proposed developments, which were figured into the estimates, would have already been prepared to satisfy California Environmental Quality Act requirements for the lead State agency. Costs to Federal agencies are expected to total approximately $10,000 total over the next 10 years. Costs to local agencies are expected to total $5,000 to $8,000 total over the next 10 years. However, this does not include the potential cost of developing a multispecies HCP. Costs to private landowners are expected to range from $159,000 to $558,000 total over the next 10 years.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis. The values presented above may be an overestimate of the potential economic effects of the designation because the final designation has been reduced to encompass 117 ha (287 acres) versus the 125 ha (308 ac) proposed as critical

habitat, a difference of approximately 8 ha (21 ac).

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) In the economic analysis, we determined 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. *Chorizanthe robusta* var. *hartwegii* was listed as endangered in February, 1994. Since that time we have not conducted any formal or informal section 7 consultations with other Federal agencies with respect to *C. r.* var. *hartwegii*. However, should any agencies be involved in any activities within the area being designated as critical habitat, we will consult with them to ensure that their actions will not jeopardize the continued existence of *C. r.* var. *hartwegii* or adversely modify its critical habitat.

Under the Act, Federal agencies shall consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (*see* Table 2 below). Based upon our knowledge of this species and its ecological needs, and the fact that it is so restricted in its range, we conclude that any Federal action or authorized action that could potentially result in the destruction or adverse modification of critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species.

Accordingly, the designation of currently occupied areas as critical habitat is not anticipated to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons that do not have a Federal "sponsorship" in their actions are not restricted by the designation of critical habitat. The designation of areas as critical habitat where section 7 of the Act consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. These impacts were evaluated in our economic analysis (under section 4 of the Act; *see Economic Analysis* section of this rule).

TABLE 2.—IMPACTS OF *Chorizanthe robusta* var.*hartwegii* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation[1]
Federal Activities Potentially Affected[2]	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, the Environmental Protection Agency, the Natural Resources Conservation Service, the Animal and Plant Health Inspection Service, and any other Federal Agencies, including, but not limited to, the authorization of permits under section 404 of the Clean Water Act, the disbursement of grant monies for housing projects, the spraying of herbicides or pesticides, the permitting or funding of clean-up activities of contaminants, pest control projects, and land acquisition.	Activities by these Federal Agencies in designated areas where section 7 of the Act consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected[3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chorizanthe robusta* var. *hartwegii* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 of the Act consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe robusta* var. *hartwegii* since its listing in 1994. We evaluated the impact of designating areas where section 7 of the Act consultations would not have occurred but for the critical habitat designation in our economic analysis (*see Economic Analysis* section of this rule). The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist on currently occupied land and will not create inconsistencies with other agencies' actions on unoccupied lands.

(c) This final rule is not expected to materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects.

(d) OMB has determined that this rule may raise novel and legal or policy issues. Therefore, this rule is significant under E.O. 12866 and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to prepare a certification statement. In this rule, we are certifying that the critical habitat designation for the *Chorizanthe robusta* var. *hartwegii* 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 non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Residential development on private land constitutes the primary activity expected to be impacted by the designation of critical habitat for the *Chorizanthe robusta* var. *hartwegii*.

To be conservative (*i.e.*, more likely overstate impacts than understate them), the economic analysis assumed that all potentially affected parties that may be engaged in development activities within critical habitat are small entities. There are approximately 35 small residential development and construction companies in Santa Cruz County. Because the draft EA estimates that at most three formal consultations could arise involving private entities, the analysis for impacts on small businesses assumes that at most three residential/small business entities may be affected by the designation of critical habitat for the Scotts Valley spineflower in Santa Cruz County over a ten-year period. It's important to note that, to date, we have not conducted any formal consultations for *Chorizanthe robusta* var. *harwegii*.

In each year over the ten-year period of analysis, on average, there would likely be less than a single consultation for real estate development projects. As a result, less than one percent of the total number of small residential development and construction companies could be affected annually by the designation of critical habitat for the *Choriazanthe robust* var. *hartwegii*. Because the percentage of small businesses that could be affected by this designation is far less than the 20 percent threshold that would be considered "substantial," the economic analysis concludes that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for *Choriazanthe robust* var. *hartwegii*.

In general, two different mechanisms in section 7 of the Act consultations could lead to additional regulatory requirements for the one small business, on average, that may be required to consult with us each year regarding their project's impact on *Chorizanthe robusta* var. *hartwegii* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives."

Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7

consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These alternatives, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Chorizanthe robusta* var. *hartwegii,* we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer could modify a project to avoid removing standing plants. Based on the types of modifications that have been implemented in the past for plant species, a developer may take such steps as installing fencing or re-aligning the project to avoid sensitive areas. The cost for implementing these modifications for one project is expected to be of the same order of magnitude as the total cost of the consultation process, *i.e.,* approximately $16,000. It should be noted that developers likely would already be required to undertake such modifications due to regulations in California Environmental Quality Act. These modifications are not likely to result in a significant economic impact to project proponents. However, there does remain some concern about secondary impacts to the species. These will need to be addressed before projects are approved.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities and have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Chorizanthe robusta* var. *hartwegii* will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) 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 they must ensure that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued a 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. There are no energy-related facilities located within designated critical habitat. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Chorizanthe robusta* var. *hartwegii* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chorizanthe robusta* var. *hartwegii* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species is more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 of the Act consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species 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 *Chorizanthe robusta* var. *hartwegii.*

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 is required. 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

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994,

"Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Chorizanthe robusta* var. *hartwegii* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Constance Rutherford, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625. 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Chorizanthe robusta* var. *hartwegii* under "FLOWERING PLANTS" in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Chorizanthe robusta var. *hartwegii.*	Scotts Valley spineflower.	U.S.A. (CA)	Polygonaceae—Buckwheat.	E	528	17.96(a)	NA
*	*	*	*	*	*		*

3. Amend § 17.96(a) by adding critical habitat for Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) in alphabetical order under Family Polygonaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Polygonaceae: *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower)

(1) Critical habitat units are depicted for Santa Cruz County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Chorizanthe robusta* var. *hartwegii* are the habitat components that provide:

(i) Thin soils in the Bonnydoon series that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(ii) "Wildflower field" habitat that has developed on these thin-soiled sites;

(iii) A grassland plant community that supports the "wildflower field" habitat, that is stable over time and in which nonnative species are absent or are at a density that has little or no adverse effect on resources available for growth and reproduction of *Chorizanthe robusta* var. *hartwegii;*

(iv) Sufficient areas around each population to allow for recolonization to adjacent suitable microhabitat sites in the event of catastrophic events;

(v) Pollinator activity between existing colonies of *Chorizanthe robusta* var. *hartwegii;*

(vi) Seed dispersal mechanisms between existing colonies and other potentially suitable sites; and

(vii) Sufficient integrity of the watershed above habitat for *Chorizanthe robusta* var. *hartwegii* to maintain soil and hydrologic conditions that provide the seasonally wet substrate for growth and reproduction.

(3) Existing features and structures, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Unit 1: Santa Cruz County, California.

From USGS 7.5′ quadrangle map Felton, California, Mount. Diablo Meridian, California.

Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 587990, 4103190; 587999, 4103220; 588021, 4103230; 588025, 4103250; 587997, 4103260; 588025, 4103280; 588035, 4103290; 588033, 4103310; 588025, 4103320; 588012, 4103330; 588014, 4103340; 588005, 4103350; 587984, 4103360; 587969, 4103370; 587962, 4103380; 587958, 4103390; 587962, 4103400; 587975, 4103410; 587992, 4103410; 588012, 4103420; 588029, 4103400; 588046, 4103410; 588058, 4103420; 588064, 4103430; 588072, 4103450; 588082, 4103480; 588088, 4103500; 588091, 4103530; 588091, 4103560; 588099, 4103570; 588115, 4103590; 588146, 4103580; 588169, 4103610; 588201, 4103630; 588272, 4103700; 588411, 4104050; 588571, 4103930; 588584, 4103940; 588589, 4103960; 588590, 4103980; 588583, 4104010; 588574, 4104030; 588559, 4104050; 588549, 4104070; 588568, 4104110; 588833, 4104150; 588827, 4104020; 588883, 4104030; 588891, 4103950; 588906, 4103920; 588931, 4103890; 588979, 4103870; 589049, 4103870; 589069, 4103680; 589061, 4103450; 589124, 4103440; 589173, 4103400; 589117, 4103050; 589062, 4103060; 589019, 4102960; 589099, 4102940; 589096, 4102920; 588612, 4103020; 588570, 4102880; 588485, 4102900; 588474, 4102960; 588452, 4102960; 588452, 4103090; 588473, 4103160; 588502, 4103270; 588504, 4103330; 588505, 4103420; 588402, 4103470; 588360, 4103480; 588292, 4103480; 588267, 4103440; 588121, 4103320; 588033, 4103080; 588352, 4103020; 588337, 4102930; 588000, 4102990; 587981, 4102940; 587900, 4102940; 587900, 4102960; 587905, 4102980; 587919, 4102970; 587931, 4102970; 587932, 4102990;

587924, 4103010; 587916, 4103040; 587915, 4103060; 587893, 4103070; 587887, 4103090; 587883, 4103100; 587885, 4103100; 587891, 4103110; 587911, 4103100; 587939, 4103130; 587942, 4103150; 587951, 4103160; 587963, 4103150; 587977, 4103160; 587990, 4103190.

(5) Unit 2: Santa Cruz County, California.

From USGS 7.5′ quadrangle map Laurel, California.

Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 589297, 4102370; 589213, 4102420; 589164, 4102430; 589168, 4102460; 589174, 4102500; 589181, 4102550; 589189, 4102570; 589210, 4102600; 589243, 4102620; 589261, 4102630; 589274, 4102640; 589271, 4102660; 589270, 4102680; 589270, 4102690; 589289, 4102710; 589327, 4102740; 589361, 4102770; 589402, 4102790; 589435, 4102800; 589472, 4102800; 589571, 4102790; 589657, 4102780; 589762, 4102770; 589845, 4102750; 589889, 4102730; 589917, 4102690; 589932, 4102660; 589932, 4102620; 589930, 4102530; 589865, 4102440; 589732, 4102250; 589681, 4102260; 589669, 4102290; 589661, 4102300; 589642, 4102310; 589623, 4102310; 589590, 4102310; 589531, 4102320; 589297, 4102370.

(6) *Critical Habitat Map for Units 1 and 2 follows:*

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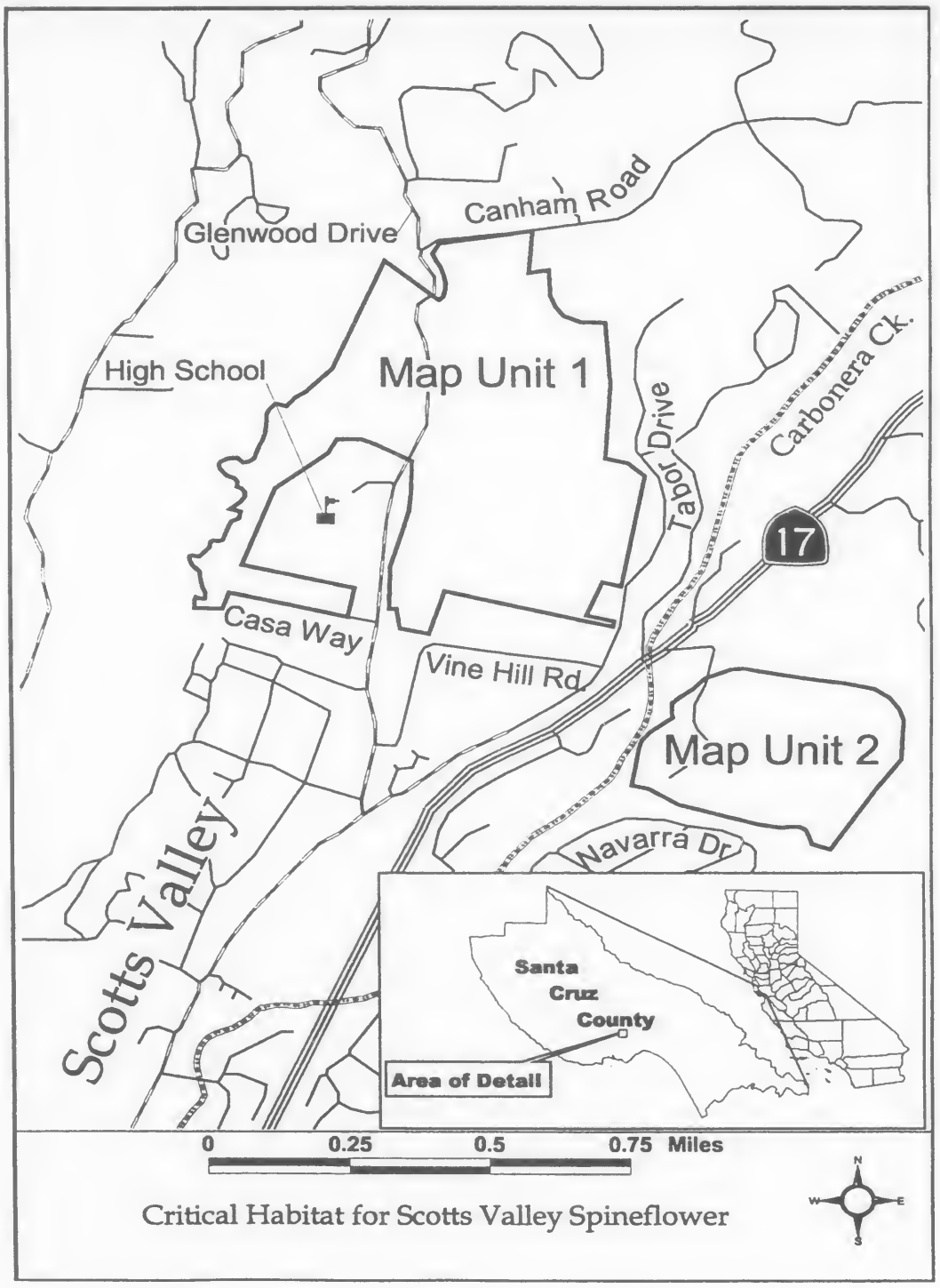

* * * * *

Dated: May 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–13063 Filed 5–28–02; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 011218303–1303–01; I.D. 110501B]

RIN 0648–AP70

Atlantic Highly Migratory Species; Commercial Shark Management Measures

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

ACTION: Emergency rule; extension of expiration date; request for comments; fishing season notification.

SUMMARY: NMFS extends the expiration date of the emergency rule that established the commercial quotas for large and small coastal sharks at 1,285 metric tons (mt) dressed weight (dw) and 1,760 mt dw, respectively. This extension is necessary to ensure that the regulations in force are consistent with a court-approved settlement agreement and are based on the best available science. NMFS also notifies eligible participants of the opening and closing dates for the Atlantic large coastal shark (LCS), small coastal shark (SCS), pelagic shark, blue shark, and porbeagle shark fishing seasons.

DATES: The expiration date of the emergency rule published December 28, 2001 (66 FR 67118), is extended to December 30, 2002.

The fishery opening for LCS is effective July 1, 2002 through 11:30 p.m., local time, September 15, 2002. The LCS closure is effective from 11:30 p.m., local time, September 15, 2002, through December 31, 2002.

The fishery opening for SCS, pelagic sharks, blue sharks, and porbeagle sharks is effective July 1, 2002, through December 31, 2002, unless otherwise modified or superseded through publication of a closure notice in the **Federal Register**.

Comments on this action must be received no later than 5 p.m. on August 27, 2002.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via email or the Internet. Copies of the Environmental Assessment and Regulatory Impact Review prepared for the initial emergency rule may be obtained from Margo Schulze-Haugen or Karyl Brewster-Geisz at the same address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

On November 21, 2000, Southern Offshore Fishing Association and other commercial fishermen and dealers (plaintiffs) and NMFS reached a settlement agreement that prescribed actions to be taken by both parties in order to resolve issues raised in two lawsuits brought against NMFS by the plaintiffs. On December 7, 2000, Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida entered an order approving the settlement agreement.

The settlement agreement, inter alia, required NMFS to maintain the 1997 commercial LCS quotas and the catch accounting/monitoring procedures pending an independent review of the 1998 LCS stock assessment. In October 2001, NMFS received the complete peer reviews of the 1998 LCS stock assessment. Three of the four reviews found that the scientific conclusions and scientific management recommendations contained in the 1998 LCS stock assessment were not based on scientifically reasonable uses of the appropriate fisheries stock assessment techniques and on the best available (at the time of the 1998 LCS stock assessment) biological and fishery information relating to LCS. Because of this conclusion, NMFS regards the management recommendations of the 1996 stock assessment to be an appropriate basis for any rulemaking, pending completion of a new stock assessment. Thus, having considered the peer review's overall conclusion, the terms of the settlement agreement, and the recommendations of the 1996 stock assessment, NMFS published an emergency rule (December 28, 2001, 66 FR 67118) to maintain the 1997 commercial LCS quota level until a new LCS stock assessment that employs improved assessment techniques and addresses the recommendations and comments of the peer reviews can be completed and independently peer reviewed.

The 2002 LCS stock evaluation workshop (SEW) will be held June 24-28, 2002, in the NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, Florida 32408. NMFS anticipates that the final LCS SEW report will be complete in August 2002.

Upon completion of the LCS stock assessment and independent review, NMFS intends to implement management measures for LCS by January 1, 2003, through notice and comment rulemaking, based on the additional information to ensure the conservation of LCS while maintaining a sustainable fishery in the long-term.

Additionally, consistent with the court-approved settlement agreement, in the initial emergency rule, NMFS maintained the SCS commercial shark quota at the 1997 level pending a new stock assessment in early 2002. The 2002 SCS stock assessment report is now available, see **ADDRESSES** or online at http://www.nmfs.noaa.gov/sfa/hmspg.html. NMFS intends to implement management measures for SCS based on the 2002 SCS stock assessment by January 1, 2003, through notice and comment rulemaking.

This emergency rule extension is necessary to manage and conserve LCS based on the best scientific information available, pending completion of a new LCS stock assessment. Without this emergency rule extension, the reduced LCS and SCS commercial quotas of 816 mt dw and 329 mt dw, respectively, adopted in the HMS FMP and based on the 1998 LCS stock assessment, would be in force, inconsistent with the terms of the court-approved settlement agreement.

Annual Landings Quotas

The 2002 annual landings quotas for LCS and SCS are established at 1,285 mt dw and 1,760 mt dw, respectively. The 2002 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw, 273 mt dw, and 92 mt dw, respectively.

Of the 735.5 mt dw established for the first 2002 semiannual LCS season (December 28, 2001, 66 FR 67118), 722.5 mt dw was taken. NMFS is adding the remaining 13 mt dw to the available quota for the second 2002 semiannual fishing season. As such, the LCS quota for the second 2002 semiannual season

is 655.5 mt dw. The SCS second semiannual quota for 2002 is established at 880 mt dw. The second 2002 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw, 136.5 mt dw, and 46 mt dw, respectively.

Fishing Season Notification

The second semiannual fishing season of the 2002 fishing year for the commercial fishery for LCS, SCS, and pelagic sharks in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open July 1, 2002. To estimate the closure dates of the LCS, NMFS examined the average catch rates for each species group from the first seasons from the years 1999, 2000, and 2001 while also considering the reporting dates of permitted shark dealers. Due to an apparent changes in LCS fishing patterns, NMFS determined that using the most recent year's LCS catch rates for the second semi-annual fishing season is appropriate for estimating the 2002 LCS second fishing season. Based on 2001 weekly catch rates, between 92 and 102 percent of the available quota would likely be taken between the first and second weeks of September. The second week of September corresponds with the end of the first of two monthly reporting periods for permitted shark dealers. Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the LCS quota for the second 2002 semiannual season will likely be attained by September 15, 2002. Thus, the LCS fishery will close September 15, 2002, at 11:30 p.m. local time.

When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The AA has determined that this action is necessary to ensure that regulations in force are consistent with the court-approved settlement agreement and with the best available science.

NMFS prepared an Environment Assessment for the initial emergency rule that describes the impact on the human environment and found that no significant impact on the human environment would result. This emergency rule extension is of limited duration. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here. NMFS intends to conduct notice and comment rulemaking to have new management measures in place, based on the 2002 LCS and SCS stock assessments and LCS peer review, by January 1, 2003.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here.

This emergency rule extension to establish the 2002 landings quotas and other shark management actions has been determined to be not significant for the purposes of Executive Order 12866.

Additionally, the ancillary action announcing the fishing season is taken under 50 CFR 635.27(b) and is exempt from review under Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the Federal Register for this emergency rule extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). Comment on these management measures were requested in the initial emergency rule published on December 28, 2001 (66 FR 67118); therefore, the agency has the authority to extend the emergency rule for another 180 days. Two comments were received. The first comment expressed concern that the emergency action does not allow for increases in harvest levels for the recreational shark fishery commensurate with increases for the commercial shark fishery. NMFS intends to review the recreational shark fishing measures during the notice and comment rulemaking after the 2002 LCS stock assessment and peer review. The second comment raised procedural and legal concerns regarding the adequacy and appropriateness of the independent peer reviews, initial emergency rule, and supporting environmental assessment. Some of these concerns are currently the subject of ongoing litigation and will be resolved by a court. To the extent possible, NMFS intends to address additional concerns in the 2002 LCS SEW and during the notice and comment rulemaking after the 2002 LCS stock assessment and peer review.

If these regulations are not in effect then more restrictive management measures (e.g. lower annual landings quotas and measures to count dead discards against that lower quota) that could significantly impact the fishery, and that currently lack an adequate scientific basis, would be in place. The public will have additional opportunities to comment on these or similar measures during the notice and comment rulemaking subsequent to the completion of the 2002 LCS stock assessment and peer review.

Dated: May 22, 2002.

Rebecca Lent,

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

[FR Doc. 02–13407 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 103
Wednesday, May 29, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–26–AD]

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD900 helicopters. The AD would require inspecting and, if necessary, repairing the longitudinal drive link (drive link) and modifying certain nonrotating swashplate (swashplate) assemblies. The AD would also require recording compliance with the AD on a component history card or equivalent record. This proposal is prompted by reports of damage to the drive link assembly caused by the sharp inner edge of the bushing in the swashplate assembly. The actions specified by the proposed AD are intended to prevent damage to the drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–26–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes adopting a new AD for certain MDHI Model MD900 helicopters. The AD would require inspecting and, if necessary, repairing the drive link assembly, part number (P/N) 900C2010212–101, and modifying the swashplate assembly, P/N 900C2010192–105, –107, and –109. The AD would also require recording compliance on the component history card or equivalent record. This proposal is prompted by reports of damage to the drive link assembly. The damage is caused by the drive link striking the sharp edges of the nonrotating swashplate due to the small clearance between the swashplate bushing and the drive link. The FAA issued AD 2000–18–08 (65 FR 55449, September 14, 2000) to require modifying the swashplate assembly, P/N 900C2010192–111, reidentifying two swashplate assemblies as P/N's 900C1010004–127 and 900C2010192–113, and inspecting drive link assemblies, P/N 900C2010212–101. We have since determined that similar requirements should also apply to swashplate assembly, P/N 900C2010192–105, –107, and –109. This condition, if not corrected, could result in damage to the drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter.

The FAA has reviewed MDHI Service Bulletin SB900–078, dated April 23, 2001 (SB), which describes procedures for reworking of the bushing in the swashplate assembly and inspecting and repairing the drive link assembly.

Since we have identified an unsafe condition that is likely to exist or develop on other MDHI Model MD900 helicopters of the same type design, the proposed AD would require the following:

- Modify the swashplate assembly, P/N 900C2010192–105, –107, or –109;
- Dye-penetrant inspect for gouging and cracking and modify or replace, as necessary, the drive link assembly, P/N 900C2010212–101.
- Record compliance with the AD on the component history card or equivalent record.

The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 28 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1164 per helicopter. Based on these figures, the

total cost impact of the proposed AD on U.S. operators is estimated to be $35,952.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MD Helicopters Inc.: Docket No. 2001–SW–26–AD.

Applicability: Model MD900 helicopters, serial numbers 0008 through 0068, certificated in any category.

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

Compliance: Required as indicated.

To prevent damage to the longitudinal drive link (drive link), loss of control of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) or 3 months, whichever occurs first, unless previously accomplished, modify the nonrotating swashplate assembly, part number (P/N) 900C2010192–105, –107, or –109, in accordance with the Accomplishment Instructions, paragraphs 2.A.(1). and 2.A.(2)., of MD Helicopters (MDHI) Service Bulletin SB900–078, dated April 23, 2001 (SB).

(b) After modifying the nonrotating swashplate assembly, P/N 900C2010192–105, –107 or –109, in accordance with paragraph (a) of this AD, dye-penetrant inspect the drive link assembly, P/N 900C2010212–101, for gouging or cracking in accordance with the Accomplishment Instructions, paragraph 2.B.(1). and 2.B.(2). of the SB, except that returning cracked parts to MDHI is not required by this AD.

(1) If a crack is found, before further flight, replace the drive link assembly, P/N 900C2010212–101, with an airworthy drive link assembly.

(2) If gouging is found without a crack, before further flight, rework the drive link assembly, P/N 900C2010212–101, in accordance with the Accomplishment Instructions, paragraph 2.B.(3) of the SB.

Note 2: Even if you have previously accomplished the inspection required by paragraph (b) of this AD, you are not relieved from complying with paragraph (b) of this AD.

(c) Record compliance with this AD on the component history card or equivalent record for the nonrotating swashplate assembly.

(d) Accomplishing the actions required by paragraphs (a) and (b) of this AD is terminating action for the requirements of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Fort Worth, Texas, on May 20, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–13291 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–329–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections for excessive wear of the internal and external splines of the torque tube couplings of the trailing edge flaps, and replacement of the couplings, if necessary. That AD also provides an optional modification that, if installed, constitutes terminating action for the inspection requirements. This action would expand the applicability of the existing AD and require new inspections of the torque tube assemblies and certain gearbox assemblies and universal joints in the drive system for the inboard trailing edge flaps, and follow-on actions, if necessary. For certain airplanes, this action also would require the previously optional modification and/or a new modification, which would terminate certain inspections. The actions specified by the proposed AD are intended to prevent separations in the drive system for the inboard trailing edge flaps, which could cause a flap skew condition that could result in damage to the flaps or fuselage, and consequent reduced controllability of the airplane.

DATES: Comments must be received by July 15, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–329–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2001–NM–329–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:

Technical Information: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1506; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1119, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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 2001–NM–329–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. 2001–NM–329–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 9, 1992, the FAA issued AD 92–25–01, amendment 39–8416 (57 FR 54298, November 18, 1992), applicable to certain Boeing Model 757 series airplanes, to require visual inspections of the internal and external splines of the trailing edge flap drive torque tube coupling assembly for excessive wear, and replacement of the coupling, if necessary. That AD also provides an optional modification that, if installed, constitutes terminating action for the inspection requirements. That action was prompted by reports of excessive wear on the aft end of the trailing edge flap drive torque tube coupling. The requirements of that AD are intended to prevent damage caused by skewed flaps resulting from excessive wear of the splines of the trailing edge flap drive torque tube coupling.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received several reports of separations in the drive system for the inboard trailing edge flaps on Boeing Model 757–200, –200CB, and –200PF series airplanes. These separations caused a flap skew condition, in which one end of a flap did not move to the commanded position. These separations have been attributed to various discrepancies in the drive system for the trailing edge flaps, including:

- Worn splines in the torque tube assemblies;
- Corroded and worn bearings from loss of lubricant, which permitted axial shaft movement and subsequent bevel gear separation inside angle gearbox assemblies; and
- Worn universal joints (U-joints) caused by the loss of boots and subsequent wear on the drive shaft assembly between the inboard transmission of the inboard flaps and the angle tee gearbox assembly.

These discrepancies could cause a flap skew condition, which could result in damage to the flaps or fuselage and consequent reduced controllability of the airplane.

The existing AD applies to Model 757 series airplanes with line numbers 1 through 411 inclusive and 413 through 432 inclusive. Since the issuance of that AD, the FAA has determined that certain other Model 757 series airplanes (*i.e.*, Model 757–200, –200CB, and –200PF series airplanes) may also be subject to the discrepancies described previously. Therefore, these additional airplanes also may be subject to the identified unsafe condition.

Also, as stated previously, AD 92–25–01 provides for an optional modification per Boeing Service Bulletin 757–27–0099, dated March 12, 1992, for airplanes that were delivered without coupling seals on torque tube assemblies 3 and 6. That modification includes replacement of torque tube assemblies 3 and 6 with improved torque tube assemblies and installation of a sealant plug in the shafts of four gearboxes. The FAA has now determined that long-term continued operational safety will be better assured by requiring installation of this modification (to remove the source of the problem), rather than by requiring repetitive inspections. In some instances, long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. Therefore, this proposed AD would require doing the previously optional modification. Doing this modification eliminates the need for the repetitive inspections for excessive wear of torque tube assemblies 3 and 6.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–27A0125, Revision 1, including Appendices A and B, dated December 2, 1999. That service bulletin describes procedures for inspecting certain torque tube assemblies, certain gearbox assemblies, and U-joints on the drive shaft assembly in the drive system for the inboard trailing edge flaps. The inspection of the torque tube assemblies involves performing a general visual inspection for excessive wear of external splines and, if excessive wear is found, measuring the distance over pins, measuring the outer diameter, if necessary, and repeating the inspection or replacing the torque tube assembly, as necessary. The inspection of the gearbox assemblies involves measuring axial movement, and replacing the gearbox assembly with a new assembly, if necessary. The inspection of the U-joints on the drive shaft assembly involves measuring the maximum and minimum distance between the upper and lower yoke, and replacing the drive shaft assembly with a new assembly, if necessary. Doing the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The FAA also has reviewed and approved Boeing Service Bulletin 757–27–0107, dated June 16, 1994. Among other actions, for airplanes delivered without coupling seals on torque tube assemblies 4 and 5, that service bulletin describes procedures for a modification that involves replacing torque tube assemblies 4 and 5 with new, improved torque tube assemblies, and changing related angle and tee gearbox assemblies of the drive system. The changes to the angle gearbox assembly involve replacing certain coupling halves with improved coupling halves, installing sealant, and changing the part number of the assembly. The changes to the tee gearbox assembly involve cleaning certain holes, installing sealant, and changing the part number of the assembly. Doing this modification eliminates the need for the repetitive inspections for excessive wear of torque tube assemblies 4 and 5.

Explanation of Change to Existing Requirements

In the "Restatement of Requirements of AD 92–25–01" in this proposed AD, the FAA has revised paragraph (a) of the existing AD to clarify that the visual inspection applies to the torque tube 3 and 6 coupling splines. Also, the FAA has clarified the existing requirement to specify that the required inspection is a "general visual inspection." A note has been added under the new requirements of this proposed AD to define that inspection.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–25–01 to continue to require repetitive inspections of the internal and external splines of the trailing edge flap drive torque tube coupling assemblies for excessive wear, and replacement of the couplings, if necessary. The proposed AD also would require accomplishment of the actions specified in Boeing Alert Service Bulletin 757–27A0125, Revision 1. For certain airplanes, the proposed AD also would require accomplishment of Boeing Service Bulletin 757–27–0099, and/or certain actions in Boeing Service Bulletin 757–27–0107, as described previously.

Cost Impact

There are approximately 979 airplanes of the affected design in the worldwide fleet.

In AD 92–25–01, the FAA estimated that approximately 279 U.S.-registered airplanes would be subject to the inspections in that AD. For these airplanes, the currently required inspections take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $33,480, or $120 per airplane, per inspection cycle.

The FAA estimates that approximately 283 U.S.-registered airplanes (Group 1 of Boeing Alert Service Bulletin 757–27A0125, Revision 1) would be subject to the proposed inspection of torque tube assemblies 3 and 6. This inspection would take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new proposed inspections on U.S. operators of Group 1 airplanes is estimated to be $33,960, or $120 per airplane, per inspection cycle.

The FAA estimates that approximately 376 U.S.-registered airplanes (Groups 1 and 2 of Boeing Alert Service Bulletin 757–27A0125, Revision 1) would be subject to the proposed inspection of torque tube assemblies 4 and 5. This inspection would take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new proposed inspections on U.S. operators of Group 2 airplanes is estimated to be $45,120, or $120 per airplane, per inspection cycle.

The FAA estimates that 643 U.S.-registered airplanes (Groups 1, 2, and 3 of Boeing Alert Service Bulletin 757–27A0125, Revision 1) would be subject to the new proposed inspections of the gear box assemblies and U-joints of the drive shaft assembly. These inspections would take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new proposed inspections on U.S. operators is estimated to be $154,320, or $240 per airplane, per inspection cycle.

The FAA estimates that approximately 283 U.S.-registered airplanes (Group 1 of Boeing Alert Service Bulletin 757–27A0125, Revision 1) would be subject to the proposed modification that involves replacement of torque tube assemblies 3 and 6. This modification would take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,550. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $1,372,550, or $4,850 per airplane.

The FAA estimates that approximately 376 U.S.-registered airplanes (Groups 1 and 2 of Boeing Alert Service Bulletin 757–27A0125, Revision 1) would be subject to the proposed modification that involves replacement of torque tube assemblies 4 and 5. This modification would take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,550. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $1,823,600, or $4,850 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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8416 (57 FR 54298, November 18, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–329–AD. Supersedes AD 92–25–01, Amendment 39–8416.

Applicability: Model 757–200, –200CB, and –200PF series airplanes; line numbers (L/Ns) 1 through 979 inclusive; 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 (h) 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 separations in the drive system for the inboard trailing edge flaps, which could cause a flap skew condition that could result in damage to the flaps or fuselage, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 92–25–01:

Repetitive Visual Inspections and Corrective Actions

(a) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive: Prior to the accumulation of 2,000 total flight cycles, or within the next 200 flight cycles after April 30, 1990 (the effective date of AD 90–08–16, amendment 39–6574), whichever occurs later, and thereafter at intervals not to exceed 2,000 flight cycles, perform a general visual inspection of the torque tube 3 and 6 coupling splines, in accordance with Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990.

Note 2: Operators who have conducted inspections of the torque tube coupling splines prior to December 23, 1992 (the effective date of AD 92–25–01, amendment 39–8416), in accordance with Boeing Service Letter 757–SL–27–52, dated January 31, 1990, or Boeing Service Letter 757–SL–27–52–A, dated March 21, 1990, are considered to be in compliance with paragraph (a) of this AD.

(1) If the measurement over the pin, as detailed in the service letter, is less than 1.8605 inches but equal to or greater than 1.8533 inches, repeat the inspection within 1,000 flight cycles, until the requirements of paragraph (c) or (f) of this AD have been accomplished.

(2) If the measurement over the pin, as detailed in the service letter, is less than 1.8533 inches, replace the coupling before further flight, in accordance with the service letter.

New Requirements of This AD:

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

New Repetitive Inspections: Torque Tubes 3 and 6

Note 4: If the requirements of paragraph (f) of this AD have been accomplished before the effective date of this AD, inspection per paragraph (b) of this AD is not required.

(b) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive, which are identified as Group 1 airplanes in Boeing Alert Service Bulletin 757–27A0125, Revision 1, including Appendices A and B, dated December 2, 1999: Do a general visual inspection for excessive wear of torque tube assemblies 3 and 6, per the service bulletin. Do the initial inspection at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. If no wear is found, repeat the inspection every 3,000 flight cycles or 24 months, whichever comes first, until paragraph (f) of this AD has been accomplished. Doing paragraph (b) of this AD terminates the requirements of paragraph (a) of this AD for torque tube assemblies 3 and 6.

(1) For airplanes on which the inspection in paragraph (a) of this AD has been done prior to the effective date of this AD: Inspect within 3,000 flight cycles after the most recent inspection done PRIOR to the effective date of this AD per paragraph (a) of this AD, or within 24 months after the effective date of this AD, whichever is first.

(2) For airplanes on which the inspection in paragraph (a) of this AD has NOT been done prior to the effective date of this AD: Inspect prior to the accumulation of 3,000 total flight cycles, within 24 months since the airplane's date of manufacture, or within 18 months after the effective date of this AD, whichever is latest.

Note 5: Inspections, measurements, and replacements done prior to the effective date of this AD per Boeing Alert Service Bulletin 757–27A0125, dated July 17, 1997, are considered acceptable for compliance with the corresponding requirements of paragraphs (b), (c), (d), and (e) of this AD.

New Repetitive Inspections: Torque Tubes 4 and 5

Note 6: If the requirements of paragraph (g) of this AD have been accomplished before the effective date of this AD, inspection per paragraph (c) of this AD is not required.

(c) For airplanes with L/Ns 1 through 411 inclusive and 413 through 580 inclusive, which are identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 757–27A0125, Revision 1, including Appendices A and B, dated December 2, 1999: Prior to the accumulation of 3,000 total flight cycles, within 24 months since the airplane's date of manufacture, or within 18 months after the effective date of this AD, whichever is latest, do a general visual inspection for excessive wear of torque tube assemblies 4 and 5, per the service bulletin. If no wear is found, repeat the inspection every 3,000 flight cycles or 24 months, whichever comes first, until paragraph (g) of this AD has been accomplished.

Corrective Actions: Torque Tubes 3, 4, 5, and 6

(d) If any wear is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, measure the distance of the measurement over pins, per Boeing Alert Service Bulletin 757–27A0125, Revision 1, including Appendices A and B, dated December 2, 1999.

(1) If the distance is 1.8337 inches or more, repeat the general visual inspection required by paragraph (b) or (c) of this AD at the applicable interval specified in Table 1 of Figure 7 of the service bulletin, until the actions in paragraphs (f) (for torque tube assemblies 3 and 6) and (g) (for torque tube assembles 4 and 5) have been done.

(2) If the distance is less than 1.8337 inches, do the actions in paragraphs (d)(2)(i) and (d)(2)(ii) of this AD, per the service bulletin.

(i) Before further flight, measure the distance of the outside diameter, as shown in Table 1 of Figure 7 of the service bulletin.

(ii) Replace the affected torque tube assembly with a new torque tube assembly at the applicable time specified in Table 1 of Figure 7 of the service bulletin.

New Repetitive Inspections: Gearbox Assemblies and Universal Joints

(e) For airplanes with L/Ns 1 through 979 inclusive: Prior to the accumulation of 3,000 total flight cycles, within 24 months since the airplane's date of manufacture, or within 18 months after the effective date of this AD, whichever is latest, perform an inspection to measure the axial movement of the angle and tee gearbox assemblies and the distance between the upper and lower yokes of the universal joints (U-joints) of the drive shaft assemblies, per Boeing Alert Service Bulletin 757–27A0125, Revision 1, including Appendices A and B, dated December 2, 1999. Repeat these measurements every 3,000 flight cycles or 24 months, whichever comes first, and do paragraphs (e)(1) and (e)(2) of this AD, as applicable.

(1) If any measurement of the axial movement of the gearbox assembly is more than 0.015 inch, as specified in the service bulletin: Before further flight, replace the gearbox assembly with a new gearbox assembly, per the service bulletin.

(2) If the distance between the upper and lower yokes of the U-joints is more than 0.020 inch, as specified in Steps 3 and 6 of Figure 6 of the service bulletin: Before further flight, replace the drive shaft assembly with a new drive shaft assembly, per the service bulletin.

Terminating Action

(f) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive: Within 3 years after the effective date of this AD, modify the airplane by replacing torque tube assemblies number 3 and 6 with new, improved torque tube assemblies, and installing a sealant plug in the shafts of four gearboxes, according to Boeing Service Bulletin 757–27–0099, dated March 12, 1992. Doing this paragraph terminates the inspections required by paragraphs (a) and (b) of this AD.

(g) For airplanes with L/Ns 1 through 580 inclusive: Within 3 years after the effective date of this AD, modify the airplane by replacing torque tube assemblies number 4 and 5 with new, improved torque tube assemblies, and changing the related angle and tee gearbox assemblies, per Boeing Service Bulletin 757–27–0107, dated June 16, 1994. The changes for the related tee and angle gearbox assemblies are shown in Figures 6 and 7, respectively, of the service bulletin. Doing this paragraph terminates the inspections required by paragraph (c) of this AD.

Note 7: No terminating action has been identified for the inspections specified in paragraph (e) of this AD.

Alternative Methods of Compliance

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

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on May 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12949 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–11301; Notice No. 02–04]

RIN 2120–AH14

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on February 28, 2002. In that document, the FAA proposed to clarify regulatory language, increase consistency between the antidrug and alcohol misuse prevention program regulations where possible, and revise regulatory provisions as appropriate. This extension is a result of a joint request from 14 entities.

DATES: Comments must be received on or before July 29, 2002.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–11301, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, AAM–800, Drug Abatement Division, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in the NPRM, Notice No. 02–04. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on the proposals in the NPRM, Notice No. 02–04, we will

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

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

Background

On February 28, 2002, the FAA published NPRM, Notice No. 02–04, Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities (67 FR 9366). Comments to that document were to be received on or before May 29, 2002.

By letter dated April 29, 2002, 14 entities jointly requested that the FAA extend the comment period for NPRM, Notice No. 02–04, for 90 days. The entities wanted additional time to gather, develop, and analyze data to support their comments regarding a proposed change clarifying the applicability of the drug and alcohol testing regulations to contractors. In addition, subsequent to the April 29 joint request, a representative of one of the entities notified the FAA that the regulatory evaluation was missing from the electronic docket.

While the FAA agrees that additional time for comments may be needed because of the inadvertent administrative error in the electronic docket, the FAA believes that a 90-day extension would be excessive. Therefore, the FAA believes an additional 60 days would be adequate for these entities to provide comment to NPRM, Notice No. 02–04.

Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the April 29 joint request made by the 14 entities for extension of the comment period to NPRM, Notice No. 02–04. Also, the FAA has recognized that there was an administrative error when information was inadvertently omitted from the electronic docket. Therefore, the FAA has found good cause for extending the comment period for 60 days. The FAA also has determined that extension of the comment period is consistent with the public interest.

Accordingly, the comment period for NPRM, Notice No. 02–04, is extended until July 29, 2002.

Issued in Washington, DC, on May 23, 2002.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 02–13366 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule User Fees

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing a Notice of Proposed Rulemaking ("NPR") to amend the FTC's Telemarketing Sales Rule ("TSR"). This new rule would impose user fees on telemarketers, and their seller or telemarketer clients, for their access to the national do-not-call registry, if one is implemented. This NPR invites written comments on the issues raised by the proposed changes, and seeks answers to the specific questions set forth in section VIII of the NPR.

DATES: Written comments will be accepted until June 28, 2002. Time is of the essence to promulgate the proposed user fees, if a national registry is adopted. Thus, the Commission does not anticipate providing any extension to this comment period.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

Alternatively, the Commission will accept comments submitted to the following email address: *userfee@ftc.gov*. All comments and any electronic versions (*i.e.*, computer disks) should be identified as "Telemarketing Rulemaking—User Fee Comment. FTC File No. R411001." The Commission will make this NPR and, to the extent possible, all comments received in electronic form in response to this NPR, available to the public through the Internet at the following address: *www.ftc.gov*.

Comments on proposed revisions bearing on the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, D.C. 20503, ATTN.: Desk Officer for the Federal Trade Commission, as well as to the FTC Secretary at the address above.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326–3075 (email: *dtorok@ftc.gov*), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On January 30, 2002, the FTC published in the **Federal Register** a NPR to amend the FTC's TSR and to request public comment on the proposed changes. 67 FR 4492 (Jan. 30, 2002) ("the Rule NPR"). Among other provisions, the Rule NPR proposed to establish a national "do-not-call" registry, maintained by the FTC. The proposal, if adopted, would permit consumers who prefer not to receive telemarketing calls to contact one centralized registry to effectuate this preference. Telemarketers would be required to refrain from calling consumers who have placed their telephone numbers on this registry. The Rule NPR anticipates that telemarketers would need to access the do-not-call registry on at least a monthly basis in order to remove from their telemarketing lists those consumers who have placed themselves on the national registry.

The Commission has not made a final determination regarding whether to establish a do-not-call registry. However, it is necessary to consider the funding for the registry at this time so that if the Commission ultimately decides to establish the registry, it can be implemented without undue delay.

The current NPR proposes user fees to fund the development and operation of the proposed national registry, if one is implemented. In developing this proposal, the Commission is guided by the Independent Offices Appropriations Act of 1952, codified at 31 U.S.C. 9701 ("the User Fee Statute"), which states:

(a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—(1) fair; and

(2) based on—(A) the costs to the Government; (B) the value of the thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.

The Commission is also guided by the Office of Management and Budget ("OMB") Circular No. A–25, which "establishes Federal policy regarding fees assessed for Government services." *Id.* at ¶ 1. It states that user fees "will be sufficient to recover the full cost to the Federal Government * * * of providing the service, * * * will be based on market prices * * * [and] will be collected in advance of, or simultaneously with, the rendering of services." *Id.* at ¶ 6(a)(2).

In accordance with the User Fee Statute and OMB Circular A–25, the Commission now proposes to charge user fees to all telemarketers that access or obtain data from the national do-not-call registry, if such a registry is, in fact, implemented. If a do-not-call registry is implemented, the Commission will be providing a "thing of value" to telemarketers; namely, a list of all United States consumers who have indicated a preference not to receive certain telemarketing calls. Access to such a list will permit telemarketers to focus their telemarketing sales on those consumers who have no objection to receiving such solicitations. Ultimately, it may be more profitable for telemarketers to call only those consumers who are receptive to being called. In addition, assuming the TSR is amended as proposed by the Rule NPR, telemarketers will be required to access the national registry to remain in compliance with the TSR and to engage in telemarketing lawfully. Thus, access to the registry will enable telemarketers to engage in their chosen business.[1] We believe telemarketers should be charged appropriately for obtaining this information.

To maintain the fairness of the fee structure and to keep the fees to individual firms as reasonable as possible, it is critical that all firms that derive a benefit from the registry pay for that benefit. The Commission understands that telemarketers may undertake telemarketing campaigns on behalf of other sellers or telemarketers. Based on our discussions with officials who run State do-not-call registries, the Commission also anticipates that sellers and telemarketers may use the information included in the registry to "scrub" the telemarketing lists of other firms.[2] The Commission proposes requiring that any telemarketer who engages in telemarketing or "list scrubbing" on behalf of its clients will be required to pay the user fee set forth below on behalf of each such entity.

The Commission also has considered charging consumers directly for adding their telephone numbers to the registry. The Commission proposes that no such fees be imposed, however, for the following reasons. First, while registering their telephone number may be perceived as a benefit to consumers, at this time the Commission does not believe that it would be appropriate to charge consumers who seek to avail themselves of the protections of the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 ("the Telemarketing Act"). Specifically, the proposed national registry would prohibit telemarketers from undertaking "a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy." 15 U.S.C. 6102(a)(3)(A). The Commission does not wish to charge consumers to protect their privacy from unwanted and abusive telemarketing calls. Second, even if the Commission found that charging consumers was appropriate, the costs of collecting what, under the constraints of the User Fee Statute, necessarily would be a very small fee from each consumer who elected to list his or her number in the registry could be greater than the fee itself.[3] OMB Circular A–25 states that agencies need not impose user fees when "the cost of collecting the fees would represent an unduly large part of the fee for the activity." *Id.* at ¶ 6.c.2. Thus, the Commission does not believe that the imposition of consumer user fees is appropriate at this time.

II. User Fee Calculation

To establish the appropriate fees to charge telemarketers and their clients for information obtained from the registry, the Commission, guided by OMB Circular A–25, will endeavor to recover the full cost of creating and implementing the registry. Based on initial market research, including potential vendor responses to the Request for Information ("RFI") that was issued by the FTC on February 28, 2002,[4] it is estimated that the cost to develop and implement a national registry will be approximately $5 million in the first year. The President's Budget proposes that $5 million of the agency's total funding be used for the proposed national registry, of which $3 million will come from user fees. Thus, user fees of approximately $3 million will be needed in Fiscal Year 2003 ("FY 03"), the first year of the potential operation of the registry.[5] Moreover, those fees must be raised during FY 03, which runs from October 1, 2002, through September 30, 2003, even though the registry may be in operation for a period of time shorter than twelve months.[6]

The first step in calculating an appropriate user fee is also potentially the most difficult—determining the number of telemarketers and sellers that would be required to pay the proposed fee. The Commission has examined

[1] Courts have long recognized that agencies may charge regulated companies for the cost of administering their regulations, since the companies receive a specialized value from the agencies by complying with the regulations and gaining the ability to remain in business. See, e.g., *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223, 229 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); *National Cable Television Ass'n* v. *United States*, 554 F.2d 1094, 1101–02 (D.C. Cir. 1976); *Electronic Indus. Ass'n* v. *F.C.C.*, 554 F.2d 1109, 1114 (D.C. Cir. 1976).

[2] Section 310.4(b)(iv) of the Proposed Rule states that it is an abusive practice for a telemarketer, or for a seller to cause a telemarketer, to sell, purchase or use the national do-not-call registry for any purpose except compliance with the Rule's do-not-call provisions. The Commission believes that this provision does not preclude a telemarketer from using the national registry to scrub the calling lists of other telemarketers or sellers, since such usage is assisting others in maintaining compliance with the Rule.

[3] States that have setablished statewide "do-not-call" registries have experienced consumer registration levels ranging from a few percent of the telephone lines in use within the State, to over 40 percent of all lines. Thus, a national registry may ultimately include over 60 million telephone numbers. Even if all those consumers do not register in the first year, raising the estimated $3 million in necessary fees from that large a pool of possible registrants would require an extremely small fee (possibly as small as $0.05 per consumer), the collection costs of which could not be justified.

[4] *See www.ftc.gov/procurement*. Responses to the RFI are not part of the public record and are legally exempt from public disclosure to the extent they constitute confidential and proprietary business information. *See* Section 6(f) of the FTC Act, 15 U.S.C. 46(f); Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

[5] If, during the appropriations process, the amount of user fees which the agency is required to collect were to change, the fee structure proposed in this NPR would have to be adjusted accordingly.

[6] Given the time needed to complete the procurement process to hire a contractor, and for that contractor to develop and implement any proposed national registry, it is unlikely the registry will be available at the start of FY 03. In fact, it may be some months into the fiscal year before user fees can first be collected.

relevant industry literature, as well as the record in this and past rulemaking proceedings concerning the TSR. The Commission believes the more pertinent information for determining the number of firms that would be required to pay the proposed user fee may be the number of firms that access State do-not-call registries. Currently, sixteen States have do-not-call registries in place. Most of those States have fewer than 1,000 telemarketing firms requesting access to their registries. Some have fewer than 100 firms requesting access. The most telemarketing firms that currently access any individual State registry is 2,932. Thus, in order to propose a realistic fee structure that would ensure sufficient funds are collected to cover the costs of a national registry, the Commission estimates that 3,000 telemarketers or sellers may pay for access to the information in the national registry.[7] The Commission is seeking comment and evidence to determine whether this estimate is realistic and appropriate.

The next step in calculating the appropriate user fee is to determine the information for which the user would be charged. In accordance with OMB Circular A–25, the Commission is proposing a user fee structure that most closely approximates the cost of operating the national registry. The primary operational cost to the Commission for the proposed national registry, once the basic database infrastructure is in place, would be each toll-free call consumers make to register their telephone numbers with the system. Thus, system costs increase with each additional consumer registrant.

At the same time, the Commission anticipates that not all telemarketers or sellers would want access to all of the telephone numbers listed in the national registry. Many telemarketers and sellers engage in regional rather than nationwide calling campaigns, and therefore would not need consumer registration data for the entire nation. To address this business need, the Commission anticipates providing telemarketers with access to the national registry by area code. Thus, telemarketers would be able to access those portions of the registry covered by as little as one area code, to as many as all area codes nationwide. The Commission also anticipates enabling telemarketers to access the national database at any time, through a secure Internet website.[8]

In order to most closely approximate the Commission's costs to operate the national registry, and to address telemarketers' and sellers' needs for regional lists, the Commission proposes a fee structure based on the number of different area codes of data that the telemarketer or seller wishes to use annually. Under the proposed fee, telemarketers and their clients would be charged a rate of $12 per year for each area code of data they use.

The Commission proposes that no charge be imposed for firms to obtain data from only one to five area codes. Such free data would be available to any business regardless of its size, although the Commission notes that small businesses that telemarket only within such a limited range of area codes are likely to benefit the most from this provision.[9] The Commission believes this approach would be less burdensome than a fee structure that would require payment no matter how few area codes are used. In addition, the Commission proposes to cap the maximum annual fee at $3,000, which would be charged for using 250 area codes of data or more.[10] Thus, for example, there would be no charge for obtaining only five area codes of data; six area codes of data would cost $72; twenty-five area codes would cost $300; two hundred area codes would cost $2,400; and access to the data from all area codes would be capped at $3,000 annually.

These proposed fees obviously are based on certain assumptions and estimates. The Commission anticipates that whatever fees may be adopted would be reexamined periodically and would likely need to be adjusted, in future rulemaking proceedings, to reflect the costs of providing the national do-not-call registry. Moreover, the Commission bases these fee assumptions on the need to raise $3 million in FY 03, which is subject to change. The Commission anticipates the need to revise this fee proposal for future fiscal years.

In accordance with OMB Circular A–25, the Proposed Rule requires telemarketers to pay these fees prior to gaining access to the registry.[11] They would be able to access data as often as they like during the course of one year (defined as their "annual period") for those area codes that are selected with the payment of the related annual fee. For telemarketers who work on behalf of multiple clients, the telemarketer would pay to access a separate list of area codes of data for each client, and the annual period would run from the date of payment for access to each separate list of area codes.

If, during the course of the year, telemarketers need to access data from more area codes than those initially selected, either for themselves or on behalf of their clients, they would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period is divided into two semi-annual periods of six months each. Obtaining additional data from the registry during the first semi-annual, six month period will require a payment of $12 for each new area code. During the second semi-annual, six month period, the charge of obtaining additional data is $6 for each new area code. These payments for additional data would provide telemarketers access to those additional areas of data for the remainder of their initial annual term. As noted above, should a telemarketer obtain a new client, it would have to pay the appropriate user fee for the area codes of data needed by that new client, and a new annual period for that client would begin on the first month when that data is accessed by the telemarketer.

The following is an example of how this proposed payment system would work. A telemarketer requests access to the registry for the first time in August 2003. After completing an application form, the telemarketer pays $600 for access to 50 area codes of data (50 area codes times $12 per area code equals $600). The telemarketer indicates which area codes it wishes to access, and is

[7] The Commission previously has estimated that there are 40,000 "telemarketers" in the United states. *See* the Rule NPR at 67 FR 4492, 4534 (notice of amended application to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*). However, of all the companies that engage in telemarketing, only those telemarketers that engage in "outbound telephone calls" would be required to access the national registry and pay the required user fee to scrub their calling lists. Moreover, the number of telemarketers and sellers who will be required to pay the fee is further limited by certain exemptions to the Rule, set forth at 16 CFR 310.6, as well as by the inherent limitations of the FTC's jurisdiction. Thus, the Commission does not believe its prior estimate is representative in the instant context.

[8] The proposed amendments to the TSR state that telemarketers must access the proposed national registry on at least a monthly basis to remain in compliance. *See* 16 C.F.R. 310.4(b)(2)(iii) (proposed), 67 FR 4543.

[9] In this regard, the Commission believes its proposal is consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies consider regulatory alternatives to minimize such impact.

[10] Currently, there are approximately 270 area codes that would be included in the proposed national registry.

[11] Section 310.9(c) of the Proposed Rule would require each telemarketer to provide any identifying information deemed necessary by the operator of the registry to collect the user fee.

then provided that information from the registry. The same telemarketer may continue to access updates to the data from those 50 originally selected area codes at any time until the end of its annual period, which in this example would be the end of July, 2004. If, during December 2003 (i.e., within the first six months of its annual period), the telemarketer needs to access 10 additional area codes, the telemarketer would need to pay an additional $120 to access that data (10 area codes times $12 per area code equals $120). The telemarketer may then continue to access the data from those additional 10 area codes (as well as the original 50 area codes) until the end of July 2004. If, during March 2004 (i.e., within the second six months of its annual period) the telemarketer needs to access another 10 previously unselected area codes, the telemarketer would need to pay an additional $60 to access that data (10 area codes times $6 per area code equals $60). At that point, the telemarketer would be able to access the data from 70 area codes (the original 50, plus 10 acquired in December, plus 10 acquired in March) until the end of July, 2004. In August, 2004, the telemarketer would need to pay another annual fee for access to any portion of the registry.

If, however, the telemarketer acquires a new client during November 2003, and the new client needs access to 20 area codes of data, the telemarketer would need to pay $240 on behalf of that client (20 area codes times $12 per area code equals $240). That new client's annual period would run from November 1, 2003, through October 31, 2004. During that annual period, the telemarketer could access information from the 20 area codes selected on behalf of that client at any time.

The Commission considered charging these user fees on a monthly, rather than annual basis. However, given the necessity of raising $3 million during FY 03 (even though the registry will be available for only a portion of that fiscal year), the Commission has tentatively determined that an annual fee, to be paid in advance, is necessary to raise the required funds during that fiscal year. The Commission seeks comment whether an annual or a monthly fee would be a more preferable, efficient and appropriate method of fee collection in the future.

III. Telemarketer Access to the Proposed National Registry

The proposed amendments to the TSR would prohibit the use of information in the national registry for any purpose other than compliance with the do-not-call provisions of the Proposed Rule. *See* 16 CFR 310.4(b)(iv) (proposed). As a result, the Commission proposes, in Section 310.9(d), to limit access to the registry to telemarketers working on their own behalf or working on behalf of other sellers or telemarketers. In order to maintain the security of the registry and to track its usage, the Proposed Rule also would require telemarketers to certify, under penalty of law, that they are accessing the registry solely to comply with the provisions of the TSR. If they are accessing the registry on behalf of other sellers or telemarketers, they also would be required to identify each of the other sellers or telemarketers on whose behalf they are accessing the registry. In addition, they would be required to certify that the other sellers or telemarketers will be using the information gathered from the list solely to comply with the provisions of the TSR. Submitting a false certification to the government would not only be a Rule violation, but also would be actionable criminally as a false statement or claim to the Federal government. *See, e.g.,* 18 U.S.C. 287, 1001; 31 U.S.C. 3729.

The Commission recognizes that additional guidance may be necessary to more accurately define the relationships for which the applying telemarketer will have to report and pay. For example, in the compliance guide to the original TSR, the Commission stated that distinct corporate divisions of a single corporation are considered separate sellers for purposes of the Rule. Factors used to determine if corporate divisions will be treated as separate sellers include whether there is substantial diversity between the operational structure of the divisions, and whether the goods or services sold by the divisions are substantially different from each other. The Commission proposes that these same distinctions would apply to the payment of the proposed annual user fee. This NPR includes specific questions on this issue in Section VIII, and seeks answers to those questions in the comments.

IV. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning these proposed changes to the Commission's Telemarketing Sales Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to whether to adopt as final the proposed changes to the Rule. Written comments must be submitted to the Office of the Secretary, Room 159, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, on or before June 28, 2002. Time is of the essence to promulgate proposed user fees, if a national registry is adopted. Thus, the Commission does not anticipate providing any extension to this comment period.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Rules of Practice, on normal business days between the hours of 9 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this NPR and, to the extent possible, all papers or comments received in electronic form in response to this NPR available to the public through the Internet at the following address: *www.ftc.gov.*

V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

VI. Paperwork Reduction Act

The instant proposed amendments involve certain limited new collection of information requirements. The Commission will submit shortly to the Office of Management and Budget a copy of this NPR and an addendum to its most recent prior clearance request under the Paperwork Reduction Act, 44 U.S.C. 3501–3517 ("PRA") that will account for the incremental PRA effects posed by these newly proposed TSR amendments.

The Commission proposes to require telemarketers to submit minimal identifying information that the operator of the proposed national registry may deem necessary to collect the user fee. The Commission anticipates that this would include basic information, such as the name, address and telephone number of the telemarketer, a contact person for the organization, and information about the matter of payment. The telemarketer also would need to submit a list of the area codes of data for which it requests information. In addition, the telemarketer would have to certify that it is accessing the registry solely to comply with the provisions of the TSR. If the telemarketer is accessing the registry on behalf of other seller or telemarketer clients, it would have to submit basic identifying information

about those clients, a list of the area codes of data for which it requests information on their behalf, and a certification that the clients are accessing the registry solely to comply with the TSR.

The Commission anticipates that each telemarketer would have to submit all of this information only once each year, at the beginning of each annual period when the telemarketer would have to pay for access to the registry, unless the telemarketer needs to acquire information from more area codes than it originally sought and paid for. In that instance, the telemarketer may have to submit the same information again to pay for the additional data.

The Commission estimates that it should take no longer than two minutes for each telemarketer to submit the basic information described above.[12] In addition, as set forth in this NPR, the Commission has estimated that approximately 3,000 telemarketers and sellers may pay for access to the information in the proposed national registry. Each of those telemarketers, either on their own behalf or on behalf of their clients, would need to submit this information annually, resulting in approximately 100 burden hours (3,000 telemarketers times 2 minutes per telemarketer equals 6,000 minutes, or 100 hours). In addition, the Commission estimates that possibly one-half of those telemarketers may need, during the course of their annual period, to submit their identifying information more than once in order to obtain additional area codes of data. This would result in an additional 50 burden hours (1,500 telemarketers times 2 minutes per telemarketer equals 3,000 minutes, or 50 hours). Thus, the Commission estimates that the proposed user fee provision will impose a total paperwork burden of approximately 150 hours per year.

The Commission invites comment that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

2. Evaluate the accuracy of the Commission's estimates of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and validity of the information to be collected; and

4. Minimize the burden of the collections 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.

[12] This estimate is likely to be conservative for PRA purposes. OMB regulations exclude from its definition of "information" certain inquiries that it considers "routine" and not burdensome to the respondent. This includes disclosures that require persons to provide facts necessary simply to identify themselves, e.g., the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the final rule concerning user fees will have the threshold impact on small entities. The NPR specifically charges no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many, if not all, small telemarketers will be able to access the national registry without having to pay any annual fee. Thus, there is likely to be little or no burden on small telemarketers resulting from the adoption of the proposed user fees.

The Commission reached a similar conclusion in the Rule NPR. *See* 67 FR 4536. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact on small entities of both the amendments to the TSR proposed in this document, as well as the proposed amendments to the TSR set forth in the Rule NPR. Therefore, the Commission has prepared the following analysis.

A. Reasons for the Proposed Rule

As stated in the Rule NPR, the Commission proposed amendments to the TSR as a result of the findings of the rule review, conducted pursuant to the mandate of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 ("Telemarketing Act"). Certain proposed changes, relating to the solicitation of charitable contributions through telemarketing, are made pursuant to the mandate of the USA PATRIOT Act of 2001, Pub. L. 107–56 (Oct. 25, 2001) ("USA PATRIOT Act"). The proposed amendments are authorized under the rulemaking authority granted to the Commission by the Telemarketing Act, as amended by the USA PATRIOT Act, to protect consumers from deceptive and abusive practices. The Commission believes that the proposed amendments to the TSR are necessary to ensure that the TSR continues to protect consumers.

The current proposed rule is intended to fulfill the obligations imposed by the User Fee Statute and the proposed amendments to the TSR. This NPR is issued so that the Commission may raise user fees to fund the development, implementation and operation of a national do-not-call registry, if such a proposed registry is implemented.

B. Statement of Objectives and Legal Basis

The objectives for the original proposed amendments to the TSR were set forth in the Rule NPR, 67 FR 4492–4546. The legal basis for the Rule NPR is the Telemarketing Act, 15 U.S.C. 6101–08, as amended by the USA PATRIOT Act of 2001, Pub. L. 107–56 (Oct. 25, 2001).

The objectives of the current proposed rule are discussed above. The legal basis for the current proposed rule is the User Fee Statute and the proposed amendments to the TSR, 67 FR 4492 (Jan. 30, 2002), promulgated pursuant to the Telemarketing Act.

C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that "telemarketing bureaus" with $6 million or less in annual receipts qualify as small businesses. *See* 13 CFR 121.201. Similar standards, i.e., $6 million or less in annual receipts, apply for many retail businesses which may be "sellers" and subject to either the proposed amendments to the TSR set forth in the Rule NPR, or the proposed user fee provisions outlined in this NPR. In addition, there may be other types of businesses, other than retail establishments, that would be "sellers" subject to the proposed rule. Determining a precise estimate of the number of small entities that would be subject to the proposed amendments to the TSR, or describing those entities, is not readily feasible. The Commission, therefore, invites comment on this issue, including information about the number and type of small business entities that may be subject to the TSR and its proposed amendments.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Rule NPR proposes to alter some collection of information requirements included in the TSR. The effect of those requirements on all businesses was discussed in detail in the Paperwork Reduction Act section of the Rule NPR, 67 FR 4534–36. The only proposed

change to the recordkeeping requirement (§ 310.5) would extend the provision's coverage to include charitable solicitations in a non-sales context, as required by the USA PATRIOT Act. See 67 FR at 4528. All other proposed amendments described in the Rule NPR relate to the Rule's disclosure or other compliance requirements, which are necessary to prevent telemarketing fraud and abuse. The classes of small entities, if any, affected by the proposed amendments set forth in the Rule NPR would include telemarketers or sellers engaged in acts or practices covered by the Rule, as discussed earlier. The types of professional skills, if any, required to comply with the Rule's recordkeeping, disclosure, or other requirements would include attorney or other skilled labor to ensure compliance.

In addition, the proposed user fee rule will, as a practical matter, require telemarketers to submit certain payment information to obtain access to the registry. The impact of that reporting requirement is discussed in Section VI, above. The Commission does not believe that any professional skills will be necessary to complete the payment information that would be required to be submitted if the user fee proposed rule is adopted. As previously noted, the Commission invites comment on the estimated paperwork burden of these amendments, including the impact it may have on any small businesses.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The FTC has identified no other federal statutes, rules, or policies that would conflict with the amendments to the TSR proposed in the Rule NPR, or the user fees proposed in this NPR. As for the amendments to the TSR proposed in the Rule NPR, the only other federal statute in this area is the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. 227 *et seq.*, and the Federal Communications Commission regulations promulgated to enforce the TCPA, 47 CFR 64.1200(e)(2). Neither the TCPA nor the FCC regulations duplicate, conflict with, or overlap the proposed amendments to the TSR; the company-by-company do-not-call provision contained in the FCC regulations and the similar provision in the TSR are consistent with one another and compliance with both imposes no additional regulatory burden on companies that conduct telemarketing. The proposed national do-not-call registry would potentially overlap the current TCPA company-by-company do-not-call scheme, but would result in a minimal additional compliance burden to those companies that conduct telemarketing, including small business entities. The Commission invites comment on the extent of this additional burden, if any, including the impact it may have on small businesses.

As for the proposed user fees, no other federal agency is currently collecting such fees, which are intended to fund a new do-not-call registry that, if adopted, would be maintained by the FTC. The FTC is aware of other State statutes and regulations that implement State do-not-call registries, and is considering the interplay between the State and proposed federal registries as part of the Rule NPR.

F. Discussion of Significant Alternatives

The Commission has sought, in drafting all of the proposed amendments to the TSR, to minimize as much as possible the compliance burden for all affected entities, including small businesses. For example, the amendments to the disclosure and recordkeeping provisions of the TSR are generally consistent with the business practices that most sellers and telemarketers, regardless of any size, would choose to follow, even absent legal requirements. That being said, each of the proposed amendments set forth in the Rule NPR is intended to better protect consumers from deceptive and abusive telemarketing practices, whether engaged in by entities large or small in size. As to these provisions, the Commission does not anticipate any disproportionate impact on small entities from compliance with the proposed Rule.

The Commission has taken care in drafting the proposed amendments to the Rule to set performance standards, which establish the objective results that must be achieved by regulated entities, but do not establish a particular technology that must be employed in achieving those objectives. For example, the Commission does not specify in what manner a company will maintain a company-by-company do-not-call list. Similarly, the proposed recordkeeping provision of the Rule is designed to afford those subject to the Rule discretion in determining how best to retain the required records.

As for the user fee rule proposal, the Commission recognizes that alternatives to the proposed fee are possible. For example, in addition to a user fee based on the number of area codes that a telemarketer accesses from the database, access to the registry's database could be provided, for example, on the basis of a flat fee regardless of the number of area codes accessed, or a fee that does not permit free access for one to five area codes. The Commission believes, however, that those alternatives would likely impose greater costs on small businesses, to the extent they are more likely to access fewer area codes than larger entities. Accordingly, the Commission believes its current proposal is likely to be the least burdensome for small businesses, while achieving the goal of covering the necessary costs of operating the registry.

Despite these conclusions, the Commission welcomes comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the proposed amendments to the TSR set forth in the Rule NPR, and the requirements of the User Fee Statute.

VIII. Questions for Comment on the Proposed Rule

The Commission seeks comment on the various aspects of the proposed revisions to the Telemarketing Sales Rule set forth in this NPR. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

1. The NPR estimates that there are 3,000 "telemarketers" or "sellers," as those terms are defined in §§ 310.2(x) and (z) of the Proposed Rule, that will be required to pay the proposed user fee for access to the national registry, if one is implemented. Is that estimate realistic and appropriate? What evidence, if any, do you have concerning the number of telemarketers that engage in "outbound telephone calls" that are subject to the Commission's jurisdiction? What evidence, if any, do you have concerning the number of sellers that hire other telemarketers to engage in "outbound telephone calls" on their behalf? What evidence, if any, do you have concerning the number of telemarketers who engage in "list scrubbing" on behalf of other sellers or telemarketers?

2. If there is no readily available evidence concerning the number of telemarketers and sellers, as requested in question 1, is it appropriate to estimate the number of entities who must pay the proposed user fee based upon the number of entities that access State registries? Why or why not? Is there a better estimate?

3. The Commission anticipates that some telemarketers will not want to gain access to the entire national registry. Is that expectation realistic? The

Commission also anticipates providing access to the registry by area code of the registrant. Is that the best method of sorting the information in the registry? Given the Commission's expectation that it will gather only the consumer's telephone number for the national registry, are there any other sorting capabilities that telemarketers would find useful to comply with the proposed amended TSR?

4. Is a user fee based on the number of area codes of data accessed by the telemarketer appropriate? Why or why not? In preparing this proposal, the Commission considered adopting a simple, flat fee for every telemarketer that accesses the registry, regardless of whether it wished to obtain data for all or only part of the country. Based upon the estimates included in this NPR (3,000 entities paying for access and the need to raise $3 million in FY 03), that flat fee would have to be $1,000 for each entity. Is such a flat fee more reasonable and appropriate that the fee based on the area codes of data accessed?

5. The proposed annual user fee of $12 per area code of data accessed is based upon the assumption that, on average, the Commission must raise $1,000 from each of the 3,000 entities that pay to gain access to the registry data. Thus, the mid-point in the range of area codes of data for which entities will be charged $12 is approximately 83. That is, the Commission anticipates that the average telemarketer or seller will pay to obtain the information in 83 area codes of data. Is this expectation realistic and appropriate?

6. Given the potential need to raise $3 million within FY 03, even though the registry may not be available for the entire fiscal year, are there any alternatives to charging the user fee on an annual basis, in advance of any access to the registry?

7. Is it appropriate not to charge telemarketers or sellers that obtain information from only one to five area codes of data from the registry? Why or why not? Should more than five area codes of data be offered free of charge? How many? If, instead of the current proposal, the Commission would charge a flat fee for every telemarketer that accesses the registry, regardless of the amount of data they access, would it still be appropriate not to charge telemarketers or sellers that obtain information from only one to five area codes of data?

8. Is the "buy-up" provision (permitting telemarketers to buy access to additional area codes of data) included in proposed section 310.9(b), reasonable and appropriate? Does it make the user fee too complex? What alternatives would you offer?

9. Is it problematic to require telemarketers to identify the particular area codes of data they need to access from the national registry, and to limit their access during the entire one-year term to those area codes? Why or why not? Does the "buy-up" provision solve any potential problems caused by such identification?

10. The NPR states that only telemarketers will be permitted access to the national registry, since the information in the registry cannot be used for any purpose other than compliance with the do-not-call provisions of the Proposed Rule. Is that limitation appropriate and workable? Would there ever be a need for an entity other than a telemarketer to gain access to the national registry? (The Commission anticipates providing appropriate law enforcement access to the national registry.)

11. Should list brokers be given access to the national registry in order to "scrub" the telemarketing lists of other firms? Why or why not?

12. Is it appropriate to require the telemarketer that gains access to the national registry on behalf of other sellers or telemarketers to pay the required user fee for those other entities? Why or why not? If the telemarketer does not pay this fee, who, if anyone, should pay? If list brokers are allowed access to the national registry, should they be required to pay the required user fee for all of their clients on whose behalf they are obtaining access? If telemarketers or list brokers are not required to pay this fee, what would prevent only a few firms from gaining access to the national registry, and passing the information they obtain on to many other entities? If that happened, wouldn't the annual fee need to be raised significantly? Is this fair to the entities who do access the registry?

13. Are the certification requirements included in Section 310.9(d) reasonable and appropriate?

14. Identify any instances when it would be difficult or impossible for a telemarketer that gains access to the national registry to identify the other "sellers" or "telemarketers" on whose behalf they are working. For example, how should this provision operate as to a telemarketer working on behalf of numerous subsidiaries of the same company?

15. The Commission anticipates that if a seller changes telemarketers during the course of the year, the newly hired telemarketer will have to pay the appropriate user fee for that seller in order to gain access to the registry on its behalf. Is this reasonable and appropriate? If not, identify other alternatives that could be used to ensure that the seller pays the appropriate user fee.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

IX. Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108

2. Add a new § 310.9 to read as follows:

§ 310.9 Fee for access to do-not-call registry.

(a) Telemarketers who obtain access to the do-not-call registry, maintained by the Commission under § 310.4(b)(1)(iii)(B), shall pay an annual fee, prior to obtaining such access, of $12.00 per area code of data they access. Telemarketers may obtain access to five or fewer area codes of data for no fee. The maximum annual fee is $3,000.00, which will provide access to 250 or more area codes of data. Any telemarketer who engages in telemarketing on behalf of other sellers or telemarketers, or who uses the information included in the registry to remove telephone numbers from the telemarketing lists of other sellers or telemarketers, shall pay this fee for each such seller or telemarketer.

(b) After a telemarketer pays the fees set forth in paragraph (a) of this section, the telemarketer may access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the telemarketer paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the telemarketer must first pay $12 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the telemarketer must first pay $6 for each additional area code of data not initially selected. The payment of the additional fee will permit the telemarketer to access the additional area codes of data for the remainder of the annual period.

(c) Access to the do-not-call registry is limited to telemarketers working on

their own behalf or working on behalf of other sellers or telemarketers. Prior to accessing the do-not-call registry, a telemarketer must provide the identifying information required by the operator of the registry to collect the user fee, and must certify, under penalty of law, that the telemarketer is accessing the registry solely to comply with the provisions of this rule. If the telemarketer is accessing the registry on behalf of other sellers or telemarketers, that telemarketer also must identify each of the other sellers or telemarketers on whose behalf it is accessing the registry, and it must certify, under penalty of law, that the other sellers or telemarketers will be using the information gathered from the registry solely to comply with the provisions of this rule.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–13320 Filed 5–28–02; 8:45 am]

BILLING CODE 6750–01–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule: Notice of extension of time.

SUMMARY: On April 23, 2002, the National Indian Gaming Commission (Commission) reopened the comment period on proposed revisions to the Minimum Internal Control Standards, 66 FR 66500 (December 26, 2001) for the limited purpose of giving small entities an opportunity to comment on the Commission's certification that the proposed revisions will not have a significant economic impact on them. Upon request from tribes, the date for filing comments is being extended.

DATES: Comments shall be filed on or before May 30, 2002.

ADDRESSES: Send comments by mail, facsimile, or hand delivery to: Minimum Internal Control Standards, Revision Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michele F. Mitchell at 202–632–7003 or, by fax, at 202–632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act ("IGRA" or "Act") 25 U.S.C. 2701–2721, enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission published proposed revisions to its existing Minimum Internal Control Standards on December 26, 2001. 66 FR 66500. The Commission received numerous comments on the proposed rule. As a result of one of the comments received, the Commission determined that certain Indian gaming operations, if they meet specific definitional criteria, might qualify as "small entities," under the Regulatory Flexibility Act (RFA). 5 U.S.C. 601(3). As a result of requests from potentially affected tribes, the Commission has agreed to extend the deadline for comment by one week. The public comment period will now end on May 30, 2002.

Dated: May 21, 2002.

Kevin K. Washburn,

General Counsel, National Indian Gaming Commission.

[FR Doc. 02–13309 Filed 5–28–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107100–00]

RIN 1545–AY26

Disallowance of Deductions and Credits for Failure To File Timely Return; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document provides notice of cancellation of proposed regulations and notice of public hearing relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations that fail to file a timely U.S. income tax return.

DATES: The public hearing originally scheduled for Monday, June 3, 2002, at 10 a.m is cancelled.

FOR FURTHER INFORMATION CONTACT: Donna Poindexter of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Tuesday, January 29, 2002 (67 FR 4217), announced that a public hearing was scheduled for June 3, 2002, at 10 a.m., in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under section 874 and 882 of the Internal Revenue Code. The public comment period for these proposed regulations expired on April 29, 2002.

The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed as of May 13, 2002; no one has requested to speak. Therefore, the public hearing scheduled for June 3, 2002, is cancelled.

Cynthia Grigsby,

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

[FR Doc. 02–13397 Filed 5–28–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL189–1b; FRL–7213–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to particulate matter control requirements for rural grain elevators in Illinois. On April 8, 1999, the Illinois Environmental Protection Agency submitted section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89–491) as a requested revision to the Illinois State Implementation Plan (SIP). The requested SIP revision exempts rural grain elevators from certain particulate matter control requirements. An air quality modeling analysis was conducted to show that this rule change would not cause or contribute to violation of the National Ambient Air Quality Standards (NAAQS) for

particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).

DATES: EPA must receive written comments on this proposed rule by June 28, 2002.

ADDRESSES: You should mail written comments to: Patricia Morris, Acting Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

Table of Contents

I. What Action is EPA Taking Today?

We are proposing to approve section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89–491) as a revision to the Illinois SIP. The revised Illinois Environmental Protection Act exempts rural grain elevators from particulate matter control requirements contained in Section 212.462 of Title 35 of the Illinois Administrative Code (35 IAC 212.462). An air quality modeling analysis showed that the requested SIP revision would not cause or contribute to violations of PM10 NAAQS.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 7, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–13247 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 156–1156; FRL–7218–1]

Approval and Promulgation of Implementation Plans and Operating Permit Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Nebraska State Implementation Plan (SIP), Operating Permit Program, and Air Toxics Program. These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program. In the final rules section of the **Federal Register**, EPA is approving these revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by June 28, 2002.

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

FOR FURTHER INFORMATION CONTACT: Lynn Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 16, 2002.

Karen A. Flournoy,

Acting Regional Administrator, Region 7.

[FR Doc. 02–13249 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI101–7332b; FRL–7206–6]

Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve the State of Wisconsin's request to redesignate the villages of Rothschild and Weston and the Township of Rib Mountain, all located in central Marathon County, Wisconsin, from primary and secondary sulfur dioxide (SO_2) nonattainment areas to attainment of the SO_2 National Ambient Air Quality Standards (NAAQS). In conjunction with these actions, EPA is also proposing to approve the maintenance plan for the Rothschild-Rib Mountain-Weston nonattainment areas, which was submitted to ensure that attainment of the NAAQS will be maintained. Further, we are also proposing to incorporate into the Wisconsin SO_2 State Implementation Plan consent orders for Weyerhaeuser Company and Wisconsin Public Service Corporation's Weston Plant. The Wisconsin Department of Natural Resources (WDNR) submitted the redesignation request and maintenance plan on November 17, 2000, and submitted the consent orders on October 17, 2001. The proposed actions are approvable because they satisfy the requirements of the Clean Air Act. In the final rules section of this **Federal Register**, we are approving these actions as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to the direct final rule, we contemplate no further activity in relation to this proposed rule. If we receive adverse comments on the direct final rule, we will withdraw the direct final rule, and we will address all public comments received in a subsequent final rule based on this proposed rule. We will not institute a second comment

period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 28, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: April 4, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–13113 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 103
Wednesday, May 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Civil Rights; Request for Reinstatement of a Previously Approved Information Collection

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Office of Civil Rights announces its intent to establish an information collection process for complaints of discrimination involving USDA programs. The Office of Civil Rights will use the information collected to investigate, attempt resolution, and settle respondents' discrimination complaints.

DATES: Comments on this notice must be submitted on or before July 29, 2002.

ADDRESSES: All comments should be addressed to: Josie Woodley-Jones, Assistant to the Director, USDA Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410. (202) 720–8765.

FOR FURTHER INFORMATION CONTACT: Josie Woodley-Jones, Assistant to the Director, USDA Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410. (202) 720–8765.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection:

Title: Program Discrimination Complaints.

OMB Number: 0508–xxxx.

Expiration Date: July 31, 1998.

Type of Request: Reinstatement of a previously approved information collection.

Estimate of Burden: The estimate of burden on the respondent is likely to vary but not to exceed 60 minutes to gather the information and complete the mail-back form.

Type of Respondents: Customers of USDA programs and activities which are conducted or assisted by USDA agencies.

Estimated Number of Respondents: 600 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 600 hours.

Copies of the information collection materials (form and brochure) can be obtained without charge from: Josie Woodley-Jones, Assistant to the Director, USDA Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410. (202) 720–5212.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

Use of Comments

All responses to this notice will be summarized and included in the request for Office of Management and Budget three-year approval. All comments will also become a matter of public record.

Abstract: Under 7 CFR 15.6 "Any person who believes himself/herself or any specific class of individuals to be subjected to discrimination [in any United States Department of Agriculture (USDA) assisted program or activity] * * * may by himself/herself or by an authorized representative file * * * a written complaint" based on the grounds of such discrimination. Under 7 CFR 15d.4(a) "Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to discrimination [in any USDA conducted program or activity]* * *may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination." The collection of this information is one avenue by which the individual or his representative may file such a written complaint.

The requested information, which can be submitted by filling out a form with the aid of an instructive brochure or by submitting a letter, is necessary in order for the USDA Office of Civil Rights to address the alleged discriminatory action. The respondent (individual filing the complaint) is asked to state his/her name, address, telephone number, and the basis of the discrimination complaint, *i.e.,* which of the bases of possible discrimination prohibited under either Part 15d: race, color, national origin, age, sex, disability, religion, sexual orientation, marital or familial status, reprisal, or because all or part of the individual's income is derived from any public assistance program; or under nondiscrimination regulations applying to recipients of Federal financial assistance from USDA: race, color, national origin, sex, age, disability, religion, political beliefs, or reprisal. (Not all bases apply to all programs.) A brief description of what occurred when, where, who was involved, and the names of any witnesses is also requested.

This discrimination complaint filing information, which is voluntarily provided by the respondent, will be used by the staff of the USDA Office of Civil Rights to investigate, attempt resolution of, and settle the respondent's complaint. The brochures also include additional information on the USDA Program Discrimination Complaint Process. The information filing format in the submitted collection documents (forms and brochures) is being provided to the public to assist in gathering the necessary information to open a program discrimination complaint case in a manner most efficient and least intrusive for the public/customer.

Two separate forms and brochures are necessary because of the distinct nature of USDA conducted and USDA assisted programs. Without two brochures and forms, public confusion will result. USDA places requirements upon its agencies that extend beyond the

prohibitions contained in Federal laws applicable to recipients of Federal financial assistance from USDA.

Dated: May 21, 2002.

Ann M. Veneman,

Secretary of Agriculture.

BILLING CODE 3410–XE–P

DISCRIMINATION COMPLAINT INFORMATION

You may request a Program Discrimination Complaint form from any USDA agency office or the office where you received this brochure, or by calling the telephone number printed on the back of this brochure.

Or, you may send a letter to file a program discrimination complaint to the address printed on the back of this brochure.

Please provide the following information when filing a program discrimination complaint:

YOUR NAME, ADDRESS, AND TELEPHONE NUMBER

APPROPRIATE TIME TO CALL YOU

USDA PROGRAM, AGENCY AND/OR RECIPIENT INVOLVED

WHAT HAPPENED AND WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

YOUR SIGNATURE AND THE DATE

If you have filed a complaint with USDA and have not heard back from USDA/CR within 15 days, please call CR at the telephone number listed below.

REPRISAL POLICY

No Recipient, sub-recipient, or agent or employee of a recipient or sub-recipient, shall intimidate, threaten, harass, coerce, discriminate against, or commit or seek reprisal against anyone who participates in any aspect of the discrimination complaint process.

If you believe an agency has taken an adverse action against you because you filed a complaint or participated in the complaint process, you have the right to file a discrimination (reprisal) complaint.

In accordance with Federal law and USDA policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, religion, political beliefs, or reprisal. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964; TTY (202) 401-0216. Persons with disabilities who require alternative means for communication of this brochure information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720-2600 (voice and TTY). USDA is an equal opportunity provider and employer.

How to File a Civil Rights Discrimination Complaint

For a USDA Assisted Program

Office of Civil Rights
United States Department of Agriculture

OUR ROLE

The United States Department of Agriculture (USDA) is committed to treating all customers fairly and equitably with dignity and respect.

USDA has a uniform Program Discrimination Complaint Process. All complaints shall be filed in writing directly with the USDA Office of Civil Rights (CR) in Washington, D.C. This office handles all new complaints. All investigations are conducted by investigators from the Washington office.

YOUR RIGHTS

As a participant in, or applicant for, programs or activities funded by USDA through a recipient agency or organization, you have a right to be treated fairly.

If you believe you have been discriminated against (treated unfairly) because of your race, color, national origin, sex, age, disability, religion, political beliefs or reprisal, you may file a discrimination complaint. (Not all prohibited bases apply to all programs.)

The complaint should be filed in writing with the USDA/CR within 180 days of the date you knew or reasonably should have known of the alleged discrimination. You may ask for an extension of the filing time for good cause.

You also have a right to request mediation and you may have a right to file a civil action. To pursue a civil action, you should consult with a lawyer.

WHAT TO REPORT

Tell what happened, the date and place it happened, and who was involved. List names of anyone who saw what happened. If you know the phone numbers or addresses of those people, that will help.

If you submit documents please send copies–not the originals–with your complaint.

WHAT WILL HAPPEN TO YOUR COMPLAINT

Your complaint will be sent immediately to CR. CR will contact you by mail or by phone within 15 days after they receive the complaint. CR will explain the process, including opportunities for mediation, and will answer your questions. In most cases the complaint process will be completed within 180 days or less, usually by a written agreement with the recipient. If CR finds that discrimination occurred, you will be told what the recipient who administered the program or activity will need to do to comply with its civil rights requirements.

HOW TO FILE YOUR COMPLAINT

You do not need a lawyer or a special form to file a complaint with USDA. However, you may hire a lawyer if you deem appropriate.

To file your complaint, you can:

- Write a letter about what happened and mail it to USDA/CR at the address on the back of this brochure.

or

- Fill out a Program Discrimination Complaint form and mail it to the address on the back of this brochure. Program Discrimination Complaint forms are available at all USDA and recipient offices.

Be sure to sign and date the complaint and keep a copy.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is xxx-xxxx. The time required to complete this information collection is estimated at an average of 1 hour, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Form Approved OMB #yyyy-yy

CIVIL RIGHTS DISCRIMINATION COMPLAINT FORM
for
USDA Assisted Programs

For USDA to process your complaint, you must file a written program discrimination complaint within 180 days of the date you knew or should have known that an action, inaction, or decision by a agency, institution, or organization receiving USDA financial assistance (recipient) or by an employee or agent of the recipient, may have been discriminatory. You may ask for an extension of the filing time for good cause.

YOUR NAME, ADDRESS, AND TELEPHONE NUMBER

APPROPRIATE TIME TO CALL YOU

USDA PROGRAM, AGENCY AND/OR RECIPIENT INVOLVED

I believe that I was treated differently because of the following–check all which apply to your situation. (Not all bases apply to all programs.)

☐ Race	☐ Color	☐ National Origin
☐ Sex	☐ Religion	☐ Age
☐ Disability	☐ Political Beliefs	☐ Reprisal

REPRISAL POLICY: No recipient, sub-recipient, or employee or agent of a recipient or sub-recipient shall intimidate, threaten, harass, coerce, discriminate against, or commit or seek reprisal against anyone who participates in any aspect of the discrimination complaint process.

MAIL THIS COMPLETED FORM TO:

USDA, Director, Office of Civil Rights
Room 326-W, Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250-9410

(202) 720-5964 (Voice)
(202) 401-0216 (TTY)*

*Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.), should contact the USDA TARGET Center at (202) 720-2600 (voice and TTY).

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ISSUE 1: WHAT HAPPENED? (Add additional pages if necessary.)

WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

ISSUE 2: WHAT HAPPENED? (Add additional pages if necessary.)

WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

ISSUE 3: WHAT HAPPENED? (Add additional pages if necessary.)

WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

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SIGN HERE DATE

Please Keep A Copy Of This Form For Your Records.

DISCRIMINATION COMPLAINT INFORMATION

You may request a Program Discrimination Complaint form from any USDA agency office or the office where you received this brochure, or by calling the telephone number printed on the back of this brochure.

Or, you may send a letter to file a program discrimination complaint to the address printed on the back of this brochure.

Please provide the following information when filing a program discrimination complaint:

YOUR NAME, ADDRESS, AND TELEPHONE NUMBER

APPROPRIATE TIME TO CALL YOU

USDA AGENCY INVOLVED (Farm Service Agency, Forest Service, etc.)

WHAT HAPPENED AND WHEN

NAMES OF USDA INDIVIDUALS INVOLVED (If you know them)

WITNESSES

YOUR SIGNATURE AND THE DATE

If you have filed a complaint with USDA and have not heard back from USDA/CR within 15 days, please call CR at the telephone number listed below.

REPRISAL POLICY

No agency, officer, or employee of USDA, including persons representing USDA and its programs, shall intimidate, threaten, harass, coerce, discriminate against, or commit or seek reprisal against anyone who participates in any aspect of the discrimination complaint process.

If you believe an agency has taken an adverse action against you because you filed a complaint or participated in the complaint process, you have the right to file a discrimination (reprisal) complaint.

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, sexual orientation, marital status, familial status, reprisal, or because all or part of an individual's income is derived from any public assistance program.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964; TTY (202) 401-0216. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720-2600 (voice and TTY). USDA is an equal opportunity provider and employer.

How to File a Civil Rights Discrimination Complaint

For a Program Conducted By USDA and its Agencies

USDA

Office of Civil Rights
United States Department of Agriculture

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If you believe you have been discriminated against (treated unfairly) because of your race, color, national origin, sex, religion, age, disability, sexual orientation, marital status, familial status, reprisal, or because all or part of your income is derived from any public assistance program, you may file a discrimination complaint.

The complaint should be filed in writing with the USDA/CR within 180 days of the date you knew or reasonably should have known of the alleged discrimination. You may ask for an extension of the filing time for good cause.

You also have a right to request mediation and you may have a right to file a civil action. To pursue a civil action, you should consult with a lawyer.

WHAT TO REPORT

Tell what happened, the date and place it happened, and who was involved. List names of anyone who saw what happened. If you know the phone numbers or addresses of those people, that will help.

If you submit documents please send copies–not the originals–with your complaint.

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Your complaint will be sent immediately to CR. CR will contact you by mail or by phone within 15 days after they receive the complaint. CR will explain the process, including opportunities for mediation, and will answer your questions. In most cases the complaint process will be completed within 180 days or less, either by a written agreement or decision. If CR finds that discrimination occurred, you will be told what the agency will have to do.

HOW TO FILE YOUR COMPLAINT

You do not need a lawyer or a special form to file a complaint with USDA. However, you may hire a lawyer if you deem appropriate.

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or

- Fill out a Program Discrimination Complaint form and mail it to the address on the back of this brochure. Program Discrimination Complaint forms are available at all USDA and recipient offices.

Be sure to sign and date the complaint and keep a copy.

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Form Approved OMB #xxxx-xxx

CIVIL RIGHTS DISCRIMINATION COMPLAINT FORM
for
Programs Conducted by USDA and its Agencies

For USDA to process your complaint, you must file a written program discrimination complaint within 180 days of the date you knew or should have known that an action, inaction, or decision by a USDA agency or employee may have been discriminatory. You may ask for an extension of the filing time for good cause.

YOUR NAME, ADDRESS, AND TELEPHONE NUMBER

APPROPRIATE TIME TO CALL YOU

USDA AGENCY INVOLVED (Farm Service Agency, Forest Service, etc.)

I believe that I was treated differently because of the following–check all which apply to your situation. (Not all bases apply to all programs.)

- ☐ Race
- ☐ Color
- ☐ National Origin
- ☐ Sex
- ☐ Religion
- ☐ Age
- ☐ Disability
- ☐ Marital Status
- ☐ Familial Status
- ☐ Income Derived From Public Assistance
- ☐ Sexual Orientation
- ☐ Reprisal

REPRISAL POLICY: No agency, officer, employee, or agent of USDA, including persons representing USDA and its programs, shall intimidate, threaten, harass, coerce, discriminate against, or commit or seek reprisal against anyone who participates in any aspect of the discrimination complaint process.

MAIL COMPLETED FORM TO:

USDA, Director, Office of Civil Rights
Room 326-W, Whitten Building
1400 Independence Ave SW
Washington, D.C. 20250-9410

(202) 720-5964 (Voice)
(202) 401-0216 (TTY)*

*Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.), should contact the USDA TARGET Center at (202) 720-2600 (voice and TTY).

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ISSUE 1: WHAT HAPPENED? (Add additional pages if necessary.)

WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

ISSUE 2: WHAT HAPPENED? (Add additional pages if necessary.)

WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

ISSUE 3: WHAT HAPPENED? (Add additional pages if necessary.)

WHEN

NAMES OF INDIVIDUALS INVOLVED (If you know them)

WITNESSES

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is xxx-xxxx. The time required to complete this information collection is estimated on an average of 1 hour , including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

SIGN HERE DATE

Please Keep A Copy Of This Form For Your Records.

[FR Doc. 02–13301 Filed 5–28–02; 8:45 am]
BILLING CODE 3410–XE–C

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, June 20, 2002. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

(1) Welcome, Introductions, Agenda
(2) Environmental Education Program
(3) LBL Communication Plan
(4) Trust Fund Criteria Review
(5) LBL Data Clarification
(6) LBL Association
(7) Discussion of Public Comments Received
(8) Passport-in-Time Project
(9) Visit to Nature Station

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by June 13, 2002, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on Thursday, June 20, 2002, 8:30 a.m. to 3:30 p.m., CDT.

ADDRESSES: The meeting will be held at the LBL Administration Building, Golden Pond, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: May 21, 2002.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 02–13315 Filed 5–28–02; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Portland, Oregon, June 13–15, 2002. The purpose of the meeting is to discuss emerging issues in urban and community forestry and to determine the categories for the 2003 Challenge Cost-Share grant program.

DATES: The meeting will be held June 13–15, 2002. A tour of local projects will be held June 13, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Westin Hotel, 750 SW. Alder Street, Portland, Oregon. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, California 95370. Individuals may fax their names and proposed agenda items to (209) 536–9089.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The Challenge Cost-Share Grant categories, identified by the Council, are advertised annually to solicit proposals for projects, which advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8 a.m. to 11 a.m. on June 15, in order for the Council to determine the categories for the 2003 Challenge Cost-Share grant program. Otherwise, the meeting is open to the public.

Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: May 15, 2002.

Ann M. Veneman,

Secretary, U.S. Department of Agriculture.

[FR Doc. 02–13382 Filed 5–28–02; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Monday, June 24, 2002. This meeting replaces the June 10, 2002 RAC meeting and will be held at the Washington State University Puyallup Research and Extension Center, Allmendinger Center, 7612 E. Pioneer Way, Puyallup, WA 98371–4998.

The meeting will begin at 9 a.m. and continue until about 3 p.m. The June 24 meeting will focus primarily on Title II project evaluation.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialists, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: May 21, 2002.

John Phipps,

Designated Federal Official.

[FR Doc. 02–13287 Filed 5–28–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday June 20, 2002. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 3 p.m. The

meeting will be held at the Alton Collins Retreat Center, 32867 SE Highway 211, Eagle Creek, Oregon, 97022. This is a joint meeting with Deschutes Advisory Committee. The tentative agenda includes: (1) Introductions, (2) Public Forum, (3) Mt. Hood NF Recreation Strategy presentation, (4) PAC Information Sharing and (5) Northwest Forest Plan update.

The Public Forum is tentatively scheduled to begin at 10:15 a.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June 20 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 225–6436.

Dated: May 21, 2002.

Y. Robert Iwamoto,

Acting Forest Supervisor.

[FR Doc. 02–13314 Filed 5–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Rural Housing Site Loans Policies, Procedures and Authorizations.

DATES: Comments on this notice must be received by July 29, 2002, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Kaye F. Deener, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, Stop 0783, 1400 Independence Ave., SW, Washington, DC 20250–0783, Telephone (202) 690–3832.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1822–G, Rural Housing Site Loans, Polices, Procedures and Authorizations.

OMB Number: 0575–0071.

Expiration Date of Approval: October 31, 2002.

Type of Request: Extension of currently approved information collection.

Abstract: Section 523 of the Housing Act of 1949 as amended (Public Law 90–448) authorizes the Secretary of Agriculture to establish the Self-Help Land Development Fund to be used by the Secretary as a revolving fund for making loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of the land as building sites to be subdivided and sold to families, nonprofit organizations and cooperatives eligible for assistance.

Section 524 authorizes the Secretary to make loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies and cooperatives eligible for assistance under any section of this title, or under any other law which provides financial assistance for housing low and moderate income families.

RHS will be collecting information from participating organizations to insure they are program eligible entities. This information will be collected at the RHS field office. If not collected, RHS would be unable to determine if the organization would qualify for loan assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Public or private nonprofit organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 6.

Estimated Total Annual Burden on Respondents: 36.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 11, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–13357 Filed 5–28–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD APRIL 19, 2002–MAY 16, 2002

Firm name	Address	Date petition accepted	Product
Zenith Fuel Systems, Inc	14570 Industrial Park Rd., Bristol, VA 24202.	04/25/02	Carburetors for internal combustion engines.
Northwest Wood Products, Inc	850 West Old Kettle Rd., Kettle Falls, WA 99141.	04/25/02	Pine wood boards and brackets.
Eagle Tool, Inc	430 Kinsley Avenue, Providence, RI 02909.	04/29/02	Base metal jewelry parts (findings).
Kendrick Pecan Company, Inc	302 Brown Avenue, Columbus, GA 31903.	04/29/02	Gourmet flavored spirit cakes and pecan confections.
Orycon Control Technology, Inc	3407 Rose Avenue, Ocean City, NJ 07712.	04/30/02	Hot runner temperature controls for plastic injection molding manufacturers.
Precision Die and Machine Co., Inc	1400 S. Carney Drive, St. Clair, MI 48079.	04/30/02	Injection molds for the automotive industry.
Old Dominion Wood Products, Inc	800 Craddock Street, Lynchburg, VA 24501.	05/01/02	Wooden chairs for the restaurant industry.
Seco Spice Co., Ltd	76 E. Cottonwood, Artesia, NM 88210	05/01/02	Dehydrated paprika.
Liberty Brass Turning Co., Inc	3801 Queens Boulevard, Long Island, NY 11101.	05/01/02	Screw machine parts for lamps and lighting fixtures.
Tesko Welding & Manufacturing Co., Inc	7350 W. Montrose Ave., Norridge, IL 60706.	05/01/02	Steel stakes, cut from bars and drilled for propping up concrete forms.
Clearwood, L.L.C	270 Clearwood Drive, Whittier, NC 28789.	05/01/02	Finger joint board.
Fiber Pad, Inc	P. O. Box 690660, Tulsa, OK 74169	05/02/02	Thermoformed automotive parts and equipment.
Tulsa Tube Bending Co., Inc	4192 South Galveston, Tulsa, OK 74107	05/02/02	Fabricated pipe and fittings used in the petrochemical, power and refining industries.
Advantage Buildings & Exteriors, Inc	8635 West 21st Street, Sand Springs, OK 74063.	05/02/02	Exterior siding.
Plastic Extruded Products Co.	1430 Chestnut Avenue, Hillside, NJ 07205.	05/02/02	Thermoplastic tubing, rods and profiles.
Carolina Casting, Inc	1416 Progress Avenue, High Point, NC 27260.	05/02/02	Furniture trim, table bases and home furnishing accessories of resin compound.
Claude's Sauces, Inc	935 Loma Verde, El Paso, TX 79936	05/16/02	Sauces—barbecue, steak and marinate.
Alphabet Embroidery Studios, Inc	1291 Bellbrook Avenue, Xenia, OH 45385.	05/16/02	Cloth embroidery badges, monogram letters sewn into clothing.
Statton Furniture Manufacturing Co.	504 East First Street, Hagerstown, MD 21741.	05/16/02	Wooden furniture for the home.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 21, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–13316 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1230]

Approval of Manufacturing Activity Within Foreign-Trade Zone 210, Port Huron, MI; Cross Hüller-North America (Metalworking Equipment)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic Development Alliance of St. Clair County, grantee of FTZ 210, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Cross Hüller-North America (Inc.) to manufacture metalworking equipment (machine tools) under FTZ procedures within FTZ 210-Site 2, Port Huron, Michigan (filed 10–5–2001);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same, in terms of products involved, to activity recently approved by the Board (§ 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of Section 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to Section 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 17th day of May 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–13395 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1228]

Grant of Authority For Subzone Status; Movado Group, Inc. (Watches and Consumer Goods), Moonachie, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "...the establishment... of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, has made application to the Board for authority to establish special-purpose subzone status at the watch and consumer goods distribution/repair facility of Movado Group, Inc., located in Moonachie, New Jersey (FTZ Docket 44–2001, filed 10/31/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 56272, 11/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the watch and consumer goods distribution/repair facility of Movado Group, Inc., located in Moonachie, New Jersey (Subzone 49J), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 17th day of May, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–13393 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board [Order No. 1229]

Approval of Manufacturing Authority, Foreign-Trade Zone 40, HMI Industries, Inc. (High Filtration Vacuum and Air Cleaners), Cleveland, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, on behalf of HMI Industries, Inc., has requested authority to manufacture vacuum and air cleaners under FTZ procedures within FTZ 40–Site 8;

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 41499, 8/8/01);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request is in the public interest;

Now, therefore, the Board hereby orders:

The application on behalf of HMI Industries, Inc., to manufacture vacuum and air cleaners under zone procedures within FTZ 40—Site 8, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 17th day of May 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–13394 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–834]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, Charles Rast, or Abdelali Elouaradia at (202) 482–6375, (202) 482–1324 and (202) 482–1374, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR 351 (2001).

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping investigation of certain cold-rolled carbon steel flat products from Germany to reflect the correction of significant ministerial errors in the margin calculation. Correction of these errors results in a revised antidumping rate for the single respondent, as well as the all others rate.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please *see* the "Scope Appendix" attached to the *Notice of*

Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 67 FR 31204 (May 9, 2002).

Background

On April 26, 2002, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Cold-Rolled Carbon Steel Flat Products from Germany*, 67 FR 31212 (May 9, 2002) (*Preliminary Determination*). That preliminary determination covered the following manufacturer/exporter: Thyssen Krupp Stahl AG (TKS). On April 30, 2002, the Department disclosed its calculations used in the preliminary determination to counsel for TKS and counsel for petitioners.

On Monday, May 6, 2002, the Department received from the respondent and petitioners[1] allegations of ministerial errors in the preliminary determination, timely filed pursuant to 19 CFR 351.224(c)(2). The respondent alleged five ministerial errors: (1) the Department incorrectly administered the arms' length test on home market sales; (2) the Department incorrectly applied its intended facts available (FA) methodology for affiliated home market resellers; (3) the Department incorrectly excluded billing adjustments from calculation of home market revenue used for the purpose of determining constructed export price (CEP) profit; (4) the Department incorrectly applied a revised general and administrative expenses rate (GNA) for U.S. further manufacturing (which results in double counting of certain indirect selling expenses) and incorrectly included freight revenue in the denominator of the further manufacturing GNA rate calculation; and (5) the Department incorrectly performed the comparison of control number (CONNUM) specific average prices. *See* letter from the respondent alleging ministerial errors in the preliminary determination (May 6, 2002). In addition, the petitioners alleged that the Department incorrectly applied its intended FA methodology to an affiliated U.S. reseller. *See* letter from petitioners alleging ministerial errors in the preliminary determination (May 6, 2002).

Significant Ministerial Error

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 CFR 351.224(f). A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g).

In this instance, the original preliminary determination resulted in a weighted-average margin of 14.52%. Implementation of the corrections of the ministerial errors results in a weighted-average dumping margin of 8.47%, thus meeting the requirements under 19 CFR 351.224(g)(2).

Amended Determination

The Department has reviewed its preliminary margin calculations and agrees that all but one of the respondent's and petitioners' identified errors constitute ministerial errors within the meaning of 19 CFR 351.224(f) as they involve inadvertent coding or calculation errors that generate results that are other than that which the Department intended. Specifically, the Department administered the arms' length test incorrectly on home market sales, incorrectly applied its intended FA methodology for affiliated home market resellers, incorrectly excluded billing adjustments from calculation of home market revenue used for the purpose of determining CEP profit, inadvertently used a variable in calculation of the CEP offset that was not weight averaged, and incorrectly applied its intended FA methodology to an affiliated U.S. reseller. For additional details, *see* the May 17, 2002, Sales Memorandum to Richard O. Weible from Anya Naschak and Charlie Rast regarding *Ministerial Error Allegation*.

With regard to respondent's allegations concerning the further manufacturing GNA ratio, the Department agrees in part that the alleged errors are ministerial in nature. The Department agrees that it inadvertently subtracted freight revenue from the denominator of that calculation, thereby overstating the GNA ratio used to calculate further manufacturing costs. We have corrected this ministerial error. However, we disagree that the Department double-counted the selling expenses used in the numerator of that calculation. The methodology used by the Department to calculate the further manufacturing GNA numerator did not double-count any expenses. Moreover, the Department intended to calculate the further manufacturing GNA numerator in the manner used in the preliminary determination. Therefore, respondent's ministerial error allegation on this point is more properly viewed as a comment on our methodology. Accordingly we have not corrected this alleged error in the amended preliminary determination. For additional details, *see* the May 17, 2002, Cost Memorandum to Neil Harper from Michael Harrison regarding *Ministerial Error Allegations*.

As a result of our analysis of petitioners' and respondent's allegations, we are amending our preliminary determination to revise the antidumping rates in accordance with 19 C.F.R. § 351.224(e). Suspension of liquidation will be revised in accordance with section 733(d) of the Act.

The following weighted-average dumping margins apply:

Manufacturer/exporter	Margin (percent)
Thyssen Krupp Stahl AG	8.47
All Others	8.47

The all others rate has been amended, and applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the Customs Service to continue to suspend liquidation of all entries of cold rolled steel from Germany that are entered, or withdrawn from warehouse, for consumption, on or after May 9, 2002, the date of publication of the original preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission of the amended preliminary determination.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., Weirton Steel Corporation, and United States Steel Corporation.

This determination is issued and published pursuant to section 733(f) and 777(i)(1) of the Tariff Act.

Dated: May 21, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–13389 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–822]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, John Drury or Abdelali Elouaradia at (202) 482–3019, (202) 482–0195 and (202) 482–1374, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR part 351 (April 2001).

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping investigation of certain cold-rolled carbon steel flat products from France. This amended preliminary determination results in a revised antidumping rate for the single respondent in this case.

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 67 FR 31204 (May 9, 2002).

Background

On May 4, 2001, the Department issued its negative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Not Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 31204 (May 9, 2002) ("*Preliminary Determination*"). That preliminary determination covered the following manufacturer/exporter, Usinor Group ("Usinor").

On May 6, 2002, the Department received from the petitioners a timely allegation of ministerial errors in the preliminary determination.[1] The petitioners alleged that the Department made a number of ministerial errors. The alleged ministerial errors include:

the creation of a temporary, rather than permanent, dataset in the Model Match program;

use of multiple producers' costs rather than a single, weighted-average cost for each product;

exclusion of certain United States sales from the margin calculation;

exclusion of certain billing adjustments to revenue;

reintroduction, into the home market dataset, of sales made to affiliated resellers that failed the arm's-length test;

- failure to correct warranty expenses in the home market;
- failure to implement weighted-average movement expenses;
- failure to use the proper customer codes in the arm's-length test program;
- improper specification of the sorting macro for U.S. variables ("USBYVARS");
- failure to exclude as intended all sales between affiliates in the model match and arm's-length test programs where downstream sales were reported;
- improper calculation of credit for all non-cash sales;
- failure to exclude all home market commissions paid to affiliates;
- failure to exclude certain rebates;
- failure to correct the cost of minor inputs in the cost of production;
- failure to convert certain adjustments stated in Euros to U.S. dollars;
- failure to correct U.S. sales with respect to non-prime merchandise; and
- improper merger of COP and home market data files.

See letters from petitioners alleging ministerial errors in the preliminary determination (May 6, 2002).

On May 6, 2002, the respondent alleged one clerical error. The respondent stated, as did the petitioners, that the model match program created a temporary, rather than a permanent, dataset.

Significant Ministerial Error

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g).

In this instance, the original preliminary determination resulted in a weighted-average margin which was de minimis. Implementation of the corrections of the ministerial errors results in a weighted-average dumping margin which is greater than *de minimis*, thus meeting the requirements under 19 CFR 351.224(g)(2).

Amended Determination

The Department has reviewed its preliminary calculations and agrees that most of the items identified as ministerial errors do constitute ministerial errors within the meaning of 19 CFR 351.224(f). For a detailed analysis and the Department's determinations, see the May 15, 2002 Memorandum to Richard O. Weible from Angelica Mendoza regarding *Ministerial Error Allegations* on file in room B–099 of the main Commerce building. As a result of our analysis of petitioners' and respondent's allegations, we are amending our preliminary determination to revise the antidumping rates in accordance with 19 CFR 351.224(e). Specifically, we corrected all of the points raised by all parties with the following exception:

we did not include freight revenue as a billing adjustment in the definition of home market revenue for sales by Etilam.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., Weirton Steel Corporation, and United States Steel Corporation.

In addition to the ministerial errors reported by petitioners and respondent, the Department separately identified and corrected another ministerial error. With respect to revised home market imputed credit expense calculations for sales with missing payment dates, we inadvertently defined the billing adjustment variable ("BILADJH") after the programming code specifying the revised credit calculations, thereby omitting this adjustment from the credit expense calculation. *See* the analysis memorandum.

Suspension of liquidation will be revised in accordance with section 733(d) of the Act.

The following weighted-average dumping margins apply:

Manufacturer/exporter	Margin (percent)
Usinor Group	5.17
All Others	5.17

The all others rate has been amended, and applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service ("Customs") to suspend liquidation of all imports of certain cold-rolled carbon steel flat products from France entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

This determination is issued and published pursuant to section 733(f) and 777(i)(1) of the Tariff Act.

Dated: May 21, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–13390 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–877]

Notice of Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of an antidumping duty investigation.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: David Salkeld at (202) 482–1168; AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petition

On May 1, 2002, the Department received a petition filed in proper form by Steel City Corporation ("the petitioner"). On May 9, 2002, we sent the petitioner a letter with questions regarding the petition. The Department received information supplementing the petition on May 14, 2002 and May 21, 2002.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of lawn and garden steel fence posts ("steel fence posts") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party, as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. (*See* the *Determination of Industry Support for the Petition* section below.)

Scope of Investigation

The scope of the investigation includes all lawn and garden steel fence posts, in whatever form, shape, or size, that are produced in the PRC. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor posts. These posts are normally "U" shaped or "hat" shaped or any other similar shape excluding round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden posts are normally made of 14 gauge steel (0.068 inches–0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden fence posts are normally made of 13 gauge steel (0.082 inches–0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheading: 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are "tee" posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot.[1] Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("Customs") purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner

[1] Tee posts are made by rolling red hot steel into a "T" shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses.

to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

The petition covers lawn and garden steel fence posts as defined in the *Scope of Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioner's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition. However, the Department will take into account any comments submitted by parties in connection with this issue during the course of the proceeding, and revisit the issue, if appropriate. In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied on the petition. The petition contained the most recent production and shipment data (by volume) of petitioner available, covering the period February 1, 2001 to January 31, 2002, which is petitioner's fiscal year. *See Initiation Checklist.*

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

We examined the accuracy of information contained in the petition, in accordance with section 732(c)(1) of the Act, by gathering information through Department research. For example, we procured a list of potential domestic producers of steel fence posts from the International Trade Commission and contacted those companies to check petitioner's claim that it was the sole producer of subject merchandise in the United States. We found no information that called into question the accuracy of information contained in the petition.

Information contained in the petition and its supplements demonstrate that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. *See Initiation Checklist* at Attachment I. Furthermore, because the Department received no domestic opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See Initiation Checklist.* Thus, the requirement of section 732(c)(4)(A)(ii) is met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Period of Investigation

The anticipated period of investigation is October 1, 2001, through March 31, 2002.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market and U.S. price are detailed in the *Initiation Checklist.*

The Department has analyzed the information in the petition and considers the country-wide import statistics for the anticipated POI and pricing information used to calculate the estimated margin to be sufficient for purposes of initiation. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the *Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may revise the margin calculation, if appropriate.

Export Price

The petitioner based export prices on actual prices of the product offered by a U.S. importer and/or distributor. The petition demonstrates that these prices are on a packed and delivered basis. Petitioner calculated a net price by deducting from the price movement expenses and a U.S. distributor markup. Movement expenses include costs for duties and fees, unloading and handling fees, foreign brokerage and handling, foreign inland freight, repacking costs, U.S. inland freight and ocean freight. To derive the movement expenses, petitioner used the lowest of numerous

[2] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 Fr 32376, 32380–81 (July 16, 1991).

price quotes from several freight companies for the costs to deliver a 40-foot container of fence posts from Youngstown, Ohio to China on March 20, 2002. *See Initiation Checklist.*

Normal Value

The petitioner asserted that the PRC is a nonmarket economy country ("NME") within the meaning of section 771(18) of the Act. In previous investigations, the Department has determined that the PRC is an NME. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 22183 (May 31, 2001); *Steel Wire Rope from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 66 FR 12759 (February 28, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on the producer's factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

For the normal value calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on the quantities of inputs it used to produce steel fence posts during calendar year ("CY") 2001. The petitioner used the actual usage rates of a U.S. production facility in accordance with 19 CFR 351.202(b)(7)(B) because information on actual usage rates of representative Chinese steel fence posts producers is not reasonably available to the petitioner. The petitioner used its own data because it claimed it is the only steel fence posts manufacturer in the United States.

The petitioner asserted that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national product. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. Specifically, the factor cost for steel was based on the public version of an Indian price quote from a market research report attached to the September 28, 2001, *Petition for the Imposition of Antidumping Duties: Certain Cold-Rolled Carbon Steel Flat Products from India. See the Initiation Checklist.*

Unit energy costs were obtained for India from public data from the *Energy Information Administration, National Energy Information Center, Electricity Prices for Industry,* 1994–1999 for electricity and natural gas as this was the best reasonably available public data the petitioner could find. The cost of paint was based on petitioner's own costs because the petitioner was unable to find publically available Indian data for this factor of production. Labor was valued using the regression-based wage rate for China provided by the Department, in accordance with 19 CFR 351.408(c)(3).

The factory overhead rate, selling, general & administrative expenses ("SG&A") rate, and profit rate, were based on the average respective rates derived from a sample of 1,914 public limited companies in India that were reported in the June 2001 *Reserve Bank of India Bulletin.* The petitioner included packing costs based on its own costs in its normal value calculation as best information available.

Based on the information provided by the petitioner, we believe that the petitioner's factors of production methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

The estimated dumping margins, based on a comparison between export price and normal value, range from 51 to 89 percent. See *Initiation Checklist.*

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioner used in its calculations of export prices and normal value and has found that it represents information reasonably available to the petitioner supporting the allegation of dumping. Based on the data provided by the petitioner, there is reason to believe that imports of lawn and garden steel fence posts from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the industry's injured condition is evident in the decline of U.S. producers' output, sales, capacity, profits, productivity, and capacity utilization, as well as negative effects on cash flow, inventories, employment, wages, and growth. We have examined the accuracy and adequacy of the evidence provided in the petition and have determined that the allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, and lost sales, and pricing information, and that the petition contains information reasonably available to the petitioner (*see Initiation Checklist* at Attachment II).

Initiation of Antidumping Investigation

Based upon our examination of the petition on lawn and garden steel fence posts from the PRC and the petitioner's responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. See *Initiation Checklist.* Therefore, we are initiating an antidumping duty investigation to determine whether imports of lawn and garden steel fence posts from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. *See* "Case Calendar" section of the *Initiation Checklist.*

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than June 17, 2002, whether there is a reasonable indication that imports of steel fence posts from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–13392 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Stainless Steel Butt-Weld Pipe Fittings From Malaysia: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Rescission of the antidumping duty administrative review for the period December 27, 2000 through January 31, 2002.

SUMMARY: On March 27, 2002, in response to a request made by Schulz (Mfg.) Sdn. Bhd. ("Schulz"), a producer and exporter of the subject merchandise in Malaysia, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on stainless steel butt-weld pipe fittings ("SSBWPF") from Malaysia, for the period December 27, 2000 through January 31, 2002. Because Schulz has withdrawn its request for review, and there were no other requests for review for this time period, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Robert A. Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–4243 and 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On February 28, 2002, Schulz, a producer and exporter of the subject merchandise in Malaysia, requested the Department to conduct an administrative review of its sales for the period December 27, 2000 through January 31, 2002. Schultz was the only interested party to request a review for this time period. On March 27, 2002, the Department published a notice of initiation of the antidumping administrative review on SSBWPF from Malaysia, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002). On April 8, 2002, Schulz withdrew its request for review.

Rescission of Review

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Schultz, the only interested party to request an administrative review for this time period, requested a withdrawal of this review within the 90–day time limit; accordingly, we are rescinding the administrative review for the period December 27, 2000 through January 31, 2002, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice 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(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: May 21, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–13388 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel wire rod from India.

SUMMARY: On January 8, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel wire rod from India. *See Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 865 (January 8, 2002). This review covers the Viraj Group Ltd., ("Viraj Group"), a manufacturer and exporter of subject merchandise to the United States. The period of review is December 1, 1999 through November 30, 2000.

Based on our analysis of the comments received, we have not changed our results from the preliminary results of review. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On January 8, 2002, the Department published in the **Federal Register** (67 FR 865) the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel wire rod from India (*"Preliminary Results"*). We invited parties to comment on our preliminary results of review. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this review is stainless steel wire rod from India. This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.045, 7221.00.0060, 7221.00.0075, and 7221.00.0080. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*"Decision Memorandum"*) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated May 21, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have not changed our results from the preliminary results of review.

Final Results of Review

We determine that the following percentage margin exists for the period December 1, 1999, through November 30, 2000:

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
The Viraj Group, Limited	0.73

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the entered quantity of those reviewed sales for the Viraj Group. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(a)).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel wire rod from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the Viraj Group will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 48.80 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: May 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1

Issues in Decision Memorandum

Comments and Responses

1. Collapsing the Viraj Group
2. Entry Value
3. Import Duties
4. Grade 304L and 304LER
5. Negative Dumping Margins
6. Comparing Individual U.S. prices to 12-month Average Cost

[FR Doc. 02–13391 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051602A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability of Draft Environmental Assessment (EA) and request for comments.

SUMMARY: Notice is hereby given of the availability of a draft EA for NMFS' implementation of part of the

Endangered Species Act (ESA) that it adopted for the 14 threatened salmon and steelhead Evolutionarily Significant Units (ESUs) identified in the **SUPPLEMENTARY INFORMATION** section. The action provides for limits on ESA prohibitions (Limits) for the various activities set out in the document. The draft EA is a programmatic EA that analyzes the impacts of implementing the Limit for routine road maintenance activities (RRM) of any state, city, county or port (Limit 10). This EA will form the basis for subsequent analyses of activities or programs that may be submitted pursuant to Limit 10. NMFS is furnishing this notification to allow other agencies and the public an opportunity to review and comment on the draft EA. All comments received will become part of the public record and will be available for review.

DATES: Written comments on the draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on June 28, 2002.

ADDRESSES: Written comments should be sent to Rosemary Furfey, Protected Resources Division, National Marine Fisheries Service, 525 N.E. Oregon Street, Suite 500, Portland, OR 97232-2737. Comments may also be sent via fax to 503–230–5441. Copies of the draft EA are available on the Internet at , *http:www.nwr.noaa.gov/1salmon/salmesa/final4d.htmhttp://swr.nmfs.noaa.gov/salmon.htm*, or from NMFS, Protected Resources Division, 525 N.E. Oregon Street, Suite 500, Portland, OR 97232–2737. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Rosemary Furfey at phone number: 503-231-2149, facsimile: 503–230–5441, or e-mail: *Rosemary.Furfey@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species are covered in this Notice:

Chinook salmon (*Oncorhynchus tshawytscha*); threatened Puget Sound (PS), Lower Columbia River (LCR), and Upper Willamette River (UWR).

Coho salmon (*Oncorhynchus kisutch*); threatened Oregon Coast (OC).

Sockeye salmon (*Oncorhynchus nerka*); threatened Ozette Lake (OL).

Chum salmon (*Oncorhynchus keta*); threatened Hood Canal Summer-run (HCS) and Columbia River (CR).

Steelhead (*Onchorynchus mykiss*); threatened Snake River Basin (SRB), Central California Coast (CCC), South/Central California Coast (SCCC), Lower Columbia River (LCR), Central Valley, California (CVC), Middle Columbia River (MCR), and Upper Willamette River (UWR).

Background

National Environmental Policy Act (NEPA) requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the human environment. Accordingly, before NMFS issued the ESA 4(d) rule for the 14 ESUs identified above it prepared a set of EAs in connection with this regulation and made a Finding of No Significant Impact (FONSI). Since the 4(d) rule came into effect on July 10, 2000, various governmental entities and the public have demonstrated interest in having their individual programs reviewed under Limit 10. With this increasing interest in using Limit 10, there is the possibility of increased effects as defined by NEPA. Thus, NMFS is conducting this subsequent NEPA analysis to determine the impacts of implementing Limit 10. States, counties, cities and ports conducting RRM activities would not be subject to ESA section 9 prohibitions provided that they perform the RRM activities using an RRM program that has been approved by NMFS as meeting the requirements of Limit 10.

NMFS is using a staged or sequential approach in its NEPA review of the implementation of Limit 10, and of any RRM that may be submitted under it. The first stage is this programmatic EA, which assesses the environmental impacts associated with just the implementation of Limit 10. It will form the basis for the second stage or subsequent NEPA analyses of NMFS' actions regarding individual RRM programs submitted under Limit 10.

This draft EA analyzes three alternatives: (1) The no action alternative; the 4(d) rule with Limits is not implemented; no ESA section 9 prohibitions are in effect; (2) the proposed action alternative; the 4(d) Rule with section 9 prohibitions and Limit 10 is implemented; and (3) alternative 3; the 4(d) rule without Limit 10 is implemented.

Because the proposed action creates an optional ESA process, its effects are necessarily programmatic in nature. In other words, the only effects that the proposed action may generate are those associated with putting take prohibitions into place and establishing the Limit 10 option for NMFS' approval of RRM programs. The proposed action does not address the possible effects of individual RRM programs because the actual effects, particularly the physical effects, associated with such programs cannot be measured at this point. Also it is impossible to anticipate what programs will be submitted to NMFS or approved by NMFS. During the second stage of NEPA review, NMFS will conduct further NEPA analyses when an RRM program is submitted to NMFS. These subsequent NEPA documents will present a summary of the issues addressed in this draft programmatic Limit 10 EA; as appropriate, incorporate by reference the analyses presented in this programmatic EA; and address any environmental effects of NMFS' action regarding a specific RRM program.

This notice is provided pursuant to the NEPA regulations (40 CFR 1506.6). The final NEPA determinations will not be completed until after the end of the 30-day comment period and NMFS will fully consider all public comments during the comment period.

Dated: May 22, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–13408 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051302A]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Gulf of Alaska

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); notice of scoping meetings; request for comments.

SUMMARY: NMFS announces its intent to prepare an SEIS in accordance with the National Environmental Policy Act of 1969 (NEPA) for the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) proposes management measures to improve the economic efficiency of the Gulf of Alaska (GOA) groundfish fisheries and to address conservation, safety, and social concerns. The Council is considering one or more methods of allocating fishing privileges, such as: individual fishing quotas (IFQs); individual processing quotas (IPQs); allocations to communities; fishing cooperatives program; or other measures. The scope of the SEIS will include a review of the GOA groundfish

fisheries that may be affected by management measures that improve the economic efficiency of the GOA groundfish fisheries, the components of these programs, and potential changes to the management of the fisheries under these programs.

NMFS will hold public scoping meetings and accept written comments to determine the issues of concern and the appropriate range of management alternatives to be addressed in the SEIS.

DATES: Written comments will be accepted through November 15, 2002 (see **ADDRESSES**). Public scoping meetings will be held in August, September, and October. For dates and times see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on issues and alternatives for the SEIS should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK., 99802, Attn: Lori Gravel-Durall, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Comments may be sent via facsimile (fax) to 907–586–7557. NMFS will not accept comments by e-mail or internet.

An analysis of the issues and alternatives will be available through the North Pacific Fishery Management Council, 605 West 4th, Suite 306, Anchorage, AK., 99501–2252.

Public scoping meetings will be held in Alaska's Sand Point, King Cove, Kodiak, Cordova, Homer, and Petersburg, and in Seattle, Washington. For specific locations, see **SUPPLEMENTARY INFORMATION.**

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

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone (EEZ). The management of these marine resources, with the exception of marine mammals and birds, is vested in the Secretary of Commerce (Secretary). Eight Regional Fishery Management Councils prepare fishery management plans for approval and implementation by the Secretary. The Council has the responsibility to prepare fishery management plans for the fishery resources that require conservation and management in the EEZ off Alaska.

NEPA requires preparation of an EIS for major Federal actions significantly impacting the quality of the human environment. Regulations implementing NEPA at 40 CFR 1502.4(b) state:

> Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as adoption of new agency programs or regulations. Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision making.

The FMP was approved by the Secretary on April 12, 1978. The Secretary has approved numerous amendments to the FMP since that time. Section 304 of the Magnuson-Stevens Act specifies a process for amending FMPs.

The proposed action to be addressed in the SEIS is amendment of the FMP to include policies and management measures that would increase the economic efficiency of the GOA groundfish fisheries. Additional information on EISs pertaining to Gulf of Alaska groundfish fisheries may be obtained through NMFS (see ADDRESSES). Fisheries conducted under such policies and management measures generally are considered more "rational" than other fisheries because capital investment in "rationalized" fisheries tends to be in balance with the amount of fish that can be conservatively harvested. Hence, to "rationalize" the management of the GOA groundfish fisheries implies that the management required will incorporate economic incentives that prevent or reduce excessive capital investment. This is commonly accomplished through the establishment of transferable harvesting privileges or other market-based systems for allocating access to the fishery resources.

Rationalization programs may provide additional opportunities to use fishing methods that reduce the bycatch of non-target species and reduce gear conflicts thereby addressing larger conservation goals. Rationalization programs also may reduce the incentive to fish during unsafe conditions. Rationalization programs frequently result in substantial changes to the existing management regime and these changes may have a significant effect on the human environment.

The SEIS will examine the GOA groundfish fisheries authorized under the FMP, which may be affected by any proposed rationalization program and the potential changes to the management of the fisheries under these programs. The scope of the alternatives analyzed is intended to be broad enough for the Council and NMFS to make informed decisions on whether a rationalization program should be developed and, if so, how it should be designed, and to assess other changes to the FMP as necessary with the implementation of these programs.

NMFS is seeking information from the public through the scoping process on the range of alternatives to be analyzed and on the environmental, social, and economic issues to be considered in the analysis.

Alternatives

The analysis will evaluate a range of alternative regimes for managing GOA groundfish fisheries. Alternatives analyzed in the SEIS may include those identified here, plus additional alternatives developed through the public scoping process and the Council.

The potential alternatives already identified for the SEIS include: (1) the existing management measures (status quo); (2) a rationalization program; and (3) a modified Licence Limitation Program. The specific options for a rationalization program identified thus far include the use of IFQs, IPQs, fishing cooperatives, and quotas held by communities, either separately or in combination. The particular combination of these options would effectively provide multiple "alternative" rationalization programs. Public scoping meetings will provide the opportunity for comment on the range of alternatives and the specific options within the rationalization alternative.

Specific options for rationalization are derived from preliminary discussions by three separate Council GOA rationalization committees tasked to address this issue, recommendations from the Council's Advisory Panel, and the Council. In addition, the Consolidated Appropriations Act of 2001 (Public Law 106-554) requires the Council to examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish fisheries, to determine whether rationalization is needed and describes management measures that should be analyzed. Additional information on the specific options for rationalization may be obtained through the Council (see **ADDRESSES**), or via the Council website at *http://www.fakr.noaa.gov/npfmc/.*

The Council may recommend specific options for analysis in late 2002. The rationalization alternative, options for consideration, and other alternatives and options, will be developed through this scoping process in coordination with the Council's rationalization committee and the Council. Depending on the rationalization program options selected, Congressional action may be required to provide statutory authority

to implement a specific rationalization alternative preferred by the Council. Lack of statutory authority for any particular alternative or option does not prevent consideration of that alternative or option in the SEIS.

Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a reasonable range of management alternatives that, with adequate analysis, will identify critical issues and provide a clear basis for distinguishing between those alternatives and selecting a preferred alternative.

NMFS is seeking written public comments on the scope of issues that should be addressed in the SEIS and on alternatives and options that should be considered for management of the GOA groundfish fisheries.

Public comments on specific aspects of the rationalization programs should be submitted to NMFS (see **ADDRESSES**). The public also will be able to provide oral and written comments at the meetings listed below. The Council will make a draft analysis of these alternative programs available for public review and comment. Copies of the analysis can be requested from the Council (see **ADDRESSES**).

Dates, Times, and Locations for Public Scoping Meetings

1. Saturday, August 17, 2002, from 9 a.m. to noon—Aleutians East Borough Office, 100 Mossberry Lane, Sand Point, AK.

2. Sunday, August 18, 2002, from 9 a.m. to noon—King Cove Harbor House, 100 Harbor House Road, King Cove, AK.

3. Friday, August 23, 2002, from 1 p.m. to 4:00 p.m.— Fishery Industrial Technology Center, 118 Trident Way, Kodiak, AK.

4. Monday, September 16, 2002, from 5 p.m to 8 p.m.—Cordova City Library Meeting Room, 622 First Street, Cordova, AK.

5. Tuesday, September 24, 2002, from 2 p.m. to 5 p.m.—Best Western Bidarka Inn, 575 Sterling Highway, Homer, AK.

6. Thursday, September 26, 2002, from 3 p.m. to 6 p.m.—City Council Chambers, 12 Nordic Drive, Petersburg, AK.

7. Tuesday, October 1, 2002, from 6 p.m. to 9 p.m.—Doubletree Hotel, Seattle Airport, 18740 Pacific Highway South, Seattle, WA, in conjunction with the Council's October meeting.

The public is invited to assist NMFS in developing the scope of alternatives and issues to be analyzed for the SEIS. Comments will be accepted in writing at the meetings and at the NMFS address above (see **ADDRESSES**). Meeting schedules may be delayed due to weather conditions and flight availability in some locations. Meetings may be rescheduled if necessary.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Glenn Merrill, NMFS, (see **ADDRESSES**), (907) 586–7228, at least 5 days prior to the meeting date.

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

Dated: May 21, 2002.

Virginia M. Fay,

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

[FR Doc. 02–13256 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052102F]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Wednesday, June 12, 2002, and will conclude at 4 p.m. on Friday, June 14, 2002.

ADDRESSES: The meeting will be held at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, LA; telephone: 504–524–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review available social and economic information on Gulf king and Spanish mackerel and to determine the social and economic implications of the levels of acceptable biological catch (ABC) recommended by the Council's Mackerel Stock Assessment Panel (MSAP). The SEP may recommend to the Council total allowable catch (TAC) levels for the 2003 fishing year and certain management measures associated with achieving the TACs. In addition, the SEP will review the results of a bioeconomic modeling evaluation of the measures proposed in the Secretarial amendment for rebuilding the red grouper stock.

A report will be prepared by the SEP containing their conclusions and recommendations. The red grouper part of the report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held on the week of June 24, 2002 in Tampa, FL and to the Council at its meeting on the week of July 8, 2002 in Sarasota, FL. The mackerel portion of the report will be presented for review to the Council's Mackerel Advisory Panel and Standing and Special Mackerel Scientific and Statistical Committee at meetings to be held on the week of July 29, 2002 in New Orleans, LA and to the Council at its meeting on the week of September 9, 2002 in Metairie, LA.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 5, 2002.

Dated: May 23, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13405 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052102G]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Oversight Committee and Advisory Panel in June, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, June 13, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee and advisory panel will discuss outstanding issues identified by NMFS related to the Council's submission of the Draft Skate Fishery Management Plan (FMP) and Environmental Impact Statement (EIS). They will also discuss the possibility of incorporating skates into the multispecies complex through an amendment to the Multispecies FMP and develop recommendations to the Council for addressing the outstanding issues identified by NMFS related to the Council's submission of the Draft Skate FMP/EIS.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 23, 2002.

Richard W. Surdi,

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

[FR Doc. 02–13406 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 020514121–2121–01]

RIN 0660–XX14

Request for Comment on the Effectiveness of Internet Protection Measures and Safety Policies

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) invites interested parties to provide comments in response to section 1703 of the Children's Internet Protection Act (CIPA), Pub. L. No. 106–554, 114 Stat. 2763, 2763A–336 (2000). Section 1703 directs NTIA to initiate a notice and comment proceeding to evaluate whether currently available Internet blocking or filtering technology protection measures and Internet safety policies adequately address the needs of educational institutions. The Act also directs NTIA to make recommendations to Congress on how to foster the development of technology protection measures that meet these needs.

DATES: Written comments are requested to be submitted on or before August 27, 2002.

ADDRESSES: Comments may be mailed to Sallianne Fortunato Schagrin, Office of Policy Analysis and Development, National Telecommunications and Information Administration, Room 4716 HCHB, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Paper submissions should include a diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: *cipa-study@ntia.doc.gov*. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: Sallianne Fortunato Schagrin, Office of Policy Analysis and Development, NTIA, telephone: (202) 482–1880; or electronic mail: *sschagrin@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration: telephone (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Growing Concern About Children's Exposure to Inappropriate Online Content

A U.S. Department of Commerce report, released earlier this year, indicates that as of September 2001 more than half of the nation's population (143 million Americans) were using the Internet. *A Nation Online: How Americans Are Expanding Their Use of the Internet*, National Telecommunications and Information Administration, U.S. Department of Commerce (Feb. 2002), available at *http://www.ntia.doc.gov/ntiahome/dn/index.html*. Children and teenagers use computers and the Internet more than any other age group. *Id.* at 1, 13. Almost 90 percent of children between the ages of 5 and 17 (or 48 million) now use computers. *Id.* at 1, 44. Significant numbers of children use the Internet at school or at school and home: 55 percent for 14–17 year olds; 45 percent for 10–13 year olds; and 22 percent for 5–9 year olds. *Id.* at 47. Approximately 12 percent of 10 to 17 year olds use the Internet at a library. *Id.* at 52. Noting the heightened interest regarding the possible exposure of children to unsafe or inappropriate content online, the Department of Commerce report notes that for the first time households were surveyed to determine the level of concern about their children's exposure to material over the Internet versus their concern over exposure to material on television. The results indicated that 68.3 percent of households were more concerned about the propriety of Internet content than material on television. *Id.* at 54.

Similarly, in its 2000 survey of public schools to measure Internet

connectivity, the Department of Education's National Center for Education Statistics asked questions about "acceptable use policies" in schools in recognition of the concern among parents and teachers about student access to inappropriate online material. *See Internet Access in U.S. Public Schools and Classrooms: 1994–2000*, NCES 2001–071, Office of Education Research and Improvement, Department of Education (May 2001), available at *http://www.nces.ed.gov/pubs2001/internetaccess*. According to the NCES survey, 98 percent of all public schools had access to the Internet by the fall of 2000. *Id.* at 1. The survey also indicated that almost all such schools had "acceptable use policies" and used various technologies or procedures (blocking or filtering software), an intranet system, student honor codes, or teacher/staff monitoring to control student access to inappropriate online material. *Id.* at 7. Of the schools with acceptable use policies, 94 percent reported having student access to the Internet monitored by teachers or other staff; 74 percent used blocking or filtering software; 64 percent had honor codes; and 28 percent used their intranet. *Id.* Most schools (91 percent) used more than one procedure or technology as part of their policy: 15 percent used all of the procedures and technologies listed; 29 percent used blocking/filtering software, teacher/staff monitoring, and honor codes; and 19 percent used blocking/filtering software and teacher/staff monitoring. *Id.* at 7, 8. In addition, 95 percent of schools with an acceptable use policy used at least one of these technologies or procedures on all Internet-connected computers used by students. *Id.*

This trend appears to be reflected in the library community as well. A recent article in the Library Journal reports that of the 355 libraries responding to its Budget Report 2002, 43 percent reported filtering Internet use, up from 31 percent in 2001, and 25 percent in 2000. Norman Oder, *The New Wariness*, The Library Journal (Jan. 15, 2002) (LJ Budget Report 2002), available at *http://libraryjournal.reviewsnews.com/index.asp?layout=articlePrint&articleID=CA188739*. Of those libraries filtering Internet use, 96 percent reported using filters on all children's terminals. *Id.*

The E-Rate and CIPA

Section 254(h) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, provides a universal support mechanism program (commonly known as the "E-Rate program") through which eligible schools and libraries may apply for discounted telecommunications, Internet access, and internal connections services. *See* 47 U.S.C. 254(h). The program is administered by the Universal Service Administrative Company (USAC) pursuant to regulations promulgated by the Federal Communications Commission. See Federal Communications Commission, Universal Service for Schools and Libraries, available at *http://www.fcc.gov/wcb/universal_service/schoolsandlibs.html*.

According to USAC, approximately 82 percent of public schools and 10 percent of private schools received E-rate funding in the Fiscal Year (FY) 2000 funding cycle (July 1, 2000 through June 30, 2001) (using 1997 data base as denominator). See Universal Service Administrative Company, available at *http://www.sl.universalservice.org*. Public libraries also rely heavily on E-rate funding; 57 percent of main public libraries received E-rate funding in FY 2000. *Id.*; *see also* LJ Budget Report 2002 supra.

In October 2000, Congress passed the Children's Internet Protection Act (CIPA) as part of the Consolidated Appropriations Act of 2001 (Pub. L. No. 106–554). Under section 1721 of the Act, schools and libraries that receive discounted telecommunications, Internet access, or internal connections services under the E-rate program are required to certify and adopt an Internet safety policy and to employ technological methods that block or filter certain visual depictions deemed obscene, pornographic, or harmful to minors for both minors and adults.[1] The Federal Communications Commission implemented the required changes to the E-rate program and the new CIPA certification requirements became effective for the fourth E-rate funding year that began on July 1, 2001, and ends on June 30, 2002. *See* Federal-State Joint Board on Universal Service, Children's Internet Protection Act, *Report and Order*, CC Docket No. 96–45 (March 30, 2001), available at *http://www.fcc.gov/wcb/universal_service/schoolsandlibs.html*.

Section 1703(a) of CIPA directs NTIA to initiate a notice and comment proceeding to determine if currently available blocking and filtering technologies adequately address the needs of educational institutions, make recommendations on how to foster the development of technologies that meet the needs of schools and libraries, and evaluate current Internet safety policies. Section 1703(a) of CIPA specifically provides:

> Sec. 1703. Study of Technology Protection Measures
>
> (a) IN GENERAL. B Not later than 18 months after the date of the enactment of this Act, the National Telecommunications and Information Administration shall initiate a notice and comment proceeding for purposes of—
>
> (1) Evaluating whether or not currently available technology protection measures, including commercial Internet blocking and filtering software, adequately address the needs of educational institutions;
>
> (2) Making recommendations on how to foster the development of measures that meet such needs; and
>
> (3) Evaluating the development and effectiveness of local Internet safety policies that are currently in operation after community input.

Internet Blocking and Filtering Software and Acceptable Use Policies

The computer industry has developed a number of technology protection measures to block or filter prohibited content in response to the growing amount of online content. Among these measures are stand alone filters, monitoring software, and online parental controls. The Pew Internet and American Life Project reports that more than 41 percent (2 of every 5) of parents of children using the Internet rely on monitoring software or use pre-selected controls on their home computers. Pew Internet and American Life Project, *The Internet and Education: Findings of the Pew Internet and American Life Project*, at 5 (September 2001), available at *http://www.pewinternet.org/reports/toc.asp?Report=36*.

A Consumer Reports study indicated, however, that some technology protection companies refuse to disclose their method of blocking or filtering and their list of blocked sites, although users can submit Web addresses to check against blocked lists in some cases. *See Digital Chaperones for Kids: Which Internet Filters Protect the Best? Which Get in the Way?*, Consumer Reports at 2 (March 2001). Another report indicates that technology protection tools can require a fair amount of technical expertise in order to be manipulated successfully, such as an understanding of how to unblock sites, adjust tools for different levels of access, and examine and interpret log files. Trevor Shaw, *What's Wrong with CIPA*, E-School News (March 1, 2001), available at *http:/*

[1] NTIA notes that Sections 1712 and 1721 of the CIPA are currently the subject of constitutional challenge. *See American Library Ass'n* v. *United States*, No. 01–CV–1303 (E.D. Pa. March 20, 2001); *Multnomah County Public Library* v. *United States*, No. 01–CV–1322 (E.D.Pa. March 20, 2001). NTIA is not seeking comment on the constitutionality of the statute or its provisions.

/www.eschoolnews.com/features/cipa/cipa3.cfm.

The National Research Council (NRC) of the National Academy of Sciences recently released a report describing the social and educational strategies, technology-based tools, and legal and regulatory approaches to protect children from inappropriate material on the Internet. *See Youth, Pornography, and the Internet,* Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council (NRC Report) (May 2, 2002), available at *http://bob.nap.edu/html/youth_internet/es.html.*

Among other things, the NRC Report concludes that perhaps the most important social and educational strategy for ensuring safe online experiences for children is responsible adult involvement and supervision. *Id.* at ES–7, 209. This strategy includes families, schools, libraries, and other organizations developing acceptable use policies to provide explicit guidelines about how individuals will conduct themselves online that will serve as a framework within which children can become more responsible for making better choices. *Id.* at 218. The Report notes that acceptable use policies are most effective when developed jointly with schools and communities. *Id.* at 219. The Report suggests that acceptable use policies are not without problems, including how to avoid the "one size fits all" problem that may arise in trying to craft a policy that is appropriate for both young children as well as teenagers. *Id.* at 219–220. The NRC Report also discusses the ways that technology provides parents and other responsible adults with additional choices as to how best to protect children from inappropriate material on the Internet. *Id.* at ES–8, 255–304. The report notes, however, that filtering/blocking tools are all imperfect in that they may "overblock" otherwise appropriate material or "underblock" some inappropriate material. *Id.* at 259–266.

Specific Questions

In an effort to enhance NTIA's understanding of the present state of technology protection measures and Internet safety policies, NTIA solicits responses to the following questions. NTIA requests that interested parties submit written comments on any issue of fact, law, or policy that may provide information that is relevant to this evaluation. Commenters are invited to discussany relevant issue, regardless of whether it is identified below. To the extent possible, please provide copies of studies, surveys, research, or other empirical data referenced in responses.

Evaluation of Available Technology Protection Measures

Section 1703(a)(1) of the Act requires NTIA to evaluate whether or not currently available technology protection measures, including commercial Internet blocking and filtering software, adequately address the needs of educational institutions.

1. Discuss whether available technology protection measures adequately address the needs of educational institutions.

2. Is the use of particular technologies or procedures more prevalent than others?

3. What technology, procedure, or combination has had the most success within educational institutions?

4. Please explain how the technology protection products block or filter prohibited content (such as "yes" lists, (appropriate content); "no" lists, (prohibited content), human review, technology review based on phrase or image, or other method.) Explain whether these methods successfully block or filter prohibited online content and whether one method is more effective than another.

5. Are there obstacles to or difficulties in obtaining lists of blocked or filtered sites or the specific criteria used by technology companies to deny or permit access to certain web sites? Explain.

6. Do technology companies readily add or delete specific web sites from their blocked lists upon request? Please explain your answer.

7. Discuss any factors that were considered when deciding which technology tools to use (such as training, cost, technology maintenance and upgrades or other factors.)

Fostering the Development of Technology Measures

Section 1703(a)(2) directs NTIA to initiate a notice and comment proceeding to make recommendations on how to foster the development of technology measures that meet the needs of educational institutions.

1. Are current blocking and filtering methods effectively protecting children or limiting their access to prohibited Internet activity?

2. If technologies are available but are not used by educational institutions for other reasons, such as cost or training, please discuss.

3. What technology features would better meet the needs of educational institutions trying to block prohibited content?

4. Can currently available filtering or blocking technology adjust to accommodate all age groups from kindergarten through grade twelve? Are these tools easily disabled to accommodate bona fide and other lawful research? Are these tools easily dismantled?

Current Internet Safety Policies

Section 1703(a)(3) requires NTIA to evaluate the development and effectiveness of local Internet safety policies currently in operation that were established with community input.

1. Are Internet safety policies an effective method of filtering or blocking prohibited material consistent with the goals established by educational institutions and the community? If not, please discuss the areas in which the policies do not effectively meet the goals of the educational institutions and/or community.

2. Please discuss whether and how the current policies could better meet the needs of the institutions and the community. If possible, provide specific recommendations.

3. Are educational institutions using a single technology protection method or a combination of blocking and filtering technologies?

4. Describe any best practices or policies that have been effective in ensuring that minors are protected from exposure to prohibited content. Please share practices proven unsuccessful at protecting minors from exposure to prohibited content.

Dated: May 22, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–13286 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

May 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67229, published on December 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 30, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239pt. [2] 300/301, 313–315, 317/326, 331pt. [3], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [4], 359–V [5], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [6], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [7], 659–H [8], 659–S [9], 666pt. [10], 845 and 846, as a group.	1,201,100,744 square meters equivalent.
Sublevels in Group I	
200	844,887 kilograms.
218	12,545,467 square meters.
219	2,819,060 square meters.
226	12,800,583 square meters.
237	2,383,936 dozen.
300/301	2,571,100 kilograms.
313	47,867,029 square meters.
314	57,648,979 square meters.
315	143,304,913 square meters.
317/326	24,971,671 square meters of which not more than 4,777,571 square meters shall be in Category 326.
331pt.	2,242,388 dozen pairs.
333	116,928 dozen.
334	366,160 dozen.
335	410,477 dozen.
336	196,283 dozen.
338/339	2,438,867 dozen of which not more than 1,837,510 dozen shall be in Categories 338–S/339–S [11].
340	838,610 dozen of which not more than 426,897 dozen shall be in Category 340–Z [12].
341	736,245 dozen of which not more than 443,883 dozen shall be in Category 341–Y [13].
342	285,516 dozen.
345	134,753 dozen.
347/348	2,409,491 dozen.
351	644,834 dozen.
352	1,739,826 dozen.
359–C	721,363 kilograms.
359–V	1,017,725 kilograms.
360	9,249,493 numbers of which not more than 6,141,216 numbers shall be in Category 360–P [14].
361	4,922,583 numbers.
362	8,029,234 numbers.
363	23,392,064 numbers.
410	1,104,672 square meters of which not more than 885,515 square meters shall be in Category 410–A [15] and not more than 885,515 square meters shall be in Category 410–B [16].
433	22,681 dozen.
434	14,232 dozen.
435	26,138 dozen.
436	16,410 dozen.
438	28,717 dozen.

Category	Twelve-month limit [1]
440	41,025 dozen of which not more than 23,442 dozen shall be in Category 440–M [17].
442	43,428 dozen.
443	139,063 numbers.
444	228,793 numbers.
445/446	303,448 dozen.
447	76,814 dozen.
448	23,844 dozen.
611	6,297,531 square meters.
613	8,911,001 square meters.
614	13,741,261 square meters.
615	29,151,701 square meters.
617	20,367,999 square meters.
631pt.	341,565 dozen pairs.
633	66,142 dozen.
634	698,943 dozen.
635	730,107 dozen.
636	599,513 dozen.
638/639	2,569,540 dozen.
640	1,447,136 dozen.
641	1,362,757 dozen.
642	386,695 dozen.
643	562,165 numbers.
644	3,799,352 numbers.
645/646	860,381 dozen.
647	1,736,889 dozen.
648	1,217,799 dozen.
651	868,116 dozen of which not more than 154,221 dozen shall be in Category 651–B [18].
652	3,202,696 dozen.
659–C	472,582 kilograms.
659–H	3,281,032 kilograms.
659–S	725,383 kilograms.
666pt.	433,445 kilograms.
845	2,439,906 dozen.
846	198,043 dozen.
Group II	
332, 359–O [19], 459pt. [20] and 659–O [21], as a group	44,086,866 square meters equivalent.
Group III	
201, 220, 224–V [22], 224–O [23], 225, 227, 369–O [24], 400, 414, 469pt. [25], 603, 604–O [26], 618–620 and 624–629, as a group.	50,623,803 square meters equivalent.
Sublevels in Group III	
224–V	4,241,431 square meters.
225	7,317,278 square meters.
Group IV	
852	410,668 square meters equivalent.
Levels not in a Group	
369–S [27]	661,141 kilograms.
863–S [28]	9,421,818 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010

[5] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[20] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[25] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[26] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[27] Category 369–S: only HTS number 6307.10.2005.

[28] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–13332 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India

May 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, recrediting of unused carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 30, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	23,960,480 square meters.
219	104,900,344 square meters.
313	64,109,374 square meters.
314	12,488,136 square meters.
315	20,975,065 square meters.
317	45,057,612 square meters.
326	12,831,781 square meters.
334/634	223,424 dozen.
335/635	1,038,521 dozen.
336/636	1,506,153 dozen.
338/339	5,194,443 dozen.
340/640	2,822,811 dozen.
341	6,177,031 dozen of which not more than 3,742,222 dozen shall be in Category 341–Y [2].
342/642	2,103,009 dozen.
345	309,363 dozen.
347/348	1,179,126 dozen.
351/651	429,206 dozen.
369–S [3]	1,078,666 kilograms.
641	2,342,904 dozen.
647/648	1,166,221 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–13333 Filed 5–28–02 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

May 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also *see* 66 FR 63031, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 29, 2002, you are directed to decrease the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	244,703 dozen.
351/651	840,608 dozen.
361	2,564,917 numbers.
433	3,362 dozen.
443	40,645 numbers.
635	369,593 dozen.
647/648	1,676,979 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–13334 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

May 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov.* For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178,

published on December 18, 2001). Also see 66 FR 67232, published on December 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 22, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 15, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 30, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	216,469,734 square meters equivalent.
Sublevels in Group I	
225/317/326	44,594,009 square meters.
619/620	16,507,532 square meters.
625/626/627/628/629	21,480,199 square meters.
Group II	
237, 239pt [6], 331pt. [7], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [8], 659–H [9], 359pt. [10], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [11], 631pt. [12], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [13], 659pt. [14], 846 and 852, as a group.	612,067,297 square meters equivalent.
Sublevels in Group II	
336	151,780 dozen.
338/339	1,045,662 dozen.
345	129,396 dozen.
347/348	1,514,317 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [15].
352/652	3,585,031 dozen.
435	27,381 dozen.
438	30,632 dozen.
445/446	145,252 dozen.
638/639	6,476,011 dozen.
647/648	5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [16].
659–S	1,713,821 kilograms.
Within Group II Subgroup	
342	230,949 dozen.
447/448	22,588 dozen.
636	379,539 dozen.
651	481,841 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[10] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–13335 Filed 5–28–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 28, 2002.

Title, Form, and OMB Number: Lock Performance Monitoring System (LPMS) Waterway Traffic Report; ENG Forms 3102C, 3102D; OMB Number 0710–0008.

Type of Request: Reinstatement.

Number of Respondents: 3,000.

Responses per Respondent: 231.

Annual Responses: 695,304.

Average Burden per Response: 2.5 minutes.

Annual Burden Hours: 28,507.

Needs and Uses: The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned and operated locks. Owners, agents, and masters of vessels provide general data about vessels and estimated tonnage and commodities carried. The information is used for sizing and scheduling replacement or maintenance of locks and canals.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for the U.S. Army Corps of Engineers, Room 10202, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 21, 2002.

Patricia L. Toppings,

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

[FR Doc. 02–13294 Filed 5–28–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 28, 2002.

Title and OMB Number: Corps of Engineers Civil Works Questionnaires—Generic Clearance; OMB Number 0710–0001.

Type of Request: Revision.

Number of Respondents: 214,150.

Responses per Respondent: 1.

Annual Responses: 214,150.

Average Burden per Response: 5 minutes (average).

Annual Burden Hours: 17,750.

Needs and Uses: The U.S. Army Corps of Engineers utilizes the data collected from the questiionnaire items for planning data to formulate and evaluate alternative water resources development plans, to determine the effectiveness and evaluate the impacts of Corps projects, and in the case of flood damage mitigation, to obtain information on flood damage incurred, whether or not a project is being considered or exists. All survey questionnaires are administered either by face-to-face, mail, or telephone methods. Public surveys are used to gather data for planning and operating Corps projects and facilities and to determine public preferences and satisfaction.

Affected Public: Individuals or Households; business or other for-profit; not-for-profit institutions; farms; State, Local or Tribal Government

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for the U.S. Army Corps of Engineers, Room 10202, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–13295 Filed 5–28–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review the make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: June 4, 2002.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: May 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–13293 Filed 5–28–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for Accommodating Development Within Marine Corps Base Quantico, VA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare a programmatic Environmental Impact Statement (EIS) to evaluate the potential environmental effects of accommodating various types and levels of development at Marine Corps Base Quantico (MCBQ), VA.

DATES: A public scoping meeting will be held on Wednesday, June 12, 2002, beginning at 7 p.m., at the Ramada Inn, 4316 Inn Street, Triangle, VA.

ADDRESSES: Written comments, statements and/or questions regarding scoping issues should be addressed to: Mr. Hank Riek, Engineering Field Activity Chesapeake, 1314 Harwood Street, SE, Washington Navy Yard, Washington, DC 20374–5018. All written comments must be received no later than July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Riek, Engineering Field Activity Chesapeake, at (202) 685–3064.

SUPPLEMENTARY INFORMATION: Marine Corps Base (MCB) Quantico, VA manages over 60,000 acres of land approximately 30 miles south of Washington, DC. A variety of Department of Defense programs, including those related to base realignments and closures, and movement of Federal activities from leased space to Federally owned facilities have resulted in the relocation of federal activities to MCB Quantico. Because of its size, controlled access, proximity to the Washington, DC area, and heightened security concerns following the terrorists attacks of September 11, 2001, MCB Quantico has been and is expected to continue to be an increasingly attractive location for accommodating future relocations for other Marine Corps activities and related agencies. In anticipation of these relocations and to address traffic concerns resulting from growth at the installation, the base has conducted a variety of planning studies. These studies have lead to the identification of two specific areas within the western area of the base that could be used to accommodate new requirements without conflicting with installation's primary mission of military education and training. The areas identified for accommodating new requirements consist of approximately 270 acres located west of Interstate 95 along Marine Corps Base Road 1, a primary access route within the installation. The studies also support the widening of Russell Road, a major access route within the installation, which connects the main containment area of the base, located east of Interstate 95, with regional transportation routes that serve the base.

The EIS will examine the environmental effects of various types and levels of potential development within the western areas consisting primarily of administrative office space, warehousing and light industrial. Alternatives for improvements of Russell Road would include widening by one or two lanes and associated traffic controls and road features.

Issues to be addressed in the EIS will include effects to vegetation, wildlife, water resources, wetlands, threatened and endangered species, historic and archaeological resources, air quality, socio-economics, and traffic.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed, and identifying the significant issues related to this action. The Marine Corps will hold a public scoping meeting as noted in the Dates section of this notice. This meeting will be advertised in area newspapers.

Marine Corps representatives will be available at the meeting to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed to the addresses noted in the **ADDRESS** section of this notice.

Dated: May 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–13284 Filed 5–28–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the

Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 5,958,701 entitled "Method for Measuring Intramolecular Forces by Atomic Force", Navy Case No. 79,257.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–13317 Filed 5–28–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete records systems.

SUMMARY: The Department of the Navy proposes to delete three systems of records notices from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletions will be effective on June 28, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, DNS10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

These deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report.

Dated: May 21, 2002.

Patricia L. Toppings,

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

N01001–5

SYSTEM NAME:

MSC Masters/Chief Engineers Biographical Data File (April 28, 1999, 64 FR 22840).

Reason: The Command no longer tracks or updates biographies. Records no longer necessary and have been destroyed.

N04050–1

SYSTEM NAME:

Personal Property Program (February 22, 1993, 58 FR 10734).

Reason: The Department of the Navy is deleting this system of records from its inventory because the Department of the Army, as the executive agency for DoD's surface passenger and personal property program, has an established DoD-wide system of records for the maintenance of these records (A0055–355 MTMC, entitled 'Personal Property Movement and Storage Records').

N05800–2

SYSTEM NAME:

Legal Records System (February 22, 1993, 58 FR 10770).

Reason: As a result of realignment, Navy hospitals no longer report to the Bureau of Medicine and Surgery. Accordingly, their legal office records are covered under a variety of other Navy legal systems. Hence, a separate distinct system for BUMED and the hospitals is no longer needed.

[FR Doc. 02–13296 Filed 5–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of the Early Childhood Educator Professional Development Program, authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA) as added by the No Child Left Behind Act, Public Law 107–110, is to enhance the school readiness of young children, particularly disadvantaged young children, and to prevent them from encountering difficulties once they enter school. The program is designed to improve the knowledge and skills of early childhood educators who work in communities that have high concentrations of children living in poverty.

Projects funded under the Early Childhood Educator Professional Development Program will provide high-quality, sustained, and intensive professional development for these early childhood educators in how to provide developmentally appropriate school-readiness services for preschool-age children that are based on the best available research on early childhood pedagogy and on child development and learning. These grants complement the President's Early Childhood Initiative and early learning programs, such as Early Reading First, by helping States and local communities strengthen early learning for young children. The Department intends to disseminate information about the funded projects that prove to be effective professional development models to child care and early childhood education programs.

Eligible Applicants: A *partnership* consisting of—

(i) One or more institutions of higher education, or other public or private entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities; *and*

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organization); *and*

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described above, if appropriate.

Applications Available: May 28, 2002.

Deadline For Receipt of Applications: The Department's Application Control Center must *receive* the application by July 5, 2002 (by 4:30 p.m., Eastern Standard Time, if hand-delivered).

Deadline for Intergovernmental Review: September 3, 2002.

Estimated Available Funds: $15,000,000 (for FY 2002).

Estimated Range of Awards: $600,000–$1,400,000 per year.

Estimated Average Size of Awards: $1,000,000 per year (based on 15 awards).

Estimated Number of Awards: 10–25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 2 years.

Applicable Regulations: The following provisions of the Education Department General Administrative Regulations (EDGAR) apply to these Early Childhood Educator Professional Development program grants: 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Matching and Use of Funds Requirements:

Cost-sharing: Each partnership carrying out a project through an Early Childhood Educator Professional Development Program grant under this program must provide a cost share of (1) at least 50 percent of the total cost of the project for the entire grant period; and (2) at least 20 percent of the project cost for each year. The project may provide this cost share from any source other than funds under this program, including other Federal sources. The partnership may provide the project cost share through contributions of cash or in-kind, fairly evaluated, including plant, equipment, and services.

Indirect Costs: For purposes of indirect cost charges, the Secretary considers all Early Childhood Educator Professional Development Program grants to be "educational training grants" within the meaning of 34 CFR 75.562(a). Therefore, consistent with 34 CFR 75.562, except for costs incurred by fiscal agents that are State agencies or agencies of local governments (such as local educational agencies), a recipient's indirect cost rate is limited to the maximum of eight percent or the amount permitted by its negotiated indirect cost rate agreement, whichever is less.

Pre-award Costs: The Department's regulations authorize grant recipients to incur allowable pre-award costs up to 90 calendar days before the grant award (34 CFR 75.263 and 74.25(e)(1)). Pre-award costs, in this case, may include the necessary and reasonable costs of a needs assessment that the statute requires applicants to conduct, before submitting their applications, to determine the most critical professional development needs of the early childhood educators to be served by the project and in the broader community. Applicants incur any pre-award costs at their own risk. That is, the Secretary is under no obligation to reimburse these costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover these costs.

Background

These Early Childhood Educator Professional Development Program grants will provide a small but significant base of high-quality, intensive, replicable, professional development programs for early childhood educators. These programs will be based upon the best available research on early childhood pedagogy and on child development and learning, including early language and literacy development. The grants are particularly important because high-quality, intensive, research-based professional development is critical for implementing effective early childhood programs that enhance the school readiness of young children.

These grants will fund projects that carry out activities to improve the knowledge and skills of early childhood educators working in early childhood programs that are located in high-need communities and serve concentrations of children from low-income families. The specific activities for which recipients may use grant funds are identified in the application package.

The Secretary will expect funded projects to use rigorous methodologies to measure progress toward attainment of project objectives and of the achievement indicators in this notice under *Achievement Indicators*. The statute requires applicants to report annually on their progress toward attaining these achievement indicators.

Definitions

The following terms used in the absolute priority, the competitive preference, and the selection criteria for this grant competition have specific statutory meanings that are included in the application package: "early childhood educator," "high-need community," "low-income family," "poverty line," "professional development," and "scientifically based research." The Secretary strongly encourages applicants to review the statutory definitions of these terms before preparing their grant applications.

Applications

Early Childhood Educator Professional Development Program grants for FY 2002 will be awarded through a competitive process. The statute requires each applicant to submit an application that contains specific information and assurances that are described in the application package. The application narrative (addressing the absolute priority, the competitive preference, the EDGAR selection criteria, and other information identified in the application package) is limited to 30 double-spaced, typed pages. In addition, the budget narrative is limited to 5 double-spaced, typed pages. Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed priorities and other program requirements that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities, achievement indicators, and application requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forgo public comment with respect to the rules in this grant competition in order to ensure timely awards. The rules in this notice will apply only to the FY 2002 grant competition.

Achievement Indicators

The Secretary announces the following achievement indicators for these grants as required by section 2151(e)(6) of the ESEA:

Indicator 1

Increasing numbers of hours of high quality professional development will be offered. High-quality professional development must be ongoing, intensive, classroom-focused, and based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children.

Indicator 2

Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and increasing numbers of hours, in high-quality professional development.

Indicator 3

Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children.

Indicator 4

Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote language and cognitive development.

Indicator 5

Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language and literacy competencies.

Priorities

Absolute Priority

Under 35 CFR 75.105(c)(3), the Secretary gives an absolute preference to any eligible applicant that proposes a project to provide professional development services that will improve the knowledge and skills of early childhood educators who are working in early childhood programs that (1) are located in high-need communities; and (2) serve concentrations of children from low-income families.

The statute requires every applicant to describe in its application the high-need community to be served by the project. Applicants should include relevant demographic and socio-economic information to support this description. To meet this priority, *all* early childhood programs served by the early childhood educators receiving services under this grant must be located in a "high-need community." For the purpose of this priority, the Secretary considers an early childhood program to serve a "concentration" of children from low-income families if the number of children in the program from low-income families is over 50 percent of the number of children served by the total program.

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applicants that meet this absolute priority.

Note: The following terms used in this absolute priority have statutory definitions that are included in the application package: "early childhood educator," "high-need community," "low-income family," and "professional development."

Competitive Preference

Under 34 CFR 75.105(c)(2), the Secretary establishes one competitive preference as follows:

The Secretary gives a competitive preference to any applicant that proposes to provide research-based professional development to early childhood educators to improve their knowledge and skills in working effectively with preschool-age children who have been identified as having a learning disability or whose pre-literacy skills put them at high risk of later being identified as having a learning disability.

An application that meets this competitive preference would receive *10 points* in the competition. These points are in addition to any points the applicant earns under the selection criteria.

Note: The following terms used in this competitive preference have statutory definitions that are included in the application package: "early childhood educator," and "professional development."

Selection Criteria

The Secretary will use selection criteria from EDGAR in 34 CFR 75.210 to evaluate applications under this competition. Those selection criteria are identified in the application package.

For Applications Contact

Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827 FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.htm.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.349A.

The public also may obtain a copy of the application package on the Department's Web site at the following address: *www.ed.gov/GrantApps/#84.349A.*

For Further Information Contact: Virginia Berg, U.S. Department of Education, Compensatory Education Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–0926, or via Internet: *Virginia.Berg@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at that 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. 6651(e).

Dated: May 22, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–13403 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Career Resource Network State Grants

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed extension of project period and waiver, and reopening of competition for American Samoa.

SUMMARY: We propose to waive the requirement in 34 CFR 75.261(c)(2) as it applies to projects funded under the Career Resource Network State GrantsProgram (CRN) in fiscal year (FY) 2000. We propose this waiver in order to be able to extend the project periods for 58 current grants awarded under the FY 2000 CRN competition.

We also are proposing to reopen the FY 2000 competition for the limited purpose of allowing American Samoa to submit an application for funding under the CRN.

We are requesting public comments on the proposed extension, waiver, and the limited reopening of the FY 2000 competition.

DATES: We must receive your comments on or before June 28, 2002.

ADDRESSES: Address all comments about this proposed extension and waiver to Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4515, Mary E. Switzer Building, Washington, DC 20202–7242. If you prefer to send your comments through the Internet, use the following address: *sharon.jones@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones. Telephone (202) 205–9870.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this proposed extension and waiver in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed extension and waiver. We are particularly interested in receiving comments on the potential impact the extension and waiver may have on the CRN.

Additionally, we invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed extension and waiver. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the CRN.

During and after the comment period, you may inspect all public comments about this proposed extension and waiver in room 4515, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed extension and waiver. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

On May 12, 2000 (65 FR 30798), we issued a notice inviting applications for new awards under the CRN for FY 2000. Among other things, the notice (a) explained that CRN grants are intended to provide support for the implementation of Statewide, systemic strategies for providing young people and adults with the critical career information resources and the skills they need to make effective educational and career decisions throughout their lives, (b) created a two-year project period, (c) established the deadline for the receipt of applications, and (d) clearly identified the eligible applicants, which include any of the 50 States, the Virgin Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

In the May 12th notice we indicated that the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are not eligible for funding under the CRN after FY 2001 and, therefore, would not be eligible to receive funding under the CRN beyond FY 2001. However, following publication of the notice, Congress enacted H.R. 2436, the Guam Omnibus Opportunities Act, in which it extended the eligibility of these three entities beyond 2001, and until such time as they have fully completed the negotiations of their compacts of free association. Accordingly, since these three entities have not yet completed the negotiations process, they would continue to be eligible for funding under the CRN program in FY 2002, and perhaps beyond.

As indicated in the May 12th notice, we expected to receive applications from each of the 59 eligible applicants. With the exception of American Samoa, every eligible State and outlying area applied for and received funding under the FY 2000 competition. American Samoa missed the deadline, but has indicated that it is interested in submitting an application and receiving funding in FY 2002. Based on the statute as written and the important services to be provided under the authority of section 118 of the Perkins Act, we believe that Congress intended for us to provide assistance under the CRN program to all eligible entities. We are, therefore, reopening the FY 2000 competition in order that American Samoa may apply for funding under the CRN.

If we held a new competition for FY 2002 and every current grantee, as well as American Samoa, applied for and received funding, all eligible applicants would be receiving support under the CRN in FY 2002. We believe, therefore, that in FY 2002 it is now preferable and in the best interest of the CRN for us to extend currently funded projects, allow American Samoa to apply for a grant, and review requests for continuation awards from the 58 current FY 2000 grantees, rather than hold a new competition in FY 2002. We believe that holding a new competition would create an unnecessary burden for current grantees since the 58 current grantees would have to undertake the effort and cost of submitting new applications for funding in FY 2002. A new competition is likely merely to cause existing grantees to expend valuable time and resources applying for program funding under the existing authority, while requesting continuation awards would be a more appropriate and effective means for current CRNs already under way to continue their projects under this program. In addition, pursuing a continuation grant process would also result in a more efficient use of Federal funds.

Moreover, the Perkins Act, which includes authorization for the CRN, expires at the end of FY 2003. With the uncertainties presented by the absence of authorizing legislation for the CRN beyond 2003, it does not appear to be advisable to hold a competition in FY 2003 for projects that would operate in FY 2004. We are generally reluctant to announce a competition whereby eligible entities would be expected to proceed through the application preparation and submission process while lacking critical information about the future of the program, and do not think that it would be in the public interest to do so in this case.

Since we propose a limited purpose reopening of the FY 2000 competition so as to allow American Samoa to apply for CRN funding, the proposal of continuation grants in lieu of a FY 2002 competition will not prevent the support of this last, and as yet unfunded, eligible entity under the CRN.

EDGAR Requirement

In order to provide for continuation awards, we must waive the requirement in 34 CFR 75.261(c)(2), which establishes the conditions for extending a project period, including prohibiting the extension of a program's project period if it involves the obligation of additional Federal funds.

This proposed extension and waiver would allow us to make continuation grants at least in FY 2002 and FY 2003 and perhaps beyond FY 2003 if Congress continues to appropriate funds for the CRN program under the current statutory authority. However, in accordance with 34 CFR 75.250, we do not hereby propose to make continuation grants beyond FY 2005.

A waiver as proposed would mean that: (1) Current CRN grants may be continued at least through FY 2004 (depending on the availability of appropriations for CRN in subsequent years under the current statutory authority), instead of ending in FY 2002, and (2) we would not announce a new competition or make new awards in FY 2002, as previously planned.

Continuation of the Current Grantees

With this proposed extension and waiver of § 75.261(c)(2) of EDGAR, we propose to extend the project periods of the 58 States and outlying areas that received grants under the FY 2000 competition for two years and for additional years for which Congress appropriates funds under the current statutory authority.

Decisions regarding annual continuation awards will be based on the program narratives, budgets and budget narratives, and Grant Performance Reports submitted by grantees, and on the regulations at 34 CFR 75.253. Consistent with 34 CFR 75.253, we would award continuation grants if we determined, among other things, and based on information provided by each grantee, that each grantee was making substantial progress performing grant activities. Under this proposed extension and waiver, (1) the project period for grantees could be extended to July 19, 2004, and (2) additional continuation awards could be made for additional year or years for which Congress appropriates funds under existing statutory authority.

We do not interpret the waiver as exempting current grantees from the account closing provisions of Pub. L. 101–510, or as extending the availability of FY 2001 funds awarded to the grantees. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed extension and waiver and the activities required to support additional years of funding would not have a significant economic impact on a substantial number of small entities.

Because this proposed extension and waiver would affect only States and State agencies, the notice would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Instructions for Requesting a Continuation Award

Each grantee wishing to receive an annual continuation grant shall submit a program narrative that describes the activities it intends to carry out during each of the two years (FYs 2002 and 2003), and during any additional years for which Congress appropriates funds under the current statutory authority, of a continuation award. The activities must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application. A grantee shall also submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.253(c)(2)). States and outlying areas should request continuation awards at least three weeks before their current grants expire.

Amount of New Awards Under Continuation Grant

The actual amount of each continuation award depends on factors such as (1) the grantee's written statement describing how the funds made available under the continuation award will be used, (2) a cost analysis of the grantee's budget by the Department, and (3) whether any unobligated funds remaining from previous grant awards are needed to complete activities that are planned for completion in the prior budget period. (34 CFR 75.232 and 75.253(c)(2)(ii) and (3)).

The CRN has received an increase in its appropriation from FY 2001, which could result in States and outlying areas receiving a percentage increase in their awards. As a result of the increase in the appropriation, it is expected that States and outlying areas will receive a 4.39 percent increase in the amount of their current grants.

Although grantees must submit program narratives and budgets describing the activities they plan to carry out during each period of continuation, which could include some increase in funding, we strongly encourage all grantees to consider the 4.39 percent increase when deciding the amount of funds to request to support their continuation of projects.

American Samoa

American Samoa missed the deadline for the FY 2000 competition, but is interested in receiving funding in FY 2002. In order to provide an opportunity for American Samoa to submit an application under the CRN, we propose to (1) reopen the competition and application notice published on May 12, 2000 (65 FR 30798) for this limited purpose, and (2) establish a new deadline date by which American Samoa would be required to submit its application. To be considered for funding, American Samoa must submit an application that meets the requirements established by the statute and the May 12, 2000 notice and is determined by the Department to have merit based on the criteria described in the May 12th notice. However, American Samoa is not required to follow the May 12th notice with regard to the DEADLINE FOR TRANSMITTAL OF APPLICATIONS, DEADLINE FOR INTERGOVERNMENTAL REVIEW, ESTIMATED AVERAGE SIZE OF AWARDS, and PROJECT PERIOD. Instead, *American Samoa* should note the following:

Deadline for Transmittal of Application: July 31, 2002.

Deadline for Intergovernmental Review: September 30, 2002.

Estimated Range of Award: As with other awards under the FY 2000 competition, the size of American Samoa's award will depend on factors such as the scope and quality of the application and will be determined during pre-award clarification discussions with us. However, we strongly encourage American Samoa to consider the $85,732 estimated grant amount determined for American Samoa and published in the May 12th notice and the 4.39 percent increase in this notice, in determining the amount it requests for FY 2002.

Project Period: American Samoa's project period would be for FYs 2003 and 2004, and possibly for additional years for which Congress appropriates funds under the current statutory authority. Decisions regarding any continuation awards for American Samoa would be made in the same manner as decisions would be made for other CRN grantees under this notice.

Note: The Department is not bound by any estimates in this notice.

If You Have Questions About The Percentage Increase Your State Or

Outlying Area May Receive Or About The Information You Must Submit In Order To Request A Continuation Award, Or New Award In The Case Of American Samoa, Contact: Burt Carlson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4331, Mary E. Switzer Building, Washington, DC 20202–7241. Telephone (202) 401–6225.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.346 Career Resource Network State Grants)

Dated: May 22, 2002.

Carol D'Amico,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 02–13311 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Quarterly Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of quarterly meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming quarterly meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at (202) 219–2253 by June 14. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: June 28, 2002.

Time: 9 a.m. to 3:30 p.m.

Location: Room 200, Graduate School of Education, the University of Pennsylvania, 3700 Walnut St., Philadelphia, PA, 19104–6216.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, (Acting) Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2353; fax: (202) 219–1528; e-mail: *Mary.Grace.Lucier@ed.gov*, or *nerppb@ed.gov* The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Board will conduct outstanding business in and hear reports from the Assistant Secretary for OERI. It will receive a briefing on the work of the Consortium for Policy Research in Education (CPRE) and on state and local initiatives in education reform. A final agenda will be available from the Board office on June 14, and will be posted on the Board's Web site, *http:www.ed.gov/offices/OERI/NERPPB/*. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: May 22, 2002.

Rafael Valdivieso,

Executive Director.

[FR Doc. 02–13377 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Management, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), 5 United States Code (U.S.C.) 552a, the Department of Education (Department) publishes this notice of a new system of records entitled "Student Loan Repayment Benefits Case Files." The Department is implementing the Federal Government authority set forth at 5 U.S.C. 5379 to establish a program providing for repayment of federally made or insured student loans when necessary to attract or retain highly qualified individuals for employment. Subject to the requirements of law and regulation, the Department can make payments to Federal student loan holders (lenders) on behalf of an employee, thus reducing an employee's Federal student loan debt.

DATES: The Department seeks comments on this new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for this system of records included in this notice on or before June 28, 2002.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 23, 2002. This new system of records will become effective at the later date of: (1) The expiration of the 40-day period for OMB review on July 2, 2002 or (2) June 28, 2002, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments on the proposed routine uses of this system, and requests for information about this system, to Jeffrey Frank, Human Resources Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Federal Office Building 6, room 2E338, Washington, DC 20202–4573. If you prefer to send your comments through the Internet, use the following address: *Comments@ed.gov*.

You must include the term "Student Loan Repayment" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 2E300, Federal Office Building 6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 5 p.m.,

Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank. Telephone: (202) 401-0539. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of new or revised systems of records managed by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that is maintained in a system of records from which information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record," and the system, whether manual or computer-driven, is called a "system of records." The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to OMB whenever the agency publishes a new or "altered" system of records.

The Student Loan Repayment authority is one of several flexibilities made available to agencies when trying to attract individuals to the Federal service, or retain highly qualified personnel. It permits agencies to repay federally insured student loans when necessary to attract or retain highly qualified personnel. This system will document requests for repayment benefits, employees who are approved to receive benefits, and the benefit amounts and service agreements specific to each individual case. Information contained in this system will be used by the Department to compile annual reports for the Office of Personnel Management (OPM) on the Department's use of the student loan repayment authority.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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 CFR is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: May 23, 2002.

William J. Leidinger,

Assistant Secretary for Management.

For the reasons discussed in the preamble, the Assistant Secretary for Management of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

18–05–15

SYSTEM NAME:

Student Loan Repayment Benefits Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Human Resources Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2E300, FOB–6, Washington, DC 20202–4573.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who are being considered for student loan repayment benefits under the Department of Education's Personnel Manual Instruction 537–1 entitled "Repayment of Federal Student Loans," as well as individuals who have been approved for and are receiving such benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by selecting officials or supervisors to offer student loan repayment benefits to recruit or retain highly qualified employees. This system contains: (1) Request letters from selecting official or supervisor with supporting documentation; (2) employee's (or potential employee's) names, home and work addresses, social security numbers, student loan account numbers, loan balances, repayment schedule, repayment history, and repayment status; and (3) the loan holder's name, address and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Floyd D. Spence National Defense Authorization Act of Fiscal Year 2001 (Public Law 106–398); 5 U.S.C. 5379, as amended, and regulations to be codified at 5 CFR part 537.

PURPOSE(S):

These records are maintained to determine eligibility and benefits and to process requests to offer student loan repayment benefits to employees under authority set forth at 5 U.S.C. 5379. The records are used by the Department to prepare its reports for OPM, as is required by 5 CFR 537.110. The Department will also refer information from this system to loan holders for collection activities in the case of any student loan default or delinquency that becomes known to the Department in the course of determining an employee's (or potential employee's) eligibility for student loan repayment benefits because of the Department's mission responsibilities for Federal student loan programs and its role in promoting their responsible use by student borrowers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Personnel Management Disclosure.* The Department may disclose as a routine use to OPM any records or information in this system of records

that OPM requests or requires pursuant to OPM's oversight and regulatory functions.

(2) *Salary Offset or Debt Collection Disclosures.* The Department may disclose records in this system to other Federal agencies, hearing or court officials, and present employers of an employee in order for the Department to obtain repayment, if an employee fails to complete the period of employment under a service agreement and fails to reimburse the Department the amount of any student loan repayment benefits the employee received from the Department.

(3) *Disclosure to other Federal agencies.* The Department may disclose records in this system to its payroll processing provider in order to calculate tax withholdings and disburse payments of student loan repayment benefits to loan holders on behalf of employees approved to receive this benefit.

(4) *Disclosure to Student Lending Institutions or Loan Holders.* The Department may disclose to student lending institutions or loan holders records from this system as a routine use disclosure in order to obtain information (such as the borrower's account number, original and current loan balance, repayment schedule, repayment history, and current repayment status) to allow the Department to determine an employee's or potential employee's initial and continuing eligibility for this program, to facilitate accurate payments to student loan holders on behalf of eligible employees, and to ensure the Department discontinues making student loan repayments to individuals who do not remain eligible for them during the period of the service agreement. The Department also may disclose to loan holders records from this system of records as a routine use disclosure in the event it becomes known to the Department during the course of its program eligibility determinations that an individual is past due, delinquent, or in default of a federally insured student loan so that the Department can facilitate the loan holder's collection of any past due, delinquent or defaulted student loans, because of the Department's mission responsibilities for Federal student loan programs and its role in promoting their responsible use by student borrowers.

(5) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(6) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(7) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the Department requests representation for or has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(8) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(9) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: a complaint, a grievance, or a discipline or competence determination proceeding. The disclosure may only be made during the course of the proceeding.

(10) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to DOJ and OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(11) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the program covered by this system.

(12) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an

individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(13) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and may be retained in electronic form accessible with office automation software on a Department personal computer in offices of the Human Resources Group.

RETRIEVABILITY:

Records are retrieved by the name of the individual. SAFEGUARDS:

Hard copy records are stored in a locked metal filing cabinet, with access limited to personnel whose duties require access. Electronic records are stored on computer diskette that is secured in a locked metal filing cabinet, with access limited to personnel whose duties require access. Personal computers used to view the electronic media are password protected; passwords are changed periodically throughout the year. All physical access to the building where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for an employee or visitor badge.

RETENTION AND DISPOSAL:

Service agreements between the Department and an employee and related supporting documents resulting in approval for program benefits will be retained for a period of three years after the employee satisfies the terms and conditions of the agreement. All other documents will be retained in accordance with the National Archives and Records Administration General Records Schedules (GRS) 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Group, U.S. Department of Education, 400 Maryland Avenue, SW, room 2E300, FOB–6, Washington, DC 20202–4573.

NOTIFICATION PROCEDURE:

If you wish to inquire whether a record exists regarding you in this system, you should contact the system manager at the address listed above. You must provide your name, name of organization, and subject matter. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to request access to your records, you should contact the system manager at the address listed above. You must comply with the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to request an amendment to your records, you should contact the system manager at the address listed above. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual to whom the information applies, lending institutions holding student loans for the individual to whom the information applies, officials of the Department, and official Department documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–13312 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Meeting

May 8, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 15, 2002 (30 Minutes Following Regular Commission Meeting).

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. EL02–75–000, *Duke Energy Trading and Marketing, L.L.C.* v. *Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Services, Inc.*

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13473 Filed 5–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

May 23, 2002.

The following notice is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 30, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, * Note: items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400, For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the Agenda;

however, all public documents may be examined in the reference and information center.

793RD—Meeting May 30, 2002, Regular Meeting 10:00 a.m.

Administrative Agenda

A–1.
DOCKET# AD02–1, 000, Agency Administrative Matters

A–2.
DOCKET# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
DOCKET# AD02–18, 000, Northeast RTO Developments
OTHER#S RT01–99, 000, Regional Transmission Organizations
RT01–86, 000, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, United Illuminating Company and The Vermont Electric Power Company
RT01–95, 000, New York Independent System Operator Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation

Markets, Tariffs and Rates—Electric

E–1.
DOCKET# ER02–456, 000, Electric Generation LLC

E–2.
DOCKET# ER02–352, 002, Southern Company Services, Inc.
OTHER#S ER02–352, 000, Southern Company Services, Inc.
ER02–352, 001, Southern Company Services, Inc.

E–3.
DOCKET# ER02–1451, 000, Ameren Energy Marketing Company

E–4.
DOCKET# ER02–1472, 000, Entergy Gulf States, Inc.

E–5.
DOCKET# ER02–1450, 000, IRH Management Committee

E–6.
DOCKET# ER02–1326, 000, PJM Interconnection, L.L.C.

E–7.
DOCKET# ER02–1618, 000, New England Power Pool

E–8.
DOCKET# ER02–1494, 000, Commonwealth Edison Company

E–9.
DOCKET# ER01–948, 000, Exelon Generation Company, L.L.C.

E–10.
DOCKET# ER01–890, 003, Boston Edison Company
OTHER#S ER02–1465, 000, Boston Edison Company

E–11.
DOCKET# ER02–1478, 000, Duke Energy Oakland, LLC
OTHER#S ER02–10, 000, Duke Energy Oakland, LLC
ER02–240, 000, Duke Energy Oakland, LLC
ER02–240, 001, Duke Energy Oakland, LLC

E–12.
DOCKET# ER02–1420, 000, Midwest Independent Transmission System Operator, Inc.

E–13.
DOCKET# EL00–95, 022, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
OTHER#S EL00–95, 023, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–95, 024, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–95, 025, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–98 021 Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 022, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 023, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 024, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

E–14.
DOCKET# ER02–108, 003, Midwest Independent Transmission System Operator, Inc.

E–15.
OMITTED

E–16.
DOCKET# ER01–2214, 001, Entergy Services, Inc.

E–17.
DOCKET# EL00–62 042 ISO New England Inc.

E–18.
OMITTED

E–19.
OMITTED

E–20.
DOCKET# TX02–2, 000, Kiowa Power Partners, LLC
OTHER#S ER02–1654, 000, Oncor Electric Delivery Company

E–21.
DOCKET# ER02–488, 001, Midwest Independent Transmission System Operator, Inc.

E–22.
DOCKET# ER98–1438, 011, Midwest Independent Transmission System Operator, Inc.
OTHER#S EC98–24, 007 Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company and Kentucky Utilities Company
ER01–479, 003, Midwest Independent Transmission System Operator, Inc.

E–23.
DOCKET# EL02–2, 001, PPL EnergyPlus, LLC

E–24.
OMITTED

E–25.
DOCKET# ER02–651, 001, California Independent System Operator Corporation

E–26.
DOCKET# ER02–653, 001, PacifiCorp

E–27.
DOCKET# ER02–913, 001, American Electric Power Company

E–28.
DOCKET# ER99–2779, 001, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

E–29.
DOCKET# EL00–80, 001, Indeck Maine Energy, L.L.C. v. ISO New England, Inc.

E–30.
OMITTED

E–31.
DOCKET# ER02–112, 001, Mid-Continent Area Power Pool

E–32.
DOCKET# ER02–708, 001, Central Illinois Light Company
OTHER#S ER02–708, 002, Central Illinois Light Company

E–33.
DOCKET# ES02–25, 001, UtiliCorp United Inc.

E–34.
DOCKET# EL01–51, 000, Detroit Edison Company
OTHER#S EL01–51, 001, Detroit Edison Company
EL01–51, 002, Detroit Edison Company
ER01–1649, 000, Detroit Edison Company
ER01–1649, 001, Detroit Edison Company
ER01–1649, 002, Detroit Edison Company

E–35.
OMITTED

E–36.
DOCKET# EL02–25, 000, Intermountain Rural Electric Association v. Public Service Company of Colorado
OTHER#S EL02–76, 000, Holy Cross Energy and Yampa Valley Electric Association v. Public Service Company of Colorado

E–37.
DOCKET# EL02–74, 000, Colton Power L.P. and City of Colton, California v. Southern California Edison Company

E–38.
OMITTED

E–39.
OMITTED

E–40.
DOCKET# ER01–1136, 000, Ameren Services Company

OTHER#S ER01–1136, 001, Ameren Services Company
ER01–1136, 002, Ameren Services Company
ER01–1136, 003, Ameren Services Company
ER01–1136, 004, Ameren Services Company

E–41.
DOCKET# EL02–59, 000, KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.

E–42.
DOCKET# EL02–69, 000, UtiliCorp United Inc.

E–43.
DOCKET# EL02–71, 000, State of California, *ex rel.* Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corporation, Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Company, All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and the California Independent System Operator Corporation

E–44.
DOCKET# ER01–3155, 002, New York Independent System Operator, Inc.
OTHER#S EL01–45, 002, Consolidated Edison Company of New York, Inc.
EL01–45, 003, Consolidated Edison Company of New York, Inc.
EL01–45, 005, Consolidated Edison Company of New York, Inc.
EL01–45, 009, Consolidated Edison Company of New York, Inc.
EL01–45, 010, Consolidated Edison Company of New York, Inc.
ER01–1385, 003, Consolidated Edison Company of New York, Inc.
ER01–1385, 004, Consolidated Edison Company of New York, Inc.
ER01–1385, 006, Consolidated Edison Company of New York, Inc.
ER01–1385, 010, Consolidated Edison Company of New York, Inc.
ER01–1385, 011, Consolidated Edison Company of New York, Inc.

E–45.
DOCKET# EL00–35, 000, Platte-Clay Electric Cooperative Inc.

E–46.
DOCKET# EL98–66, 000, East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

E–47.
DOCKET# EL02–86, 000, Exelon Generation Company, L.L.C. v. Southwest Power Pool, Inc.

Miscellaneous Agenda

M–1.
RESERVED

Markets, Tariffs and Rates—Gas

G–1.
DOCKET# RP02–332, 000, Petal Gas Storage, L.L.C.

G–2.
DOCKET# RP02–329, 000, Stingray Pipeline Company, L.L.C.

G–3.
DOCKET# RP99–518, 027, PG&E Gas Transmission, Northwest Corporation

G–4.
DOCKET# RP00–337, 000, Kern River Gas Transmission Company
OTHER#S RP00–337, 001, Kern River Gas Transmission Company
RP00–337, 002, Kern River Gas Transmission Company
RP01–93, 000, Kern River Gas Transmission Company
RP01–93, 001, Kern River Gas Transmission Company
RP01–93, 002, Kern River Gas Transmission Company

G–5.
DOCKET# RP02–232, 000, Great Lakes Gas Transmission Limited Partnership

G–6.
DOCKET# RP02–248, 000, Kern River Gas Transmission Company

G–7.
DOCKET# RP96–312, 070, Tennessee Gas Pipeline Company

G–8.
OMITTED

G–9.
DOCKET# RP02–335, 000, ANR Pipeline Company

G–10.
DOCKET# RP02–334, 000, Northern Natural Gas Company

G–11.
DOCKET# RP02–238, 000, Natural Gas Pipeline Company of America

G–12.
DOCKET# IS02–216, 000, Express Pipeline LLC

G–13.
DOCKET# RP00–410, 000, Mississippi River Transmission Corporation
OTHER#S RP00–410, 001, Mississippi River Transmission Corporation
RP01–8, 000, Mississippi River Transmission Corporation
RP01–8, 001, Mississippi River Transmission Corporation

G–14.
DOCKET# RP02–318, 000, Questar Southern Trails Pipeline Company
OTHER#S RP02–318, 001, Questar Southern Trails Pipeline Company

G–15.
DOCKET# RP00–322, 000, Garden Banks Gas Pipeline, L.L.C.
OTHER#S RP00–577, 000, Garden Banks Gas Pipeline, L.L.C.

G–16.
DOCKET# RP00–338, 000, Mojave Pipeline Company
OTHER#S RP00–621, 000, Mojave Pipeline Company

G–17.
DOCKET# RP00–465, 000, Trunkline LNG Company
OTHER#S RP00–616, 000, Trunkline LNG Company

G–18.
DOCKET# RP00–480, 000, Alliance Pipeline L.P.
OTHER#S RP00–445, 000, Alliance Pipeline L.P.
RP01–9, 000, Alliance Pipeline L.P.

G–19.
DOCKET# RP00–336, 002, El Paso Natural Gas Company
OTHER#S RP00–139, 000, KN Marketing, L.P. v. El Paso Natural Gas Company
RP01–484, 000, Aera Energy, LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company LP, Conoco Inc., Coral Energy Resources LP, ONEOK Energy Marketing & Trading Company, L.P., Pacific Gas and Electric Company, Panda Gila River L.P., the Public Utilities Commission of the State of California, Southern California Edison Company, Southern California Gas Company and Texaco Natural Gas Inc. v. El Paso Natural Gas Company
RP01–486, 000 Texas, New Mexico and Arizona Shippers: Apache Nitrogen Products, Inc., Arizona Electric Power Cooperative, Inc., Arizona Gas Division of Citizens Communications Company, BHP Copper, Inc., El Paso Electric Company, El Paso Municipal Customer Group, Phelps Dodge Corporation, Public Service Company of New Mexico, Salt River Project and Southern Union Gas Company v. El Paso Natural Gas Company

G–20.
DOCKET# RP99–301, 041, ANR Pipeline Company

G–21.
OMITTED

G–22.
DOCKET# RP96–312, 029, Tennessee Gas Pipeline Company

G–23.
DOCKET# RP02–151, 002, Gulf South Pipeline Company, L.P.
OTHER#S RP96–320, 054, Gulf South Pipeline Company, L.P.
RP02–151, 001, Gulf South Pipeline Company, L.P.

G–24.
OMITTED

G–25.
DOCKET# RM98–10, 011, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

G–26.
DOCKET# RP02–330, 000, ANR Pipeline Company

G–27.
DOCKET# PR02–3, 000, Bay Gas Storage Company, Ltd.
OTHER#S PR02–3, 001, Bay Gas Storage Company, Ltd.

G–28.
DOCKET# RP02–333, 000, Northern Natural Gas Company

Energy Projects—Hydro

H–1.
DOCKET# UL97–11, 004, PacifiCorp

H–2.
DOCKET# DI97–8, 003, Domtar Maine Corporation

OTHER#S P–2618, 015, Domtar Maine Corporation
P–2660, 016, Domtar Maine Corporation
DI97–9, 003, Domtar Maine Corporation
H–3.
DOCKET# P–6032, 044, Niagara Mohawk Power Corporation and Fourth Branch Associates
H–4.
OMITTED
H–5.
DOCKET# P–2232, 411, Duke Energy Corporation

Energy Projects—Certificates

C–1.
DOCKET# CP02–76, 000, Eastern Shore Natural Gas Company
C–2.
DOCKET# CP01–4, 001, Maritimes & Northeast Pipeline, L.L.C.
OTHER#S CP01–5, 002, Algonquin Gas Transmission Company
C–3.
DOCKET# CP02–20, 000, Iroquois Gas Transmission System, L.P.
C–4.
DOCKET# CP02–6, 001, Colorado Interstate Gas Company
OTHER#S CP02–6, 000, Colorado Interstate Gas Company
C–5.
DOCKET# CP01–66, 001, Egan Hub Partners, L.P.
C–6.
DOCKET# CP02–188, 000, Copper Eagle Gas Storage, L.L.C.
C–7.
DOCKET# CP02–80, 000, Reliant Energy Gas Transmission Company
C–8.
DOCKET# CP02–74, 000, Reef International, L.L.C.
C–9.
DOCKET# CP02–81, 000, Natural Gas Pipeline Company of America
C–10.
DOCKET# CP01–260, 001, Columbia Gas Transmission Corporation

Magalie R. Salas,

Secretary.

[FR Doc. 02–13474 Filed 5–28–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Nonconformance Penalties for Heavy-Duty Engines and Heavy-duty Vehicles, Including Light-Duty Trucks; Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Nonconformance Penalties for Heavy-duty Engines and Heavy-duty Vehicles, Including Light-Duty Trucks, Reporting And Recordkeeping Requirements, OMB Control Number 2060–0132, expired 5/31/97, reinstatement. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1285.05 and OMB Control No. 2060–0132 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1285.05. For technical questions about the ICR contact Anthony Erb, tel.: (202) 564–9259; fax: (202) 565–2057; or e-mail: *erb.anthony @epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Reporting And Recordkeeping Requirements; OMB Control No. 2060–0132; EPA ICR No. 1285.05, expired 5/31/1997, reinstatement. This is a request for reinstatement with change of a previously approved collection for which approval has expired.

Abstract: Section 206(g) of the Act as amended in 1990 contains the nonconformance penalty (NCP) provisions. It requires tests of production engines and vehicles to determine the extent of their nonconformity. Nonconformance penalties allow a manufacturer to introduce into commerce heavy-duty engines or vehicles including light-duty trucks, which fail to conform with certain emission standards upon payment of a monetary penalty. A manufacturer that elects to pay a nonconformance penalty must perform a Production Compliance Audit (PCA). The collection activities of the nonconformance penalty program include periodic reports and other information (including the results of emission testing conducted during the PCA) which the manufacturer will create and submit to the Certification and Compliance Division (CCD), Office of Transportation and Air Quality(OTAQ), Office of Air and Radiation (OAR). CCD will use this information to ensure that manufacturers are complying with the regulations and that appropriate nonconformance penalties are being paid. Responses to this collection are voluntary based on the fact that participation in the nonconformance penalty program is an option that is available to manufacturers. Once a manufacturer opts to participate, specific regulatory requirements must be fulfilled in order to obtain a benefit under the NCP. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 01/29/02 (67 FR 4252); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: On-Highway engine and vehicle manufacturers.

Estimated Number of Respondents: 2.

Frequency of Response: 52.

Estimated Total Annual Hour Burden: 1178 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $18,200.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1285.05 and OMB Control No. 2060–0132 in any correspondence.

Dated: May 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–13345 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR Number 0138.07, OMB Control Number 2040–0088, expiring July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 2002.

FOR FURTHER INFORMATION: Contact Susan Auby at EPA by phone at (202) 566–1672, by email at *auby.susan@epa.gov,* or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0138.07.

SUPPLEMENTARY INFORMATION:

Title: Modification of Secondary Treatment Requirements for Discharges into Marine Waters (EPA ICR Number 0138.07; OMB Control Number 2040–0088) expiring July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The Clean Water Act (CWA) 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW); and (2) the State in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December 1982. A POTW seeking to obtain a 301(h) waiver, holding a current waiver, or reapplying for a waiver, provides application, monitoring, and toxic control program information. The State provides information on its determination whether the proposed conditions of the waiver ensure the protection of water quality, biological habitats, and beneficial uses of receiving waters, and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The State also provides information to certify that the discharge will meet all applicable State laws and that the State accepts all permit conditions.

EPA requires updated information on the discharge to: (1) Determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued; (2) determine whether the water quality, biological habitats, and beneficial uses of the receiving waters are protected; and (3) ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works. EPA needs information from the State to: (1) Allow the State's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions; and (2) ensure that all State laws are met and that the State accepts all permit conditions. This information is the means by which the State can non-concur with a section 301(h) approval decision made by the EPA Regional office. Responses to the collection of information are required to obtain or retain a benefit. Regulations implementing CWA section 301(h) are found at 40 CFR part 125, subpart G. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on January 3, 2002 (67 FR 71245); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 667 hours per response for POTWs and 86 hours per response for States. The average annual reporting burden varies depending on the size of the respondent and the category of the information collection. There are 6 categories of information collection in this ICR renewal. The frequency of response varies from 1 time to once every 5 years, to case-by-case, as the individual permit specifies, depending on the category. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information, and transmit or otherwise disclose the information.

Respondents/Affected Entities: Municipalities with publicly owned treatment works (POTW) that currently have section 301(h) waivers from secondary treatment, who have applied for a renewal of a section 301(h) waiver, or have a pending section 301(h) waiver, and the States within which these municipalities are located.

Estimated Number of Respondents: 51.

Frequency of Response: Varies from 1 time to once every 5 years, to case-by-case, depending on the category of information collection.

Estimated Total Annual Hour Burden: 65,057 hours.

Estimated Total Annualized Cost Burden (capital/startup and O&M costs only): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0138.07 and OMB Control No. 2040–0088 in any correspondence.

Ms. Susan Auby, U.S. Environmental Protection Agency, Office of Information Collection, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503

Dated: May 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–13346 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Evaluations of Innovative Pilot Project Innovations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB): Evaluations of Innovative Pilot Project Innovations, EPA ICR 1993.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1993.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1993.01. For technical questions about the ICR contact Eric Marsh in EPA's Office of Environmental Policy Innovation at (202) 260–2782.

SUPPLEMENTARY INFORMATION:

Title: Evaluations of Innovative Pilot Project Innovations, EPA ICR No. 1993.01. This is a new collection.

Abstract: In 1995 the U.S. Environmental Protection Agency began to solicit innovative pilot projects in response to a challenge to transform the environmental regulatory system to better meet the needs of a rapidly changing society while maintaining the nation's commitment to protect human health and safeguard the natural environment. Through site-specific agreements with project sponsors, EPA is gathering data and project experience that will help the Agency redesign current approaches to public health and environmental protection. Through these projects, sponsors—private facilities, multiple facilities, industry sectors, Federal facilities, communities, universities, Tribes and States—can implement innovative strategies that produce superior environmental performance, provide flexibility, cost savings, paperwork reduction or other benefits to sponsors, and promote greater accountability to stakeholders.

In September 2002, EPA would like to begin in-depth evaluations of different innovative pilot project innovations in order to determine which, if any, innovations have the potential for wider application. These innovations center around regulations, permitting, environmental information management, compliance and enforcement, environmental stewardship, and stakeholder involvement. From the identified innovations, EPA plans to evaluate a select set the Agency believes has potential for broader application. As more innovative pilot projects move into implementation and more innovations emerge, EPA plans to continue this same process of selecting a set of new innovations and then evaluating them.

The evaluation of innovative pilot project innovations will serve a variety of purposes. First, by learning which innovations are working and which are not, EPA management can better discern which innovations can be applied on a wider-scale, which need further testing and refining before wide-scale adoption, and which should eventually be retired. Second, the evaluations will provide information to state, tribal, and local agencies attempting their own unique efforts to transform their regulatory systems. Third, they will inform industry representatives and the public, allowing them to play an active, creative role in finding solutions to environmental problems. Finally, the evaluations will help set the course for future EPA innovative environmental programs. As a start, EPA intends to begin evaluating permit innovations from projects that have been in implementation for at least a year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 22, 2000, (65 FR 70345); one comment was received.

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

Respondents/Affected Entities: State, Local and Tribal Government, Individuals, Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 1,800.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1993.01 in any correspondence.

Dated: May 22, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–13347 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Final Authorization for Hazardous Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Final Authorization for Hazardous Waste Management, OMB Control No. 2050–0041, expiring May 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0969.06 and OMB Control No. 2050–0041, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-Mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0969.06. For technical questions about the ICR contact Wayne Roepe by phone at (703) 308–8630, or by e-Mail at *roepe.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Final Authorization for Hazardous Waste Management, OMB Control Number 2050–0041, EPA ICR Number 0969.06, expiration date May 31, 2002. This is a request for extension of a currently approved collection.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise it's previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of RCRA. A State with an approved program may voluntarily transfer program responsibilities back to EPA by notifying EPA of the proposed transfer, as required by 40 CFR 271.23. Either EPA or the approved State may initiate a revision to the authorized program. State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall inform EPA of any proposed modification to it's basic statutory or regulatory authority, it's forms, procedures, or priorities, in accordance with § 271.21. If a State is proposing to transfer all or any part of any program from the approved agency to any other agency, it must notify EPA in accordance with § 271.21 and submit revised organizational charts as required under § 271.6. Further, whenever EPA has reason to believe that circumstances have changed with respect to a State program, EPA may request, and the State will provide, a supplemental Attorney General's statement, program description or other such documents or information ass are necessary. These paperwork requirements are mandatory under section 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets statutory and regulatory requirements for authorization.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on put December 28, 2001 (66 FR 67245). One comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 399 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Federal Government; State, Local, or Tribal Government.

Estimated Number of Respondents: 50.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 19,968 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the address listed above. Please refer to EPA ICR No. 0969.06 and OMB Control No. 2050–0041 in any correspondence.

Dated: May 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–13348 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Synthetic Organic Chemical Manufacturing Industry (SOCMI): Consolidation of Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Synthetic Organic Chemical Manufacturing Industry (SOCMI): Consolidation of Information Collection Requests (ICRs); OMB Control Number 2060–0443 expiring January 31, 2004.

The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1854.03 and OMB Control Number 2060–0443, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION: For a copy of the ICR, contact Susan Auby of EPA, by phone at: (202) 566–1672, by E-mail at: *auby.susan@epa.gov*, or download off the Internet at: *http://www.epa.gov/icr*, and refer to EPA ICR Number 1854.03. For technical questions about the ICR, contact: Marcia Mia of EPA, by phone at: (202) 564–7042, or by E-mail at: *mia.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Synthetic Organic Chemical Manufacturing Industry (SOCMI): Consolidation of Information Collection Requests (ICRs); EPA ICR Number 1854.03; OMB Control Number 2060–0443 expiring January 31, 2004. This is a revision to a previously approved collection.

Abstract: This ICR contains a consolidation of recordkeeping and reporting requirements that are mandatory for compliance with the applicable subparts listed below at 40 CFR parts 60, 61, 63 and 65. The consolidated Federal Air Rule (CAR) is an optional alternative compliance strategy for plant sites that must comply with the existing subparts in the Code of Federal Regulations (CFR). This ICR also consolidates major portions of 14 different New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology (MACT) pertaining to storage vessels, process vents, transfer racks and equipment leaks, as well as the general provisions in the three applicable parts (60, 61, and 63). The referencing subparts include: 40 CFR part 60, subpart Ka; 40 CFR part 60, subpart Kb; 40 CFR part 60, subpart VV; 40 CFR part 60, subpart DDD; 40 CFR part 60, subpart III; 40 CFR part 60, subpart NNN; 40 CFR part 60, subpart RRR; 40 CFR part 61, subpart BB; 40 CFR part 61, subpart Y; 40 CFR part 61, subpart V; 40 CFR part 63, subpart F; 40 CFR part 63, subpart G; 40 CFR part 63, subpart H; and 40 CFR part 63, subpart I.

Compliance with the CAR is a voluntary alternative; sources may continue to comply with existing applicable rules or may choose to comply with the consolidated rule. The CAR, therefore, does not constitute additional requirements, per se. Rather, the recordkeeping and reporting requirements in the CAR would be carried out in lieu of the existing requirements. This revised ICR creates a consolidated ICR, consisting of the CAR and its referencing subparts burden; it shows the sum of all of the burden hours for the CAR and its referencing subparts based upon the most recently approved collections for the ICRs. When an individual ICR is renewed, appropriate changes will be made to the CAR, and vice versa. This avoids updating every time a referencing subpart is renewed to account for the percentage of sources that opt to comply with it. Similarly, when the CAR is renewed, updating each of the referencing subparts is unnecessary.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2001 (66 FR 8588); no comments were received. Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 209 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers in the Synthetic Organic Chemical Manufacturing Industry.

Estimated Number of Respondents: 3,862.

Estimated Number of Annual Responses: 10,361.

Frequency of Response: Semiannually and on occasion.

Estimated Total Annual Hour Burden: 2,165,600 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $99,921,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1854.03 and OMB Control Number 2060–0443 in any correspondence.

Dated: May 21, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–13349 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulatory Reinvention Pilot Projects Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulatory Reinvention Pilot Projects Under Project XL, OMB Control No. 2010–0026, expiring May 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1755.06 and OMB Control No. 2010–0026, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania

Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington. DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1755.06. For technical questions about the ICR contact Eric Marsh in EPA's Office of Environmental Policy Innovation at (202) 260–2782.

SUPPLEMENTARY INFORMATION:

Title: Regulatory Reinvention Pilot Projects Under Project XL (OMB Control No. 2010–0026; EPA ICR No. 1755.06) expiring May 31, 2002. This is a request for extension of a currently approved collection.

Abstract: In 1995 the U.S. Environmental Protection Agency began to solicit innovative pilot projects in response to a challenge to transform the environmental regulatory system to better meet the needs of a rapidly changing society while maintaining the nation's commitment to protect human health and safeguard the natural environment. Through site-specific agreements with project sponsors, EPA is gathering data and project experience that will help the Agency redesign current approaches to public health and environmental protection. Through these projects, sponsors—private facilities, multiple facilities, industry sectors, Federal facilities, communities, universities, Tribes and States—can implement innovative strategies that produce superior environmental performance, provide flexibility, cost savings, paperwork reduction or other benefits to sponsors, and promote greater accountability to stakeholders.

The intent of the regulatory flexibility of the innovative pilot projects is to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site or state specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Innovative pilot project proposals are collected by EPA's Office of Environmental Policy Innovation (OEPI) [formerly the Office of Reinvention], which has been given responsibility for implementation of this program. Since 1995, EPA has implemented pilot projects to test innovative ideas working with EPA headquarters, EPA regions, federal, state, and local government agencies. The renewal of this ICR is important as it will allow the Agency to identify additional regulated entities who are interested in participating in innovative pilot projects as well as allow the Agency to continue its commitment to innovation and regulatory flexibility with facilities, communities, and states in achieving environmental results. The renewal of this ICR will allow OEPI to continue to receive and work with project sponsors on proposals for innovation, including those directly through EPA and those through the Joint EPA-State Agreement to Pursue Regulatory Innovation. In addition, the renewal of this ICR is necessary to allow EPA to continue its commitments to current projects, including three specified in approved ICR amendments: the NYSDEC ICR amendemnt (1755.03), the US Filter ICR amendment (1755.04) and the POTWs ICR amendment (1755.05).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 9, 2001 (66 FR 56671); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 150 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements; train personal to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit, State, Local or Tribal Government.

Estimated Number of Respondents: 480.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 60,840.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1755.06 and OMB Control No. 2010–0026 in any correspondence.

Dated: May 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–13355 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7218–6]

Request for Initial Proposals for Fiscal Year 2003—Chesapeake Bay Program

The U.S. Environmental Protection Agency (EPA) Chesapeake Bay Program (CBP) is issuing a Requests for Initial Proposals (RFIP) to implement specific outcomes that will further goals of the Chesapeake 2000 agreement. Up to $2.2 million dollars may be available for Fiscal Year 2003 for implementation of activities to protect and restore the Chesapeake Bay. Any non-profit organization, federal state or local government agency, interstate agency, college or university is eligible to submit proposals in response to this Request for Initial Proposals. Funding will be provided to an applicant under the authority of the Clean Water Act. section 117.

The RFIP will be available starting May 29, 2002 at the following Web site: *http://www.gov/r3chespk/* You may also request a copy by calling Robert Shewack at 410–267–9856 or by e-mail at *shewack.bob@epa.gov* All proposals must be postmarked NLT July 30, 2002.

Diana Esher,

Deputy Director, Chesapeake Bay Program Office.

[FR Doc. 02–13353 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7218–4]

Notice of Availability for FY 02 Enforcement and Compliance Assurance Multi-Media Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), is soliciting proposals for assistance agreements with states and tribes, in the range of $50,000–$200,000, for proposals in three focus areas: Tribal and State Inspector Training; Program Planning and Performance Measurement; and Data Management.

DATES: Two to five page pre-proposals must be received electronically or by hard copy by July 5, 2002. Funding decisions will be made by August 16, 2002 based on the pre-proposals. Applicants selected to receive funds will be required to submit final proposals to the appropriate EPA Region by September 27, 2002.

ADDRESSES: Copies of Pre-proposals should be sent to David Piantanida (2222A), US EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, email: *piantanida.david@epa.gov*, Tel: (202) 564–8318, Fax: (202) 564–0034; and simultaneously to the appropriate Regional Enforcement Coordinator. This document will be posted on the EPA's Office of Enforcement and Compliance Assurance web site at *http://www.epa.gov/compliance/planning/states*.

FOR FURTHER INFORMATION CONTACT: David Piantanida at (202) 564–8318.

SUPPLEMENTARY INFORMATION:

Eligibility and Authority

The funds available are from OECA's Multi-Media State and Tribal Assistance Grants (STAG) appropriation. Eligible applicants include States, Tribes, Inter-Tribal Consortia, Territories, and multi-jurisdictional organizations.

Authority to enter into assistance agreements for the purposes described in this Notice are delegated to OECA in EPA Delegation 1–47, Assistance Agreements for Economic, Social Science, Statistical, and Other Research, Development, Studies, Surveys, Demonstrations, Investigations, Public Education Programs, Training, and Fellowships.

Funding priorities must be allowable under 66.709 (Capacity Building Grants and Cooperative Agreements for States and Tribes) of the *Catalog of Federal Domestic Assistance* (CFDA).

Desired Projects

OECA will only consider funding projects for the three focus areas described below, and for projects which can be completed in 3 years or less. Projects will be evaluated for potential funding based on the extent to which they address the information below. Please note, applicants do not need to address all 3 focus areas in their pre-proposals. Each focus area is separate and proposals from each category will be evaluated independently.

Table of Contents

1. Tribal and State Inspector Training

OECA's Office of Compliance is seeking ways to improve and build tribal and state inspector capability. EPA maintains discretionary authority to ask tribes and states to conduct civil inspections on behalf of the Agency under each federal environmental statute. It is essential that tribal and state inspectors are trained to safely and properly conduct federal civil inspections. OECA will consider funding for basic inspector training, media-specific inspector training, and/or health and safety training courses.

This Notice also solicits projects that build partnerships between states or tribes through a Regional Inspectors workshop. The workshop may be designed for state, tribal or local inspectors within a region, and could cover a variety of topics designed to build inspector capability to conduct compliance monitoring inspections under federal authority. The host state or tribe would fund the travel, course materials, and contractor costs with grant funds.

Criteria for proposal selection will include the following:

(a) The explicit intent to collaborate and partner with other states and tribes within an EPA region to host or participate in an Inspector workshop.

(b) Course outline and content is consistent with EPA Federal guidelines and is supportive of an authorized program. (e.g., training provides information on federal inspection law and policy) Course content may also provide information on inspection issues that arise under state and tribal laws.

2. Program Planning and Performance Measurement

OECA's Office of Compliance is making funds available to assist states and tribes with Performance Measurement and Program Planning initiatives. Projects should develop and/or implement performance measurement outcomes or improved program planning in the following ways:

(A) Enhancing Results through Improved Regional/State/Tribal Planning: Projects to support state or tribal efforts to collaboratively carry out joint priority setting and work planning. Projects address the following components of a joint planning effort:

(1) Projects that describe how a state or tribe plans to perform efficient enforcement and compliance work planning with EPA Regions;

(2) Projects that define the components for the steps in the joint planning process; and

(3) Projects that develop a process which would be used to produce a surrogate "risk based" ranking of all identified enforcement and compliance assurance problems facing a state or a tribe.

Projects may be used to support either Performance Partnership grants or traditional, media specific program grant activities.

(B) Outcome measures for Enforcement and Compliance Assurance Initiatives: Historically, EPA and the states have used enforcement outputs such as inspections conducted, or enforcement actions taken, as the primary performance measures for their enforcement and compliance assurance programs. While these output measures provide important information about the enforcement presence among regulated facilities and industries, they do not necessarily characterize the state of compliance in regulated facilities, describe the overall environmental results achieved, or assess the extent to which important objectives and problems are being addressed.

Measurement of environmental outcomes in general is often very challenging due to the difficulty of defining outcomes, lack of supporting

data, and the complexity of developing measures that are valid and representative of populations being measured. Outcome measurement of compliance incentives or assistance presents unique challenges compared to other activities such as enforcement, where the results are compulsory and can therefore be tracked. OECA is making funds available to assist states and tribes in developing and field testing outcome measures for enforcement and compliance assurance initiatives/activities.

Projects should develop and test outcome measures from state/tribal enforcement and compliance assurance activity. Examples of outcome measures for enforcement and/or compliance assurance/initiatives follow:

Statistically Valid Noncompliance Rates

—Develop or implement a methodology for statistically valid noncompliance rates.

Improvements Resulting from Enforcement Actions/Initiatives

Examples:

—Number or percent of concluded enforcement actions identifying pollutant reductions.

—Amount of emissions, pollutants, and/or risk reduced from enforcement actions.

—Number or percent of enforcement actions that result in improvements in the use or handling of pollutants, such as changes in industrial processes or storage and disposal practices to achieve emission and discharge reduction.

—Number or percent of enforcement actions that result in improvements in facility management practices and information.

Improvements Resulting from Compliance Assistance Tools and Initiatives

Compliance assistance can include on site visits, workshops, mailed tools or outreach materials, hotlines, phone calls, meetings, or training that provides clear and consistent information for (1) helping the regulated community understand and meet its obligations under environmental regulations; and (2) compliance assistance providers to aid the regulated community in complying with environmental regulations. Compliance assistance may also help the regulated community find cost-effective ways to comply with regulations and/or go "beyond compliance" through the use of pollution prevention, environmental management practices, and innovative technologies, thus improving their environmental performance. To be categorized as a compliance assistance project or activity, at least one objective must be related to achieving or advancing regulatory compliance.

Better understanding of regulations or compliance:

—Number of facilities whose understanding of environmental regulations improved as measured by pre-or post-tests at workshops.

—Number of facilities whose understanding of environmental regulations has improved as a result of the compliance assistance received, as indicated by verbal or written responses to surveys.

Behavioral changes (regulatory and non-regulatory environmental management changes):

—Number of facilities:

• That have taken action(s) to comply with environmental regulations because of the compliance assistance received and/or incentives offered.

• That have improved the quality of self-reported information or begun reporting this information for the first time.

• Adopting non-regulatory process changes or best management practices as a result of compliance assistance received and/or incentives offered.

• Making environmental management changes (i.e., improved training, self-audits, development of an environmental management system) because of the compliance assistance received and/or incentives offered.

—Number of compliance assistance projects demonstrating improved compliance rates, measured through direct observation.

Environmental or human health improvements:

—Number of facilities that reduce emissions or other pollutants.

—Amount of emissions, pollutants, and/or risk reduced.

Applicants are encouraged to consult and utilize EPA's Guide to Compliance Assistance Outcome Measurement. This document is available at *http://es.epa.gov/oeca/perfmeas/full-oec.pdf.* If you do not have access to the internet, you may request a hard copy by contacting David Piantanida on (202) 564–8318.

Improvements Resulting from Integrated Initiatives

Environmental or human health improvements or behavioral changes (see above) from initiatives which include more than one tool, e.g. enforcement and compliance assistance.

Improvements Resulting from Self-policing Efforts/Use of Compliance Incentive Policies

Compliance incentive policies encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Examples of outcome measures from compliance incentive policies include:

—Number or percent of concluded self-disclosed actions identifying pollutant reductions.

—Amount of emissions, pollutants, and/or risk reduced from self-disclosed actions.

—Number or percent of self-disclosed actions that result in improvements in the use or handling of pollutants.

—Number or percent of self-disclosed actions that result in improvements in facility management practices and information.

(C) Development of performance measures for Concentrated Animal Feeding Operations (CAFOs) and Worker Protection Standards (WPS): OECA is making funds available to states or tribes to develop and field test outcome measures to gauge the effectiveness of assistance, incentives, monitoring, and enforcement on CAFO and WPS compliance. Examples of outcome measures for enforcement and compliance assistance have previously been listed above.

Applicants are encouraged to consult and utilize EPA's Guide to Compliance Assistance Outcome Measurement. This document is available at *http://es.epa.gov/oeca/perfmeas/full-oec.pdf.* If you do not have access to the internet, you may request a hard copy by contacting David Piantanida on (202) 564–8318.

Criteria for Proposal Selection for A, B, or C, Will Include the Following

(a) Extent to which suggested performance measures are: (1) Relevant—to important goals and objectives of enforcement and compliance assurance programs; (2) transparent—comprehensible to important users and audiences; (3) credible—based on accurate and timely supporting data;

(4) feasible—capable of being implemented without costs disproportionate to their value; and

(5) functional—they promote good performance by regulated entities and agency personnel; and

(b) Extent to which information and data is relevant to, and shared with, other states, tribes and EPA.

3. Data Management

OECA's Office of Compliance is seeking ways to enhance states and tribes ability to provide data to EPA to allow for better integration of data (e.g. enforcement and compliance), improve state and tribal multi-media targeting capabilities, improve multi-media reporting capabilities, and compliance assurance capabilities. To accomplish this, it is critical that a state or tribal system is capable of reporting data to EPA that is consistent with EPA/state data standards and in line with new requirements of modernized media data systems (e.g. Permit Compliance System) or current requirements of legacy media systems. OECA is making funds available to support the enhancement of the state's or tribe's ability to provide data to EPA, through improved system interfaces, data linkages, and data clean-up. OECA is interested in maximizing the quality of the data that is provided to the national systems, while minimizing reporting burdens, especially for states/tribes with numerous quasi-independent boards, departments and offices—all with independent data systems.

This Notice also solicits projects that assist states/tribes with reporting of consistent streamlined environmental and compliance data to EPA, including, but not limited to, the following:

(A) Permit Compliance System (PCS) Modernization: assisting states/tribes with upgrading of their current state systems through improved system interfaces, data linkages and data clean-up; and

(B) Air Facility System (AFS)—Universal Interface (UI): assisting states/tribes with enhancement of their current state systems to incorporate the use of the AFS UI interface software to allow for improved system interfaces, data linkages and data clean-up.

Criteria for Proposal Selection Will Include the Following

(a) Extent to which projects support/provide a solution to consistent streamlined reporting of data across the various independent media data systems or lead to identifying problems/issues associated with the reporting of environmental data to EPA, with recommendations for solving the problem;

(b) Extent to which projects address problems and provide recommendations for improvements to enhancing reporting of data to EPA by the states/tribes and by EPA;

(c) Extent to which projects support EPA/state data standards implementation, media system modernization efforts, and data clean up efforts that would promote better integration of data across EPA systems.

Funding

The grants/cooperative agreements should be in the range of $50,000 to $200,000, although proposals below or above that range will be considered.

State and tribal matching funds are not required. However, preference will be given to proposals which also make a commitment of state or tribal resources towards the total project cost. This can be state or tribal personnel salary dedicated to the project, cash contribution to the project budget or other "in kind" contributions.

OECA can not predict that additional funds for these focus areas will be available in future years. Therefore, states and tribes should assume that these funds will be available on a one-time only basis and should not propose projects requiring annual funding.

Process and Schedule

Electronic pre-proposals must be received by EPA by July 5, 2002 and should follow the format below. Pre-proposals should be submitted simultaneously to the appropriate Regional Enforcement Coordinator, and to David Piantanida, OECA, (See contact information below.) Funding decisions will be made by August 16, 2002 based on the pre-proposals. Applicants selected to receive funds will be required to submit final proposals by September 27, 2002. Regions will provide application materials to selected applicants.

Proposed Milestones for 2002 OECA Multi Media Assistance Agreements

July 5: Electronic Pre-Proposals due simultaneously to the appropriate EPA Regional Enforcement Coordinator, and David Piantanida, OECA. (See contact information below.)

August 16: EPA notifies applicants of funding decisions.

August 19: Selected recipients receive final application materials from EPA Regional office and name and contact info of Regional Project Officer and Regional Grants Contact.

September 27: Final Proposals/Work Plans due to Regional Project Officers and Regional Grants Contact, and David Piantanida, OECA.

October: Grants awarded.

Format for Pre-Proposals

Pre-proposals should be 2–5 pages long and follow the format below:

I. Project Information

State/Tribe and Department:
Title of Project:
Focus Area: (from Notice of Availability)
Total Funds Requested from EPA:
Total Project Cost (including state/tribe cash and in-kind contributions):
Contact Person: (name, title, address, phone, fax, & email)
Preferred Assistance Agreement: (Grants or cooperative agreements)

II. Summary

—Summary of the problem being addressed
—Summary of project goal(s)
—Summary of project components
—Summary of how the project components will address the problem & attain the goals

III. Work Plan

—Proposed activities—list and describe activities and how they relate to the evaluation elements listed under Desired Projects above
—Measures—how will the success of the project be measured?
—Sharing results—how will the results of the project be shared across states/tribes?

IV. Project Milestones

—List project milestones with estimated dates, including estimated duration of project

V. Project Costs

—Include an itemized budget for all project costs—distinguish the funds requested from any state/tribe contributions (in kind or other)

Reports

Awardees will be required to submit quarterly and final progress reports to their project officer and to David Piantanida at the address below. A template reporting form will be provided to all funded grantees. Recipients will also be required to complete annual Financial Status Reports.

Contact Information

For more information regarding this process, please contact David Piantanida at the address below:

David Piantanida (2222A), US EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *piantanida.david@epa.gov*, Tel: (202) 564–8318, Fax: (202) 564–0034.

EPA Regional Contacts

EPA Region I

Enforcement Coordinator: Ken Moraff—*moraff.ken@epa.gov*
Enforcement Division Director: Sam Silverman—*silverman.sam@epa.gov*

EPA Region II

Enforcement Coordinator: Barbara McGarry—*mcgarry.barbara@epa.gov*
Enforcement Division Director:Richard Caspe—*caspe.richard@epa.gov*

EPA Region III

Enforcement Coordinator: Samantha Fairchild—*fairchild.samantha@epa.gov*

EPA Region IV

Enforcement Coordinator: Sherri Fields—*fields.sherri@epa.gov*
Enforcement Division Director: William Anderson—*anderson.william@epa.gov*

EPA Region V

Enforcement Coordinator: Tinka Hyde—*hyde.tinka@epa.gov*

EPA Region VI

Enforcement Coordinator: Walter Biggins—*biggins.walter@epa.gov*
Enforcement Division Director: Samuel Coleman—*coleman.samuel@epa.gov*

EPA Region VII

Enforcement Coordinator: Cecilia Tapia—*tapia.cecilia@epa.gov*

EPA Region VIII

Enforcement Coordinator: Eddie Sierra—*sierra.eddie@epa.gov*
Enforcement Division Director:Carol Rushin—*rushin.carol@epa.gov*

EPA Region IX

Enforcement Coordinator: Sally Seymour—*seymour.sally@epa.gov*

EPA Region X

Enforcement Coordinator: Lauris Davies—*davies.lauris@epa.gov*

Dated: May 21, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–13250 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7218–8]

Environmental Laboratory Advisory Board Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will hold an Open Forum on Tuesday July 9, 2002 at 5–6 p.m. EDT and an Open Meeting on Thursday July 11, 2002 at 1:30–5 p.m. EDT at the Wyndham Harbour Island Hotel, 725 S. Harbour Island Boulevard, Tampa, Florida. Members of the public are invited to attend both events. Items to be discussed include: (1) Update on recommendations to restructure the National Environmental Laboratory Accreditation Conference (NELAC) to allow it to better serve the future needs of EPA, the States, and the private sector, (2) discussion of ELAB recommendations to EPA, and (3) review of Action Items from the June 19 ELAB meeting. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, P.O. Box 93478, Las Vegas, NV 89193, faxed to (702) 798–2261, or e-mailed to *kantor.edward@epa.gov*. or can be presented in person at the Open Forum, July 9. Members of the public are invited to raise issues or to make comments at the Open Forum and time permitting, will be allowed to comment on discussions ensued from the ELAB Open Meeting.

Dated: May 20, 2002.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–13351 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7218–7]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on June 19, 2002, at 11 a.m. EDT to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed include: (1) Update on recommendations to restructure the National Environmental Laboratory Accreditation Conference (NELAC) to allow it to better serve the future needs of EPA, the States, and the private sector, (2) discussion of ELAB recommendations to EPA, (3) review of Action Items from the April 17 ELAB meeting, and (4) ELAB upcoming meeting at NELAC 8. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, P.O. Box 93478, Las Vegas NV 89193, faxed to (702) 798–2261, or emailed to *kantor.edward@epa.gov*. Members of the public are invited to listen to the teleconference calls and, time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Dated: May 20, 2002.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–13352 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0074; FRL–7178–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number OPP–20020–0074, must be received on or before June 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0074 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration

Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6411; and e-mail address: tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**"—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0074. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0074 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0074. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA

has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Valent U.S.A. Corporation and represents the view of Valent. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent U.S.A. Corporation

PP 2F6385

EPA has received a pesticide petition (2F6385) from Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596-8025 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, in or on the raw agricultural commodity vegetable, brassica, leafy, group (crop group 5) at 2.5 parts per million (ppm); vegetable, cucurbit, group (crop group 9) at 0.1 ppm; and olive at 1.0 ppm; and in the processed commodity olive, oil at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism of ^{14}C-pyriproxyfen labelled in the phenoxyphenyl ring and in the pyridyl ring has been studied in cotton, apples, tomatoes, lactating goats, and laying hens (and rats). The major metabolic pathways in plants is aryl hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by further oxidation and/or conjugation reactions. However, the bulk of the radiochemical residue on raw agricultural commodity samples remained as parent. Comparing metabolites detected and quantified from cotton, apple, tomato, goat, and hen (and rat) shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. The residue of concern is best defined as the parent, pyriproxyfen.

Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 2% of the administered dose, and were less than 1 ppm in all cases. In poultry, total ^{14}C-residues in eggs, muscle and tissues accounted for about 2.7% of the administered dose, and were less than 1 ppm in all cases except for gizzard.

2. *Analytical method.* Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites) have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical methods for analysis of cottonseed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues*—i. *Vegetable, brassica, leafy, group.* Seven field trials in cabbage were conducted in 1999 and 2000. Similarly, seven field trials were conducted for cauliflower and six field trials were conducted for mustard greens. The proposed use pattern for the three vegetable, brassica, leafy, crops is identical. The analytical data show that the average measured residue in/on cabbage samples was 0.14 ppm ($n = 14$, $\sigma_{n-1} = 0.12$ ppm) pyriproxyfen. Similarly, the analytical data show that the average measured residue in/on cauliflower samples was 0.03 ppm ($n = 14$, $\sigma_{n-1} = 0.05$ ppm), and in/on mustard green samples was 0.70 ppm ($n = 12$, $\sigma_{n-1} = 0.53$ ppm), of pyriproxyfen. The highest average residue (HAR) from field trials was 1.6 ppm. These data support a proposed tolerance for pyriproxyfen in/on the vegetable, brassica, leafy, group at 2.5 ppm.

ii. *Vegetable, cucurbit, group.* Seven field trials in cantaloupe were conducted in 1999 and 2000. Similarly, six field trials were conducted for cucumber and six field trials were conducted for summer squash. The proposed use pattern for the three vegetable, cucurbit, crops is identical. The analytical data show that the average measured residue in/on cantaloupe samples was 0.02 ppm ($n = 14$, $\sigma_{n-1} = 0.01$ ppm) pyriproxyfen. Similarly, the analytical data show that the average measured residue of pyriproxyfen in/on cucumber and summer squash samples was below the residue method "Limit of Detection" of 0.01 ppm. The HAR from field trials was 0.04 ppm. These data support a proposed tolerance for pyriproxyfen in/on the vegetable, cucurbit, group at 0.1 ppm.

iii. *Olive.* Four field trials in olive were conducted in 2000. The analytical data show that the average measured residue in/on olive samples was 0.37 ppm ($n = 8$, $\sigma_{n-1} = 0.24$ ppm) pyriproxyfen. A processing study in olive demonstrated that pyriproxyfen concentrated in olive oil (3-fold). The HAR from field trials was 0.73 ppm. These data support proposed tolerances for pyriproxyfen in/on olive at 1.0 ppm and olive oil at 3.0 ppm.

iv. *Secondary residues.* No additional feed commodities are associated with the new proposed use on vegetable, brassica, leafy, group; vegetable, cucurbit, group; and olive. Using established tolerances to calculate the maximum feed exposure to fed animals, and using the very low potential for residue transfer demonstrated in the milk cow feeding residue study, detectable secondary residues in animal tissues, milk, and eggs are not expected. Therefore, no tolerances are required for these commodities.

v. *Rotational crops.* The results of a confined rotational crops accumulation study indicate that no rotational crop planting restrictions or rotational crop tolerances are required.

B. Toxicological Profile

1. *Acute toxicity.* The acute toxicity of technical grade pyriproxyfen is low by all routes. The compound is classified as Category III for acute dermal and inhalation toxicity, and Category IV for

acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicty.* Pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for . mutagenicity: Ames assay with and without S9, *in vitro* unscheduled DNA synthesis in HeLa S3 cells, *in vitro* gene mutation in V79 chinese hamster cells, and *in vitro* chromosomal aberration with and without S9 in Chinese hamster ovary cells.

3. *Reproductive and developmental toxicity.* Pyriproxyfen is not a developmental or reproductive toxicant. Developmental toxicity studies have been performed in rats and rabbits, and multigenerational effects on reproduction were tested in rats. These studies have been reviewed and found to be acceptable to the Agency.

In the developmental toxicity study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 milligrams/kilogram body weight/day (mg/kg bw/day) during gestation days 7–17. Maternal toxicity (mortality, decreased body weight gain and food consumption, and clinical signs of toxicity) was observed at doses of 300 mg/kg bw/day and greater. The maternal no observed adverse effect level (NOAEL) was 100 mg/kg bw/day. A transient increase in skeletal variations was observed in rat fetuses from females exposed to 300 mg/kg bw/day and greater. These effects were not present in animals examined at the end of the postnatal period; therefore, the NOAEL for prenatal developmental toxicity was 100 mg/kg bw/day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg bw/day. The NOAEL for postnatal developmental toxicity was 300 mg/kg bw/day.

In the developmental toxicity study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg bw/day during gestation days 6–18. Maternal toxicity (clinical signs of toxicity including one death, decreased body weight gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg bw/day or higher. The maternal NOAEL was 100 mg/kg bw/day. No developmental effects were observed in the rabbit fetuses. The NOAEL for developmental toxicity in rabbits was 1,000 mg/kg bw/day.

In the rat reproduction study, pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through two generations of rats. Adult systemic toxicity (reduced body weights, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg bw/day in males, 498 mg/kg bw/day in females) during the pre-mating period. The systemic NOAEL was 1,000 ppm (87 mg/kg bw/day in males, 96 mg/kg bw/day in females). No effects on reproduction were produced at 5,000 ppm, the highest dose tested (HDT).

4. *Subchronic toxicity.* Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weight gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit; altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, a decrease in survival rates. The NOAELs from these studies were 400 ppm (23.5 mg/kg bw/day for males, 27.7 mg/kg bw/day for females) in rats, 1,000 ppm (149.4 mg/kg bw/day for males, 196.5 mg/kg bw/day for females) in mice, and 100 mg/kg bw/day in dogs.

In a 4-week inhalation study of pyriproxyfen technical in rats, decreased body weight and increased water consumption were observed at 1,000 mg/m^3. The NOAEL in this study was 482 mg/m^3.

A 21–day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg bw/day, the highest dose tested. In a 21–day dermal study conducted with KNACK® Insect Growth Regulator, the test material produced a NOAEL of 1,000 mg/kg bw/day HDT for systemic effects, and a NOAEL for skin irritation of 100 mg/kg bw/day.

5. *Chronic toxicity.* Pyriproxyfen technical has been tested in chronic studies with dogs, rats and mice. EPA has established a reference dose (RfD) for pyriproxyfen of 0.35 mg/kg bw/day, based on the NOAEL in female rats from the 2–year chronic/oncogenicity study. Effects cited by EPA in the Reference Dose Tracking Report include negative trend in mean red blood cell volume, increased hepatocyte cytoplasm and cytoplasm: nucleus ratios, and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen have shown that repeated high dose exposures produced changes in the liver, kidney and red blood cells, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2–year chronic feeding/oncogenicity study or in a 78-eight week study on mice. The oncogenicity classification of pyriproxyfen is "E" (no evidence of carcinogenicity for humans).

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300, and 1,000 mg/kg bw/day for 1 year. Dogs exposed to dose levels of 300 mg/kg bw/day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOAEL in this study was 100 mg/kg bw/day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600 and 3,000 ppm in diet for 78 weeks. The NOAEL for systemic effects in this study was 600 ppm (84 mg/kg bw/day in males, 109.5 mg/kg bw/day in females), and a LOAEL of 3,000 ppm (420 mg/kg bw/day in males, 547 mg/kg bw/day in females) was established based on an increase in kidney lesions.

In a 2–year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOAEL for systemic effects in this study was 600 ppm (27.31 mg/kg bw/day in males, 35.1 mg/kg bw/day in females). A LOAEL of 3,000 ppm (138 mg/kg bw/day in males, 182.7 mg/kg bw/day in females) was established based on a depression in body weight gain in females.

6. *Aninal metabolism.* The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg bw (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg bw (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg bw of unlabelled material. For all dose groups, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days after radiolabeled test material dosing, and 92–98% of the administered dose was excreted within 7 days. Seven days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radiocarbon concentrations in fat were the higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

7. *Metabolite toxicology.* Metabolism studies of pyriproxyfen in rats, goats and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88-96%) of the administered radiolabel was excreted in the urine and feces within 2 days of dosing, and 92-98% of the administered dose was excreted within

7 days. Tissue residues were low 7 days after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potential for acute toxicity from in situ formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the maximum tolerance dose (MTD) and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4′-OH-pyriproxyfen, 5′′-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity (Ames) and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micro-grams per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertant colonies in any of the test strains. Positive control chemicals showed marked increases in revertant colonies. The acute toxicity to mice of 4′-OH-pyriproxyfen, 5′′-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral LD_{50} values greater than 2,000 mg/kg bw. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male) and 166 (female) mg/kg bw, and 1,105 (male) and 1,000 (female) mg/kg bw, respectively.

8. *Endocrine disruption.* Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and other some arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure.* An evaluation of chronic dietary exposure including both food and drinking water has been performed for the U.S. population and various sub-populations including infants and children. No acute dietary endpoint; and dose was identified in the toxicology data base for pyriproxyfen; therefore, the Agency has concluded that there is a reasonable certainty of no harm from acute dietary exposure.

i. *Food.* Chronic dietary exposure to pyriproxyfen residues was calculated for the U.S. population and 25 population subgroups assuming tolerance level residues, processing factors from residue studies, and 100% of the crop treated. The analyses included residue data for all existing uses, pending uses, and proposed new uses. The results from several representative subgroups are listed below. Chronic exposure to the overall U.S. population is estimated to be 0.002984 mg/kg bw/day, representing 0.9% of the RfD. For the most highly exposed sub-population, children 1 to 6 years of age, exposure is calculated to be 0.007438 mg/kg bw/day, or 2.1% of the RfD. Generally speaking, the Agency has no cause for concern if total residue contribution for established and proposed tolerances is less than 100 percent of the RfD.

CALCULATED CHRONIC DIETARY EXPOSURES TO THE TOTAL U.S. POPULATION AND SELECTED SUB-POPULATIONS TO PYRIPROXYFEN RESIDUES IN FOOD

Population subgroup	Exposure (mg/kg bw/day)	Percent of RfD
Total U.S. population (all seasons)	0.002984	0.853
Children (1–6 Years)	0.007438	2.125
Non-Nursing Infants (<1 Year Old)	0.006483	1.852
All Infants (<1 Year Old)	0.005604	1.601
Children (7–12 Years)	0.004159	1.188
Children (1–6 Years)	0.007438	2.125
Females (13+/Nursing)	0.002964	0.847
Nursing Infants (<1 Year Old)	0.002601	0.743

ii. *Drinking water.* Since pyriproxyfen is applied outdoors to growing agricultural crops, the potential exists for pyriproxyfen or its metabolites to reach ground or surface water that may be used for drinking water. Because of the physical properties of pyriproxyfen, it is unlikely that pyriproxyfen or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for pyriproxyfen were estimated using GENEEC 1.3. The average 56–day concentration predicted in the simulated pond water was 0.16 ppb. Using standard assumptions about body weight and water consumption, the chronic exposure to pyriproxyfen from this drinking water would be 4.57×10^{-6} and 1.6×10^{-5} mg/kg bw/day for adults and children, respectively; 0.0046% of the RfD (0.35 mg/kg/day) for children. Based on this worse case analysis, the contribution of water to the dietary risk is negligible.

2. *Non-dietary exposure.* Pyriproxyfen is currently registered for use on residential non-food sites. Pyriproxyfen is the active ingredient in numerous registered products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars). With the exception of the pet collar uses, consumer use of

pyriproxyfen typically results in acute and short-term intermittent exposures. No acute dermal, or inhalation dose or endpoint was identified in the toxicity data for pyriproxyfen. Similarly, doses and endpoints were not identified for short- and intermediate-term dermal or inhalation exposure to pyriproxyfen. The Agency has concluded that there are reasonable certainties of no harm from acute, short-term, and intermediate-term dermal and inhalation occupational and residential exposures due to the lack of significant toxicological effects observed.

Chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses. The risk assessment was conducted using the following assumptions: Application rate of 0.58 mg a.i./day (product label), average body weight for a 1–6 year old child of 10 kg, the active ingredient dissipates uniformly through 365 days (the label instruct to change collar once a year), 1% of the active ingredient is available for dermal and inhalation exposure per day (assumption from Draft EPA Standard Operating Procedures (SOPs) for Residential Exposure Assessments, December 18, 1997). The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%. The estimated chronic term MOE was 61,000 for children, and 430,000 for adults. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not, at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are no other pesticidal compounds that are structurally related to pyriproxyfen and have similar effects on animals. In consideration of potential cumulative effects of pyriproxyfen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by pyriproxyfen would be cumulative with those of other chemical compounds. Thus, only the potential risks of pyriproxyfen have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of pyriproxyfen consistent with the schedule established by EPA at (62 FR 42019) (FRL–5734–6) August 4, 1997 and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*—i. *Chronic dietary exposure and risk.—Adult sub-populations.* The results of the chronic dietary exposure assessment described above demonstrate that estimates of chronic dietary exposure for all existing, pending and proposed uses of pyriproxyfen are well below the chronic RfD of 0.35 mg/kg bw/day. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is from 0.002123 to 0.003884 mg/kg bw/day, 0.607 to 1.100% of the RfD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by only 4.57×10^{-6} mg/kg bw/day and does not change the maximum occupancy of the RfD significantly. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the RfD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population or any non-child/infant subgroups from aggregate, chronic dietary exposure to pyriproxyfen residues.

ii. *Acute dietary exposure and risk.—Adult sub-populations.* No acute dietary endpoint and dose were identified in the toxicology data base for pyriproxyfen; therefore, it can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population or any non-child/infant subgroups from aggregate, acute dietary exposure to pyriproxyfen residues.

iii. *Non-dietary exposure and aggregate risk. —Adult sub-populations.* Acute, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed. The results of a chronic residential post-application exposure and risk assessment for pet collar uses demonstrate that potential risks from pet collar uses do not exceed the Agency's level of concern. The estimated chronic term MOE for adults was 430,000.

2. *Infants and children*—i. *Safety factor.* In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating prenatal and postnatal toxicity for pyriproxyfen is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent concludes that reliable data support use of the standard 100–fold uncertainty factor and that an additional uncertainty factor is not needed for pyriproxyfen to be further protective of infants and children.

ii. *Chronic dietary exposure and risk.* Using the conservative exposure assumptions described above, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of pyriproxyfen ranges from 0.002601 mg/kg bw/day for nursing infants, up to 0.007438 mg/kg bw/day for children (1–6 years of age), 0.743 to 2.125% of the RfD, respectively. Adding the worse case potential incremental exposure to infants and children from pyriproxyfen in drinking water (1.6×10^{-5} mg/kg bw/day) does not materially increase the aggregate, chronic dietary exposure and only increases the occupancy of the RfD by 0.0046% to 2.130% for children (1–6 years of age). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic dietary exposure to pyriproxyfen residues.

iii. *Acute dietary exposure and risk.* No acute dietary endpoint and dose were identified in the toxicology data

base for pyriproxyfen; therefore, it can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, acute dietary exposure to pyriproxyfen residues.

iv. *Non-dietary exposure and aggregate risk.* Acute, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed. The results of a chronic residential post-application exposure and risk assessment for pet collar uses demonstrate that potential risks from pet collar uses do not exceed the Agency's level of concern. The estimated chronic term MOE for children was 61,000.

F. International Tolerances

There are no presently existing Codex maximum residue levels maximum residue levels for pyriproxyfen.

[FR Doc. 02–13356 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7218–9]

Agreement and Covenant Not To Sue, Sharon Steel Superfund Site, Midvale, UT

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Notice; Agreement and Covenant Not to Sue.

SUMMARY: In accordance with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, notice is hereby given of an Agreement and Covenant Not to Sue ("Agreement"), also known as a Prospective Purchaser Agreement ("PPA"), concerning the Sharon Steel Superfund Site in Midvale, Utah (the "Site"). The Agreement resolves any potential liability for response costs incurred and to be incurred by the United States Environmental Protection Agency ("EPA") and the State of Utah Department of Environmental Quality that may be acquired by the City of Midvale, UT when it takes title to certain permanent easements that traverse the Sharon Steel Superfund Site. The City of Midvale is taking title to these easements in order to construct the Provo/Jordan River Parkway Pedestrian & Bicycle Trail and the Bingham Junction Parkway.

DATES: Comments must be submitted to EPA on or before June 28, 2002.

ADDRESSES: Comments should be addressed to Nancy A. Mangone, (8ENF–L), Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Sharon Steel Superfund Site Agreement And Covenant Not To Sue Midvale City.

FOR FURTHER INFORMATION CONTACT: Nancy A. Mangone, (8ENF–L), Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6903.

SUPPLEMENTARY INFORMATION: Notice of Agreement and Covenant Not to Sue with the City of Midvale for the Sharon Steel Superfund Site: In accordance with CERCLA, 42 U.S.C. 9601, *et seq.* notice is hereby given that the terms of a Prospective Purchaser Agreement and a covenant not to sue have been agreed to by the United States, Utah Department of Environmental Quality and the City of Midvale.

By the terms of the proposed Agreement, the City will acquire permanent public easements and access rights across certain portions of the Site in order to: (1) Construct a non-motorized, multiple-use recreational trail along the western edge of the Site, from 7980 South to 8500 South, known as the Provo/Jordan River Parkway Pedestrian & Bicycle Trail, including an access road known as the Oxbow Road, (collectively, the "Parkway Trail"); and (2) construct a new north/south road, the Bingham Junction Parkway, from 7800 South at approximately 1000 West, across the eastern portion of the Site, to Sandy Parkway ("Bingham Junction Parkway").

The PPA provides the City with covenants not to sue from EPA and UDEQ for liability for the existing contamination that has already been addressed by the remedial action performed at the Site in accordance with section 107(a) of CERCLA, 42 U.S.C. 9607(a) and the Utah Hazardous Substance Mitigation Act, section 19–6–301, *et seq.*, Utah Code Ann. The City will also receive contribution protection under section 113 CERCLA, 42 U.S.C. 9613, for claims that could be brought against it by third parties. In consideration for these covenants not to sue, the City has agreed to perform operation and maintenance ("O&M") activities on that portion of the Sharon Steel Site it is acquiring, which amounts to approximately 15 acres of the Site. The current annualized value of the performance of these O&M activities is estimated to be $22,505 for the Bingham Junction Parkway and $4,938 for the Parkway Trail. The City is also providing O&M for the access road to the Site, known as Oxbow Road.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Agreement and Covenant Not to Sue for the Sharon Steel Superfund Site. A copy of the PPA may be obtained in person or by mail from Mike Rudy, Enforcement Specialist (ENF–T), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6332.

Dated: May 17, 2002.

Michael T. Risner,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 02–13350 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7219–1]

Koppers Company Inc., (Morrisville Plant) Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with Beazer East Inc., pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding Beazer East Inc., located in Morrisville, Wake County, North Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: May 10, 2002.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–13354 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Certified Statement for Semiannual Deposit Insurance Assessment."

DATES: Comments must be submitted on or before July 29, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Certified Statement for Semiannual Deposit Insurance Assessment." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Certified Statement for Semiannual Deposit Insurance Assessment.

OMB Number: 3064–0057.

Form Number: 6420/07A.

Frequency of Response: Semiannual.

Affected Public: All insured institutions that file certified statements with the FDIC.

Estimated Number of Respondents: 19,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden: 4,850 hours.

General Description of Collection: Certified statements are prepared and submitted semiannually to report and certify deposit liabilities and to compute the assessment payment due for deposit insurance protection.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of May, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–13327 Filed 5–28–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1414–DR]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1414–DR), dated May 7, 2002, and related determinations.

EFFECTIVE DATE: May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 7, 2002:

Floyd and Martin Counties for Public Assistance (already designated for Individual Assistance).

Lincoln, Magoffin, and Perry Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–13330 Filed 5–28–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for

this disaster is reopened and the incident type is expanded to include flooding. The incident period for this declared disaster is now April 24, 2002, and continuing, and the incident type is severe storms, tornadoes and flooding.

Bollinger, Butler, Carter, Howell and Madison Counties (already designated for Individual and Public Assistance under FEMA–1412–DR).

Cape Girardeau, Iron, Oregon, Perry, Reynolds, Ripley, Shannon, St. Francois, Stoddard and Wayne Counties (already designated for Individual Assistance under FEMA–1412–DR).

Adair, Barry, Dade, Dallas, Johnson, Knox, Lafayette, Lawrence and Taney Counties for Public Assistance.

Crawford, Dent, Jefferson, St. Geneieve for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–13329 Filed 5–28–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1415–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1415–DR), dated May 16, 2002, and related determinations.

EFFECTIVE DATE: May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 16, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from an earthquake on April 20, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Clinton and Essex Counties for Individual Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–13331 Filed 5–28–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank orBank Holding Companies

The notificants listed below have applied under the Change in BankControl Act (12 U.S.C. 1817(j)) and § 225.41 of theBoard's Regulation Y (12 CFR 225.41) to acquire a bank or bankholding company. The factors that are considered in acting on the noticesare set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the FederalReserve Bank indicated. The notices also will be available for inspectionat the office of the Board of Governors. Interested persons may expresstheir views in writing to the Reserve Bank indicated for that notice or tothe offices of the Board of Governors. Comments must be received not laterthan June 11, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E.Collins, Senior Vice President) 100 North 6th Street, Philadelphia,Pennsylvania 19105–1521:

1. George Connell, Radnor, Pennsylvania; to acquireadditional voting shares of Bryn Mawr Bank Corporation, Bryn Mawr,Pennsylvania, and thereby indirectly acquire voting shares of Bryn MawrTrust Company, Bryn Mawr, Pennsylvania.

B. Federal Reserve Bank of Kansas City (Susan Zubradt,Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri64198–0001:

1. Lynn Dinsdale Marchese. Omaha, Nebraska; to retainvoting shares of Pinnacle Bancorp, Inc., Central City, Nebraska, andthereby indirectly retain voting shares of Bank of Colorado, Fort Collins,Colorado; First National Bank, Abilene, Kansas; Pinnacle Bank, Papillion,Nebraska; Pinnacle Bank - Wyoming, Torrington, Wyoming; and Western Bank,Gallup, New Mexico.

2. Blair Lauritzen Gogel, Mission Hills, Kansas, andClarkson Davis Lauritzen, Boston, Massachusetts; to acquire voting sharesof K.B.J. Enterprises, Inc., Omaha, Nebraska, and thereby indirectlyacquire voting shares of Sibley State Bank, Sibley, Iowa.

Board of Governors of the Federal Reserve System, May 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board

[FR Doc. 02–13324 Filed 5–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank HoldingCompanies

The companies listed in this notice have applied to the Board forapproval, 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 allother applicable statutes and regulations to become a bank holding companyand/or to acquire the assets or the ownership of, control of, or the powerto vote shares of a bank or bank holding company and all of the banks andnonbanking companies owned by the bank holding company, including thecompanies listed below.

The applications listed below, as well as other related filings requiredby the Board, are available for immediate inspection at the Federal ReserveBank indicated. The application also will be available for inspection atthe offices of the Board of Governors. Interested persons may expresstheir views in writing on the standards enumerated in the BHC Act (12U.S.C. 1842(c)). If the proposal also involves the acquisition of anonbanking company, the review also includes whether the acquisition of thenonbanking company complies with the standards in section 4 of the BHC Act(12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will beconducted throughout the United States. Additional information on all bankholding companies may be obtained from the National Information Centerwebsite at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applicationsmust be received at the Reserve Bank indicated or the offices of the Boardof Governors not later than June 21, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt,Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri64198–0001:

1. Denison Capital Enhancement Trust, Omaha, Nebraska; tobecome a bank holding company by acquiring 100 percent of the non-votingshares of K.B.J. Enterprises, Inc., Omaha, Nebraska, and thereby indirectlyacquire Sibley State Bank, Sibley, Iowa..

2. Sibley Capital Enhancement Trust, Omaha, Nebraska, tobecome a bank holding company by acquiring 100 percent of the non-votingshares of The Viking Corporation, Omaha, Nebraska, and thereby indirectlyacquire shares of K.B.J. Enterprises, Omaha, Nebraska, and Sibley StateBank, Sibley, Iowa.

Board of Governors of the Federal Reserve System, May 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–13325 Filed 5–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activitiesor to Acquire Companies that are Engaged in Permissible NonbankingActivities

The companies listed in this notice have given notice under section 4 ofthe Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y(12 CFR Part 225) to engage *de novo*, or to acquire or controlvoting securities or assets of a company, including the companies listedbelow, that engages either directly or through a subsidiary or othercompany, in a nonbanking activity that is listed in § 225.28 ofRegulation Y (12 CFR 225.28) or that the Board has determined by Order tobe closely related to banking and permissible for bank holding companies.Unless otherwise noted, these activities will be conducted throughout theUnited States.

Each notice is available for inspection at the Federal Reserve Bankindicated. The notice also will be available for inspection at the officesof the Board of Governors. Interested persons may express their views inwriting on the question whether the proposal complies with the standards ofsection 4 of the BHC Act. Additional information on all bank holdingcompanies may be obtained from the National Information Center website atwww.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must bereceived at the Reserve Bank indicated or the offices of the Board ofGovernors not later than June 11, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble,Vice President) 2200 North Pearl Street, Dallas, Texas75201–2272:

1. Lost Pines Bancshares, Inc., Smithville, Texas; toengage *de novo*, in lending activities, pursuant to §225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–13326 Filed 5–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, June 3, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board

[FR Doc. 02–13505 Filed 5–24–02; 12:35 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications, Cancellation of Standard Form by the Department of Treasury

AGENCY: Office of Communications, GSA.

ACTION: Notice.

SUMMARY: Because of low demand from the Federal Supply Service the Department of Treasury cancelled the following Standard Form:

SF 1035A, Public Voucher for Purchases and Services Other Than Personal (Memorandum).

DATES: Effective May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: May 14, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–13283 Filed 5–28–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–15]

Notice of Proposed Information Collection: Comment Request; Loss Mitigation Evaluation

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Laurie Maggiano, Director, Single Family Asset Management and Disposition Division, Room 9176, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loss Mitigation Evaluation.

OMB Control Number, if applicable: 2502–0523.

Description of the need for the information and proposed use: Mortgagees are required by 24 CFR 203.605 to evaluate what (if any) loss mitigation initiatives are appropriate, and must maintain documentation of this evaluation.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 135,795 hours; the number of respondents is 600, the total annual number of responses is approximately 543,180, the frequency of response is on occasion, and the estimated time per response is estimated to be 15 minutes.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 21, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 02–13303 Filed 5–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Waubay National Wildlife Refuge Complex, Waubay, SD

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish & Wildlife Service announces that a Draft Comprehensive Conservation Plan and the Environmental Assessment (CCP/EA) for Waubay National Wildlife Refuge and Wetland Management District Complex (Complex) is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish & Wildlife Service intends to manage the Complex for the next 15 years.

DATES: Please submit comments on the Draft CCP/EA on or before June 28, 2002.

ADDRESSES: Comments on the Draft CCP/EA should be addressed to: Bridget McCann, Planning Team Leader, U.S. Fish & Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225–0486.

FOR MORE INFORMATION CONTACT: Larry Martin, Project Leader, U.S. Fish & Wildlife Service, Waubay National Wildlife Refuge Complex, 44401 134A Street, Waubay, SD 57273; (605) 947–4521; fax (605) 947–4524; or Bridget McCann, Planning Team Leader, U.S. Fish & Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225–0486; (303) 236–8145 ext. 685; fax (303) 236–4792.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the Draft CCP/EA may be obtained by writing to Larry Martin, Project Leader, U.S. Fish & Wildlife Service, Waubay National Wildlife Refuge Complex, 44401 134A Street, Waubay, SD 57273. The Draft CCP/EA will also be available for viewing and downloading online at *http://www.r6.fws.gov/larp.*

Background

Waubay National Wildlife Refuge (NWR), comprised of 4,650 acres, is located in Day County in northeastern South Dakota. The Refuge's mix of lakes, wetlands, prairie, forests, and cropland is home to a diversity of wildlife. More than 100 bird species nest on this small piece of habitat, with 37 mammals also calling it home.

Waubay NWR was established by President Roosevelt in 1935 as "a refuge and breeding ground for migratory birds and other wildlife."

Waubay Wetland Management District (WMD) protects over 250,000 acres of wetlands and prairie in six counties of northeastern South Dakota. The area's mix of native grass, planted grasses, cropland, and wetlands support a variety of wildlife. Wildlife communities are dependent on the abundant grasslands or wetlands, or both. The WMD is home to 247 species of birds, 43 species of mammals, and over 20 species of amphibians and reptiles. Breeding waterfowl and grassland-dependent passerines are two groups that are especially prominent.

This Draft CCP/EA identifies and evaluates three alternatives for managing Waubay National Wildlife Refuge Complex in northeastern South Dakota for the next 15 years.

Under Alternative A, the No Action alternative, current management of the Complex would continue; programs would follow the same direction, emphasis, and intensity as they do at present. No additional restoration of grasslands would occur on the Refuge. No effort would be made to enhance or research the importance of Refuge woodlands. Grassland and wetland easements on the WMD would continue to be purchased at current levels from willing sellers, averaging 10,000 and 2,000 acres per year, respectively. Fee-title acquisitions would be limited to exceptional tracts or those requiring special protection, or particular roundouts to Waterfowl Production Areas (WPAs). Wildlife monitoring on the Complex would be limited to mostly waterfowl surveys with incidental sightings of threatened and endangered species. Public use programs would continue, as is, with no additional educational or recreational programs offered. White-tailed deer hunting on the Refuge would continue for archery, rifle, and muzzleloader seasons. Providing deer hunts for youth and people with disabilities would not be planned for. Ice fishing, with current restrictions, would be allowed on the Refuge. Waterfowl Production Areas on the WMD would remain open to hunting, fishing, and trapping in accordance with State regulations. Development of an environmental education center would not be explored.

Alternative B would focus on protecting remaining tracts of native tallgrass prairie, restoring diversity to degraded grassland sites, replanting croplands to native grasses and forbs, and enhancing and maintaining these sites to support a functioning prairie ecosystem.

Protection of tallgrass prairie would be accomplished through fee-title acquisition, easements or through partnerships with State, Tribal or private organizations. In order to concentrate protection, restoration and management efforts in the WMD, especially in the target area of the Minnesota-Red River Lowlands, activities and management on the Refuge would be reduced to minimum levels. Restoration and management of Refuge woodlands would not occur. Threatened and endangered species on the Complex would be documented, but additional surveys or inventory plans would not be initiated. Protection, restoration, management, and wildlife monitoring efforts would increase in the Minnesota-Red River Lowlands, where tallgrass prairie historically occurred. Other parts of the WMD would receive minimal attention in terms of management and wildlife monitoring. Current hunting and fishing seasons on the Refuge would continue with no effort to expand or offer more accessible opportunities. An increase in fee-title lands would provide expanded opportunities for hunting, fishing, and trapping on the WMD. No changes would be made on the Refuge to provide additional trails or other wildlife observation opportunities. An education/visitor/research center within the Tallgrass Prairie Ecosystem would be developed to educate the public and provide a place for long-term studies on the dynamics and richness of this threatened habitat. Other interpretive and educational programs and special events on the Complex would be minimized to focus staff energies on the tallgrass prairie.

Under alternative C, the proposed action, management of the Complex would be much more aggressive and proactive. Fee-title lands would be managed and monitored to maintain higher quality habitat. All tame grasslands on the Refuge would be converted to native grasslands. Food plots within native woodlands on the Refuge would be restored to native trees to reduce edge effects and brown-headed cowbird populations. Native woodlands on the WMD would be protected where necessary. An inventory and monitoring plan would be developed for threatened and endangered species and State species at risk on the Complex. Public use and recreation on the Complex would be expanded to provide additional and improved educational experiences for visitors. Current hunting opportunities on the Refuge would be augmented by offering youth hunts and/or hunts for people with disabilities. Ice fishing on the Refuge, with current restrictions, would continue. Opportunities for wildlife observation, wildlife photography, environmental education and interpretation would be expanded on the Complex. The development of an outdoor classroom would be explored. The headquarters building would be expanded. One or two additional hiking trails would be developed on the Refuge. A more active volunteer program would be developed and promoted. Educational programs offered for schools in the WMD would increase, as would interpretive opportunities for visitors to WPAs.

Dated: May 7, 2002.

Ralph O. Morgenweck,

Regional Director, Region 6, Denver, Colorado.

[FR Doc. 02–13319 Filed 5–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for Endangered Species Permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by June 28, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit

comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESS**). You may also comment via the Internet to "*victoria_davis@fws.gov*." Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your Internet message, contact us directly at either telephone number listed above (*see* **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Arlena Maija Wartell, University of Georgia, Athens, Georgia, TE056509–0.

The applicant requests authorization to take (survey, capture, identify, examine, measure, tag, remove hair follicles, and release) the North Carolina northern flying squirrel (*Glaucomys sabrinus colratus*) to provide information on the genetic structure, diversity, and gene flow of the populations in the southern Appalachians. The proposed activities will take place at the following North Carolina locations: Plott Balsam Mountains, Roan Mountain, Grandfather Mountain, Great Smoky Mountains National Park, and Unicoi Mountains.

Applicant: Joseph H.K. Pechmann, University of New Orleans, New Orleans, Louisiana, TE056510–0.

The applicant requests authorization to take (survey, capture, tag, toe clip, monitor egg masses and tadpoles, and translocate) the Mississippi gopher frog (*Rana capito sevosa*) to gather information about the growth and survival and metamorphosis of tadpoles when raised in ponds that have different characteristics and to determine if the species raised in artificial ponds will return to breed. The proposed activities will take place in the DeSoto National Forest, Harrison County, Mississippi.

Applicant: Jeanette Wyneken, Florida Atlantic University, Boca Raton, Florida, TE056217–0.

The applicant requests authorization to take (survey, capture, identify, radio tag, measure and weigh, and release) the loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), and leatherback sea turtle (*Dermochelys coriacea*) to monitor green sea turtle use of developmental habitat in near shore waters, to collate and summarize long-term data, to update the understanding of the North Atlantic loggerhead population structure in a spatially explicit way, to update and partition the morality associated with several well-documented environmental stressors, and to collect new comprehensive data to describe the sex ratios of hatchlings throughout the southeastern United States. The proposed activities will take place in Florida, Georgia, South Carolina, and North Carolina.

Applicant: Tennessee Valley Authority, Travis H. Henry, Norris, Tennessee, TE056341–0.

The applicant requests authorization to take (survey, capture, mark, recapture, and release) the gray bat (*Myotis grisescens*), Indiana bat (*Myotis sidakus*), and bald eagle (*Haliaeetus leucocephalus*) to determine presence and absence and to gather population data, and to conduct a feeding analysis study of bald eagles. The proposed activities will take place in 201 counties within the Tennessee Valley Authority Power Service Area. This would include areas throughout Tennessee and portions of Alabama, Mississippi, Georgia, North Carolina, Virginia, and Kentucky.

Applicant: University of North Carolina at Wilmington, Dr. Michael A. McCartney, Wilmington, North Carolina TE056186–0.

The applicant requests authorization to take (harass) the Waccamaw silverside (*Menidia extensa*) while conducting population surveys and collecting the Waccamaw darter (*Etheostoma perlongum*) for genetic studies. The proposed activities are confined to Lake Waccamaw in Columbus County, North Carolina.

Applicant: North Carolina Natural Heritage Program, Stephen P. Hall, Raleigh, North Carolina, TE056340–0.

The applicant requests authorization to take (collect) 15 Saint Francis' Satyr (*Neonympha mitchellii francisci*) for genetic studies. The purpose of the collection is to determine the identity of the newly discovered populations in Alabama and Virginia. The activities will take place at Fort Bragg Army Base, Cumberland and Hoke Counties, North Carolina.

Applicant: Fish and Wildlife Associates, Inc., Pamela M. Boaze, Whitter, North Carolina TE056486–0.

The applicant requests authorization to take (survey, capture, and translocate) the pink mucket (*Lampsilis abrupta*) and orangefoot pimpleback (*Plethobasus cooperianus*) to relocate mussels outside of the construction site of a bridge over State Road-2 and the demolition of an existing bridge over State Road-2. The proposed activities will take place in Loudon, Tennessee.

Applicant: Mark A. Bailey, Shorter, Macon, TE056488–0.

The applicant requests authorization to install artificial cavity inserts in red-cockaded woodpecker (*Picoides borealis*) habitat so that each cluster has a minimum of four suitable cavities. The proposed activities will take place at Mitchell Dam, Richville, and Flag Mountain, Coosa County, Alabama.

Dated: May 8, 2002.

Judy L. Pulliam,

Acting Regional Director.

[FR Doc. 02–13318 Filed 5–28–02; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–462]

In the Matter of Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof II; Notice of Commission Decision not to Review an Initial Determination Terminating the Investigation as to Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID")(Order No. 26) terminating the above-captioned investigation as to respondents Sidel S.A. and Sidel, Inc. based on a settlement agreement. Under ALJ Order No. 27, the investigation will continue so that complainant may have

the opportunity to move for summary determination of violation and to request a general exclusion order pursuant to Commission rule 210.16(c)(2), 19 CFR 210.16(c)(2).

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-captioned investigation on August 23, 2001, based on a complaint filed by Milacron, Inc. (Milacron) of Cincinnati, OH, against eleven respondents. 66 FR 44374 (2001). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain plastic molding machines with control systems having programmable operator interfaces incorporating general purpose computers, and components thereof, by reason of infringement of claims 1–4 and 9–13 of U.S. Patent No. 5,062,052. Sidel S.A. and Sidel, Inc. (collectively, Sidel) are the last respondents remaining in the investigation. The nine other respondents were previously terminated from the investigation on the basis of settlement agreements.

On April 9, 2002, Milacron, and Sidel filed a joint motion under Commission rule 210.21(b) to terminate the investigation as to Sidel based on a Settlement and Non-Exclusive License Agreement. On April 18, 2002, Milacron filed a motion to amend the procedural schedule so that it would have the opportunity to file a motion for summary determination of violation of section 337 and to request a general exclusion order. On April 19, 2002, the Commission investigative attorney filed a response in support of both the joint motion to terminate and Milacron's motion to amend the procedural schedule. On April 23, 2002, the presiding ALJ issued his ID terminating the investigation as to Sidel. On April 24, 2002, he issued Order No. 27, granting Milacron's request to amend the procedural schedule. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: May 23, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–13323 Filed 5–28–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–472]

In the Matter of Certain Semiconductor Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 22, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Toshiba Corporation of Japan. A supplement to the complaint was filed on May 8, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices and products containing same by reason of infringement of claims 1, 3, 5, 7, 8, 10, and 12 of U.S. Letters Patent 5,150,178; claims 1–4 of U.S. Letters Patent 4,683,382; and claims 18–20 of U.S. Letters Patent 5,187,561. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Rett V. Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 21, 2002, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor devices or products containing same by reason of infringement of claim 1, 3, 5, 7, 8, 10, or 12 of U.S. Letters Patent 5,150,178; claim 1–3, or 4 of U.S. Letters Patent 4,683,382; or claim 18, 19, or 20 of U.S. Letters Patent 5,187,561, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Toshiba Corporation, 1–1, Shibaura 1-Chome, Minato-ku, Tokyo, 105–8001, Japan.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Samsung Electronics Co., Ltd., Samsung Main Building, 250–2 ga, Taepyong-ro, Chung-gu, Seoul, Korea; Samsung Semiconductor, Inc., 3655 North First Street, San Jose, CA 95134; Samsung Electronics America, Inc., 105 Challenger Road, 8th Floor, Ridgefield Park, NJ 07660.

(c) Rett V. Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: May 22, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–13321 Filed 5–28–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–460]

In the Matter of Certain Sortation Systems, Parts Thereof, and Products Containing Same; Order

The Commission instituted this patent-based investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain sortation systems, parts thereof, and products containing same, on July 25, 2001. 66 FR 38741. The complainants, Rapistan Systems Advertising Corporation and Siemens Dematic Corporation, named Vanderlande Industries Nederland BV and Vanderlande Industries, Inc. as respondents. On January 3, 2002, the then presiding administrative law judge (ALJ) (Judge Terrill) issued an ID (Order No. 10), which extended the target date for completion of the investigation from October 25, 2002, to March 10, 2003. On February 6, 2002, the Commission determined to review and vacate the ID. Consistent with the Commission's vacatur order, the ALJ on February 13, 2002, issued Order No. 13 reestablishing the original target date of October 25, 2002.

On March 6, 2002, the ALJ issued an order (Order No. 20) extending the target date for completion of the investigation by two months, from October 25, 2002, to December 25, 2002. On May 2, 2002, the Commission issued an order assigning this investigation to Judge Charles E. Bullock. On May 8, 2002, Judge Bullock issued an ID (Order No. 26) extending the target date by one month, from December 25, 2002, until January 25, 2003. Pursuant to Commission rule 210.42(a)(1)(i), the ALJ's final ID on the merits would be due four months earlier, i.e., by September 25, 2002.

Because Judge Bullock only recently became an ALJ at the Commission and this is his first section 337 investigation, it is reasonable to allow him more time for preparation of the final ID. Accordingly, we are, pursuant to rule 201.4(b), waiving the four-month requirement of rule 210.42(a)(1)(i) for good and sufficient reason and setting October 25, 2002, as the date by which the ALJ must issue his final ID in this investigation.

By order of the Commission.

Issued: May 22, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–13322 Filed 5–28–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on April 12, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has 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, Action Electronics Co., Ltd., Chung Li, Taiwan; Alcorn McBride, Inc., Orlando, FL; Creative Technology Ltd., Singapore, Singapore; DVS Korea Co. Ltd, Sungnam City, Kyungki-do. Republic of Korea; Denca Industrial Limited, Kowloon, Hong Kong-China; First International Computer, Inc., Taipei Hsien, Taiwan; Gema O.D. S.A., Barcelona, Spain; KD Media, Inc., Seol, Republic of Korea; Media Group, Inc., Fremont, CA; Megatron Co., Ltd., Seoul, Republic of Korea; Novac Co., Ltd., Bunkyo-ku, Tokyo, Japan; SDC Denmark A/S, Sakskobing, Denmark; STMicroelectronics, Inc., Carrollton, TX; UP Technology, Yangcheon-Gu, Seoul, Republic of Korea; and Videolar S/A, Barueri, Brazil have been added as parties to this venture.

Also, Beijing Durban Yu Change Electronics Co. Ltd., Kowloon, Hong Kong-China; Diversion Technologies, Inc., Castro Valley, CA; Dragon DVD Technology Sdn Bhd, Kuala Lumpur, Malaysia; Ngai Lik Electronics Co., Ltd., Kowloon, Hong Kong-China; Kanematsu Corporation, Tokyo, Japan; Nokia Corporation, Espoo, Finland; and P.T. Hartono Istana Teknologies, Kudos, Indonesia have been dropped as parties 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 DVD Copy Control Association ("DVD CCA") intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association ("DVD CCA") 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 August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on January 15, 2002. A notice was published in the **Federal Register** pursuant seciton 6(b) of the Act on March 25, 2002 (67 FR 13662).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–13304 Filed 5–28–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on March 28, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum has 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, Synopsys, Mountain View, C; Exar, Fremont, CA; Charlotte's Web Networks, Yoqneam, Israel; Mysticom, Netanya, Israel; Anritsu, Atsugi-shi, Kanagawa, Japan; Flextronics Semiconductor, Bowie, MD; Stratos Lightwave, Mountlake Terrace, WA; Bookham Technology, Abingdon, Oxfordshire, United Kingdom; Tality, Cary, NC; Peregrine Semiconductor, San Diego, CA; SiPackets, Fremont, CA; Ignis Optics, San Jose; CA; Sparkolor, Santa Clara, CA; Xindium, Champaign, IL; Harting Electro-Optics GmbH, Espelkamp, Nordrhein-Westfalen, Germany; Silicon Logic, Eau Claire, WI; Myrica Networks, San Diego, CA; Atrica, Hertzelia, Israel; TeraConnect, Nashua, NH; DeriveIt, Campbell, CA; Greenfield Networks, Santa Clara; CA; MathStar, Minnetonka, MN; Santec Corporation, Komaki, Aichi, Japan; Optium, Chalfont, PA; Fiberspace, Woodland Hills, CA, Octillion Communications, San Jose, CA; and GDA Technologies, San Jose, CA have been added as parties to this venture.

Princeton Optronics, Princeton, NJ changed from auditing to small business member. The following members have changed their names: Cinta Corporation to Cinta Networks, San Jose, CA; GMD to FhG—IMK, Munich, Bavaria, Germany; Edgeflow to Meriton Networks, Kanata, Ontario, Canada; Solinet Systems to Ceyba, Ottawa, Ontario, Canada; Sita Equant to Equant, Valbonne, Sophia Antipolis, France.

The following members have been involved with mergers: Onex Communications, Bedford, MA merged with TranSwitch Corporation, Bedford, MA; Ocular Networks, Reston, VA merged with Tellabs, Lisle, IL; and Silicon Packets, San Jose, CA merged with Cypress Semiconductor, San Jose, CA.

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 Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum 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 29, 1999 (64 FR 4709).

The last notification was filed with the Department on October 3, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 2002 (67 FR 7201).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–13307 Filed 5–28–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum ("PERF") Project No. 2000–01

Notice is hereby given that, on April 25, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 2000–01: "Effective Methods and Lessons Learned for Exploration & Production Waste Treatment" has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are ChevronTexaco Energy Research and Technology Company, Richmond, CA; ExxonMobil Production Company, Houston, TX; Phillips Petroleum Company, Bartlesville, OK; and Unocal, Brea, CA. The nature and objectives of the venture are, through cooperative research efforts, to identify, develop and/or improve methods for waste management considering both biological and non-biological methods, disposal options, selecting methods for international locations, sharing lessons learned from implementing technologies at specific sites including remote locations.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–13305 Filed 5–28–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby give that, on April 16, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has 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, Acuid Limited, Edinburgh, Scotland, United Kingdom; Bob Altizer (individual member), Phoenix, AZ; Suzanne Harrison (individual member), Palo Alto, CA; Gerald Keeler (individual member), San Francisco, CA; Sadrudin Laiwala (individual member), Fremont; CA; David Laone (individual member), San Jose, CA; Zainalabedin Navabi (individual member), Boston, MA; Patrick Sullivan (individual member), Palo Alto, CA; Angela Sutton (individual member), Redwood City, CA; Joe Villella (individual member), Palo Alto, CA; and NewLogic Technologies AG, Lustenau, Austria have been added as parties to this venture. Also, 3DSP Corporation, Irvine, CA; American Microsystems, Inc., Pocatello, ID; Ando Electric Co. Ltd., Tokyo, Japan; Axys Design Automation, Irvine, CA; C Level Design, Campbell,

CA; Fluence Technology, Inc., Beaverton, OR; Fuji Xerox Co. Ltd., Kanagawa, Japan; inSilicon Corp., San Jose, CA; Intensys, San Jose, CA; MIPS Technologies, Mountain View, CA; Monterey Design Systems, Sunnyvale, CA; Paxonet Communications, Pune, Maharashtra, India; Silicon Metrics, Austin, TX; Teradyne, Inc., Agoura Hills, CA; Xilinx, San Jose, CA; Zaiq Technologies, Inc., Woburn, MA; and NewLogic Consulting & Technology GmbH, Lustenau, Austria have been dropped as parties 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 VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance 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 March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on January 15, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2002 (67 FR 10763).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–13306 Filed 5–28–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection; Request Submitted for Public Comment and Recommendations; Management Information System Reporting Requirements for Youth Opportunity Grants

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paper-work Reduction Act of 1995, (PRA95)(44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data could be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly under-stood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of information collection for the management information system (MIS) reporting requirements for Youth Opportunity Grants. A copy of the current information collection request forms ETA–9086 and ETA–9087, can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on/or before July 29, 2002.

ADDRESSES: Gregg Weltz, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4511, Washington, DC 20210, telephone: 202–693–3527. (this is not a toll-free number), e-mail: *gweltz@doleta.gov.*

SUPPLEMENTARY INFORMATION:]

I. Background

Youth Opportunity Grants concentrate a large amount of resources in high-poverty neighborhoods to increase the employment, high school graduation, and college enrollment rates of youth growing up in these communities. In February 1999, the DOL announced Youth Opportunity awards to 36 urban, rural, and Native American sites. The MIS requirements for these grants currently include information on enrollee characteristics, services received, outcomes, retention in jobs and school. Youth Opportunity program operators currently maintain individual records of enrollees through an electronic method. The purpose of this collection provides grantees, services providers and the Employment and Training Administration with critical program data in order to ensure effective an efficient delivery of program services under these grants.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden and the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Youth Opportunity Grant program is a five year initiative. The current OMB approval instrument will expire in the middle of the third-year of program operation. In order to continue to monitor in real-time, the effective and efficient delivery of program services delivered through the grant funds for the remaining years of program operation, this collection of information is necessary. In addition, through the collection of this information the Employment and Training Administration is able to calculate the Workforce Investment Act (WIA) youth performance measures. The WIA youth performance measures data is also sent to the States in which grants are located to generate additional performance calculations that require Unemployment Insurance wage record data. Without this collection it would be impossible to generate the WIA youth performance measures, a Youth Opportunity Grant's required under the WIA legislation.

At this time, no revision will be made to the existing collection.

Cite/reference	Total respondents	Frequency	Total responses	Average	Burden
ETA–9086	36	Monthly	432	104	44,928
ETA–9087	36	Quarterly	144	48	6912
Totals					51,840

Type of Review: Extension (without change).

Agency: Einployment and Training Administration.

Title: Management Information System Requirements for Youth Opportunity Grants OMB Number: 1205–0414 and Agency Number: ETA–9086 and ETA–9087.

Affected Public: Local Workforce Investment Boards and Youth Opportunity Service Providers such as community-based organizations, schools, Tribal Governments and community colleges.

Total Respondents: 36 Youth Opportunity Grantees.

Frequency: Monthly.

Total Responses: 576 each year.

Average Time Per Response: 130 hours. This is based on the following assumptions: Each site will need to enter updated information for an average of 1,250, participant records over the course of a year at an average time of one hour a year, or 104 hours per month. Sites will require an average of 16 hours to prepare each quarterly report site per month.

Estimated Total Burden Hours: 51,840 hours.

Estimated Total Burden Costs: $777,600 to maintain data collection each year.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; and they will become a matter of public record.

Dated: May 13, 2002.

Lorenzo D. Harrison,

Administrator, Office of Youth Services.

[FR Doc. 02–13404 Filed 5–28–02; 8:45 am]

BILLING CODE 4510–30–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. Eastern Associated Coal Corp.

[Docket No. M–2002–042–C]

Eastern Associated Coal Corp., 202 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Rivers Edge Mine (I.D. No. 46–08890) located in Boone County, West Virginia. The petitioner proposes to use contactors instead of circuits breakers to provide undervoltage protection, ground fault, and ground monitor protection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Lone Mountain Processing, Incorporated

[Docket No. M–2002–043–C]

Lone Mountain Processing, Incorporated, Drawer C, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Darby Fork No. 1 Mine (I.D. No. 15–02263) located in Harlan County, Kentucky. The petitioner proposes to use a 480-volt, three-phase, 300KW/375VA diesel powered generator (DPG) set to supply power to a three-phase wye connected 300 KVA auto transformer and three-phase 480-volt and 995-volt power circuits. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Lone Mountain Processing, Incorporated

[Docket No. M–2002–044–C]

Lone Mountain Processing, Incorporated, Drawer C, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.901 (Protection of low- and medium-voltage three-phase circuits used underground) to its Huff Creek Mine No. 1 (I.D. No. 15–17234) located in Harlan County, Kentucky. The petitioner proposes to use a 480-volt, three-phase, 300KW/375VA diesel powered generator (DPG) set to supply power to a three-phase wye connected 300 KVA auto transformer and three-phase 480-volt and 995-volt power circuits. 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, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 28, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 22nd day of May, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–13410 Filed 5–28–02; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Board of Directors; Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on June 1, 2002. The meeting will begin at 9 a.m. and continue until conclusion of the Board's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of April 6, 2002.
3. Approval of the minutes of the Executive Session of the Board's meeting of April 6, 2002.
4. Chairman's Report.
5. Members' Report.
6. Acting Inspector General's Report.
7. President's Report.
8. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Service.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
11. Consider and act on changes to the Board's 2002 meeting schedule.

Closed Session

12. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.

13. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

14. Consider and act on other business.

15. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: May 24, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–13560 Filed 5–24–02; 2:22 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Board of Directors Finance Committee; Sunshine Act Meeting

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on May 31, 2002. The meeting will begin at 1:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of April 5, 2002.
3. Review of the Legal Services Corporation's Consolidated Operating Budget, Expenses and Other Funds available through April 5, 2002.
4. Review the projected operating expenses for fiscal year 2002 based on operating experience through March 31, 2002 and the required internal budgetary adjustments due to shifting priorities.
5. Consider and act on the President's recommendations for Consolidated Operating Budget reallocations.
6. Report on internal budgetary adjustments by the President and Inspector General.
7. Report on budgetary needs for fiscal year 2004.
8. Consider and act on Amendment to the LSC Flexible Benefits Plan.
9. Consider and act on other business.
10. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: May 24, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–13561 Filed 5–24–02; 2:22 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Board of Directors Committee on Provision for the Delivery of Legal Services; Sunshine Act Meeting

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on May 31, 2002. The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of April 5, 2002.
3. Panel Discussion—Listening to the Voices of our Clients. Five legal services clients from across the country will talk about the issues and problems that brought them into a legal services office and discuss the importance of legal services in their lives.
4. Office of Program Performance (OPP) Staff Updates on Three Special Projects:

(1) Update by Cynthia Schneider, OPP Program Counsel, on LSC's Contract for Skills Training with the National Poverty Law Center.

(2) Update by Monica Holman, OPP Program Counsel, on LSC's Resource Library (a.k.a. LARRY).

(3) Update by Joyce Raby, OPP Program Analyst, and Glen Rawdon, OPP Program Counsel, on LSC's Technology Initiative.

5. Report by Randi Youells, Vice President for Programs, on the State Planning Evaluation Instrument and the Innovations in Government Award Application.
6. Report by Randi Youells on development and publication of grant assurances.
7. Consider and act on other business.
8. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel Corporate Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: May 24, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–13562 Filed 5–24–02; 2:22 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Board of Directors Operations and Regulations Committee; Sunshine Act Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on May 31, 2002. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of April 5, 2002.
3. Staff report on the status of Current Negotiated Rulemakings: 45 CFR Part 1626 (Restrictions on Legal Assistance to Aliens); and 45 CFR Part 1611 (Eligibility).
4. Staff report on the publication of a Final Rule at 45 CFR Part 1639 (Welfare Reform).

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(1)(2) and (b). See also 45 CFR § 1622.2 & 1622.3.

5. Consider and act on changes to the title and qualifications for the position of Vice President for Administration.
6. Consider and act on appointment of acting Vice President for Compliance and Administration (formerly Vice President for Administration).
7. Consider and act on other business.
8. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: May 24, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–13563 Filed 5–24–02; 2:22 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–064)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, June 20, 2002, 10 a.m. to 6 p.m.; and Friday, June 21, 2002, 8 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, Conference Room MIC–6, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review Recommendations
—Program Overview
—Division Reports
—Status of International Space Station
—Research Prioritization Task Force
—Education and Outreach Policy
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 21, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–13297 Filed 5–28–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Allowance For Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of final interpretive ruling and policy statement (IRPS) 02–3.

SUMMARY: The National Credit Union Administration (NCUA) is adopting an Interpretive Ruling and Policy Statement on *Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Federally-Insured Credit Unions* (the IRPS). The federal banking agencies recently issued a final policy statement intended to clarify the banking agencies' expectations regarding methodologies and documentation support for the ALLL. The Securities and Exchange Commission (SEC) issued parallel guidance in a Staff Bulletin. Likewise, it is necessary for the NCUA to issue analogous guidelines for federally-insured credit unions in order to clarify the NCUA's expectations regarding methodologies and documentation support for the ALLL. This IRPS is intended to provide the necessary parallel guidance for federally-insured credit unions.

The IRPS provides guidance on the design and implementation of ALLL methodologies and supporting documentation practices. The guidance recognizes that credit unions should adopt methodologies and documentation practices that are appropriate for their size and complexity.

DATES: The IRPS is effective May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6389.

SUPPLEMENTARY INFORMATION:

I. Keypoints

- Credit union management is responsible for establishing an appropriate ALLL and documenting their methodology.
- Credit union methodologies should conform to generally accepted accounting principles (GAAP).
- Credit unions with lending portfolios comprised of homogeneous pools of consumer loans (such as credit card and automobile loans) and mortgage loans will find methodology and documentation requirements discussed herein to be less burdensome than those for credit unions with lending portfolios comprised of larger-balance, non-homogeneous loans. Simply put, credit unions must review all loans (by groups, as appropriate) for relevant internal and external factors, loss history, collateral values, and methods to ensure they are applied consistently when estimating probable existing losses but, when appropriate, modify loss estimates for new factors affecting collectibility.
- The Statement of Financial Accounting Standard (FAS) 5 discussions throughout this document will be most relevant to the majority of credit unions.
- Independent review of management's methodology and documentation practices by the supervisory committee, internal or external auditors is emphasized.
- Illustrations are provided that may be useful to a credit union in enhancing their own ALLL estimation methodology and documentation practices.

II. Background

On March 10, 1999, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission (the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (the Joint Letter). In the Joint Letter, the Agencies agreed to establish a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic. The Agencies agreed that the Joint Working Group would develop and issue parallel guidance for two key areas regarding the ALLL:

- Appropriate methodologies and supporting documentation, and
- Enhanced disclosures.

As a result, the banking agencies issued a final Policy Statement providing guidance to banks and savings institutions relating to methodologies and supporting documentation for the ALLL. The Securities and Exchange Commission staff has issued parallel guidance on this topic for public companies in Staff Accounting Bulletin No. 102.[1] This IRPS is intended to provide parallel guidance for federally-insured credit unions.

This IRPS clarifies the NCUA's expectations regarding methodologies and documentation support for the ALLL. For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with generally accepted accounting principles (GAAP). GAAP requires that a credit union maintain written documentation to support the amounts of the ALLL and the provision for loan and lease losses reported in the financial statements.

The IRPS does not change existing accounting guidance in, or modify the documentation requirements of, GAAP. It is intended to supplement, not replace, current guidance. The IRPS does not address or change current guidance regarding loan charge-offs; therefore, credit unions should continue to follow existing regulatory guidance that addresses the timing of charge-offs.

The guidance in this IRPS recognizes that credit unions should adopt methodologies and documentation practices that are appropriate for their size and complexity. For credit unions with fewer and less complex loan products, the amount of supporting documentation for the ALLL may be less exhaustive than for credit unions with more complex loan products or portfolios.

Recognizing that a primary mission of the NCUA is to support a safe and sound credit union system, examiners will continue to evaluate the overall adequacy of the ALLL, including the adequacy of supporting documentation, to ensure that it is appropriate. While the IRPS generally does not provide guidance to examiners in conducting safety and soundness examinations, examiners may take exception to credit union practices that fail to document and maintain an adequate ALLL in accordance with this IRPS, and other NCUA guidance. In such cases, credit union management may be cited for engaging in unsafe and unsound practices and may be subject to further supervisory action.

[1] In addition, the American Institute of Certified Public Accountants (AICPA) is developing guidance on the accounting for loan losses and the techniques for measuring probable losses in a loan portfolio.

III. The Proposed IRPS

The NCUA sought public comment on a proposed IRPS on ALLL methodologies and documentation practices for credit unions on October 26, 2001 (66 FR 54290). The proposal indicated that the purpose of the policy statement was to provide federally-insured credit unions with enhanced guidance on appropriate ALLL methodologies and documentation practices.

The proposed IRPS explained that the board of directors of each federally-insured credit union is responsible for ensuring that controls are in place to determine the appropriate level of the ALLL. It also emphasized the NCUA's long-standing position that credit unions should maintain and support the ALLL with documentation that is consistent with their stated policies and procedures, GAAP, and applicable supervisory guidance.

The proposed IRPS described significant aspects of ALLL methodologies and documentation practices. Specifically, the proposal provided guidance on maintaining and documenting policies and procedures that are appropriately tailored to the size and complexity of the credit union and its loan portfolio. The proposed IRPS stated that a credit union's ALLL methodology must be a thorough, disciplined, and consistently applied process that incorporates management's current judgments about the credit quality of the loan portfolio.

The proposal also discussed the methodology and documentation needed to support ALLL estimates prepared in accordance with GAAP, which requires loss estimates based upon reviews of individual loans and groups of loans. The proposal stated that after determining the allowance on individually reviewed loans and groups of loans, management should consolidate those loss estimates and summarize the amount to be reported in the financial statements for the ALLL. To verify that the ALLL methodology is effective and conforms to GAAP and supervisory guidance, the supervisory committee, the internal or external auditors or some other designated party who is independent from the ALLL estimation process should review the methodology and its application in a manner appropriate to the size and complexity of the credit union.

The proposal included illustrations of implementation practices that credit unions may find useful for enhancing their own ALLL practices; a summary of applicable GAAP guidance; an appendix that provided examples of certain key aspects of ALLL guidance; and a bibliographical list of relevant GAAP guidance, joint interagency statements, and other literature on ALLL issues.

IV. Discussion of Public Comments

A. General Comments

The NCUA received thirteen letters commenting on the proposed IRPS. Five of the letters were received from credit unions; four were received from credit union league groups; two letters were from credit union trade groups; one letter was from another credit union group; and one letter came from a banking trade group.

Overall, eight of the thirteen commenters supported the IRPS: three favoring the IRPS and welcoming the guidance and policy clarification; five others supporting the IRPS but expressing cautious approval. One of the eight summarized the flavor of the comments well in pointing out that the IRPS was an enhancement to current guidelines; provided a given framework without endorsing a fixed formula; and provided valuable discussion points on generally accepted accounting principles (GAAP). Another of the eight welcomed the IRPS guidance as offering areas of policy clarification. One commenter welcomed the IRPS guidance arguing that a new process is needed to replace the outdated historical loss approach. Other favorable comments included approval of the useful appendix illustrations; appreciation for the discussion points on FAS 5 and FAS 114 as particularly helpful; and acknowledgement that the policy recognized that credit unions with homogeneous pools of consumer loans should have a lesser burden. A banking trade group supported the effort and encouraged the NCUA to issue identical guidance to credit unions as the other regulators issue for banks.

One commenter was unclear in setting forth his position as either favoring or opposing the IRPS. Another commenter expressed the view that current practices within its credit union satisfied the major points in the IRPS. He understood that the guidance did not attempt to expand current GAAP requirements and allowed credit unions to continue to use judgment in implementing loan loss estimation methodologies that are appropriate to individual credit unions.

The NCUA believes that credit unions currently complying with GAAP should not need to dedicate additional resources to create or support the ALLL

included in their regulatory reports. The NCUA has expected credit unions to follow GAAP, as it applies to the ALLL, for regulatory reporting purposes for a number of years. The IRPS is consistent with existing GAAP, which requires that allowances be well documented, with clear explanations of the supporting analysis and rationale. The NCUA encourages credit unions to carefully evaluate their current ALLL methodologies and supporting documentation practices as well as other credit risk management practices and reports before making significant changes to their current practices or creating new processes, reports, or other supporting documents in order to follow this guidance.

Two of the thirteen commenters opposed the change outright both arguing it would impose a regulatory burden without a corresponding benefit. One of these categorized the IRPS as an extensive policy change and the other objected to the documentation requirements. These comments are discussed more fully below in the section dealing with "IRPS Burden on Small Credit Unions".

The remaining commenter expressed caution and anticipated overly-zealous agency enforcement of the IRPS, fearing that the examiners would likely challenge the ALLL result even when the methodology had been validated by a third party. The NCUA plans several initiatives to update examiner directives and train examiners in the less familiar aspects of the IRPS. The Board does not anticipate an unreasonable enforcement of the IRPS with regard to affected credit unions.

B. Board Approval Requirement

The proposed IRPS required that amounts to be reported each period for the provision for loan and lease losses and the ALLL should be reviewed and approved by the board of directors. The NCUA did not intend through this language to expand the board of directors responsibilities beyond those that currently exist.

Two commenters that favored the IRPS proposal and one that opposed it objected to the referenced language. One of these three stated that it was inappropriate to require the board of directors by regulatory ruling to provide such approvals. Another suggested it was unwise to add responsibilities on credit union boards of directors at a time when attracting qualified volunteers was becoming increasingly difficult. Each argued that boards should have oversight over the methodology used, periodically validating the methodology and ensuring it was revised when appropriate; but, otherwise, not be required to provide approvals.

At present, boards of directors are responsible for approving ALLL policies and attesting to the validity of the regulatory reports, which includes the ALLL. While the board of directors has ultimate responsibility for these functions, daily administration of policies and recordkeeping may be delegated to operating management. The IRPS includes the statement that the scope of board of directors' responsibilities is not changed or expanded with the issuance of this Policy Statement.

C. Independent Review of ALLL

The proposed IRPS required that credit union policies governing the ALLL methodology should include procedures for a review, by a party who is independent of the ALLL estimation process, of the ALLL methodology and its application in order to confirm its effectiveness. Further, the supervisory or audit committee should oversee and monitor the internal controls over the ALLL determination process.

Three commenters request modifications to the IRPS language. One opposed this provision outright arguing that an independent review carries little or no weight at the examiner level. One argued that since the supervisory committee could delegate these functions to the internal or external auditor, the IRPS should acknowledge that fact. The third stated it was inappropriate and unnecessary to require, by regulatory ruling, that the oversight and monitoring of the internal controls over the ALLL determination process is a specific responsibility of the supervisory committee.

The NCUA did not intend through this language to expand the supervisory committee's responsibilities beyond those that currently exist. The supervisory committee's responsibilities with regard to oversight and monitoring of the internal controls over the ALLL determination process are already encompassed within its general responsibilities set forth in § 715.3 of the NCUA Rules and Regulations. The IRPS simply highlights and reinforces the supervisory committee's role (which may be delegated to the internal or external auditor) with regard to the ALLL estimation process and specifically, its role in the independent review of management's implementation of the board's policies with regard to the process. The Board believes the IRPS guidance would be deficient if it failed to mention and reinforce this role.

D. IRPS Burden On Small Credit Unions

The IRPS provided in several places that credit unions currently complying with GAAP should not need to dedicate additional resources to create or support the ALLL included in regulatory reports. Essentially, those credit unions currently following GAAP should not be greatly affected by the IRPS nor find their current practices in need of substantial change.

One commenter acknowledged that the current practices within his credit union satisfy the major points in the IRPS. However, two other commenters did not agree: one of these, opposed to the IRPS generally, argued that the additional regulatory burden it will impose is without a corresponding benefit. The other commenter objected that the IRPS imposes a needless burden to credit unions; that the ALLL within credit unions is not systemically deficient; and that they support a simpler rule without adding new burden to credit union management and board members. Further, this commenter opposed a particular methodology.

The IRPS provides throughout that if a credit union is currently complying with GAAP in its ALLL estimation practices and methodology, the IRPS will not substantially change current practice. The guidance in the IRPS includes a broad description of the steps taken during the ALLL estimation process that must be documented. The types of documentation described in the examples illustrate that management has considerable flexibility in determining the appropriate level and type of supporting documentation given the type of loans and associated credit risks being evaluated. Additionally, the guidance specifically states that credit unions with less complex products or portfolios may consider combining some of the procedures outlined in the proposed guidance. Furthermore, when appropriate, these credit unions may use documentation that is already being generated for other purposes to support their ALLLs. The NCUA believes these suggestions will assist these credit unions in supporting their ALLLs without any unnecessary burden.

E. Statement of Financial Accounting Standard (FAS) 5

The proposed IRPS included a discussion of relevant GAAP particularly FAS 5 and FAS 114, and provides illustrations of how the two standards work in tandem.

One commenter suggested that small credit unions should not have to apply either FAS 5 or FAS 114, but that NCUA

should develop a simplistic methodology for their use. FAS 5 and FAS 114 comprise GAAP and all credit unions must comply with GAAP in their ALLL estimation process: credit unions under $10 million in assets must comply with GAAP in their ALLL estimation process in order to meet full and fair disclosure requirements of the NCUA Rules and Regulations; in addition, credit unions with $10 million or more in assets must comply with GAAP under requirements of the Federal Credit Union Act as amended by the Credit Union Membership Access Act. However, the IRPS does concede a lesser methodology and documentation burden for less complex credit unions.

Another commenter, generally favoring the IRPS, acknowledged that the IRPS approach is technically accurate but argued that it does not protect the National Credit Union Share Insurance Fund (NCUSIF) by building a cushion in good times to cover losses in bad times. The commenter is correct. The GAAP rules, aimed at fair presentation of financial statements, are predicated on an "incurred loss" accounting model for estimating loan losses rather than an "expected loss" model; the latter model is arguably more favorable in cushioning against future losses. Nonetheless, the entire ALLL must be determined in accordance with GAAP and supported with adequate documentation. Credit unions are already required to follow GAAP (incurred loss model) when determining the ALLL and the guidance does not change existing GAAP; therefore, following this IRPS should not result in material adjustments to the ALLL by credit unions currently following GAAP.

A third commenter addressed the requirement that homogeneous pools be segmented based on predominant risk characteristics. The commenter expressed concern about the examiners interpretation of this provision and strongly advocated for additional examiner guidance. This commenter also suggested the final IRPS omit the paragraph dealing with loss estimation models. The NCUA agrees that examiner guidance will be needed and will be following the issuance of this IRPS with Examiner Guide revisions and examiner education to ensure the smooth implementation of this policy. The Board considered the elimination of the loss estimation models paragraph but determined there was merit to segments of the credit union population in retaining the paragraph.

A final commenter wanted the NCUA to emphasize that obtaining an appropriate ALLL that correctly recognizes risk is more important than the minute details of the methodology. The NCUA agrees but acknowledges that a sound methodology ensures an appropriate ALLL. This commenter also wants NCUA to recognize in the guidance that many credit unions are already abiding by these practices. The NCUA agrees this statement is true and believes the guidance recognizes this fact.

F. Statement of Financial Accounting Standard (FAS) 114

The proposed IRPS discussed GAAP generally and FAS 114 specifically. FAS 114 deals with individual classification of large-balance, non-homogeneous loans which for credit unions will predominantly consist of business and agricultural loans.

One commenter suggested that rarely will a credit union have such a loan, and if they do, it is unlikely they will have the means to analyze and calculate the present value of future cash flows. He believes FAS 114 is intended to provide job security to CPAs. This commenter further suggested that the vast majority of credit unions will have loans within the scope of FAS 5, *i.e.*, smaller balance, homogeneous pools of consumer loans. He encouraged parameters defining "larger balance" for each of consumer loans and commercial loans. The NCUA agrees that the vast majority of credit unions will have loans within the scope of FAS 5 and that it will be only the most complex credit unions that may have a large balance business loan within the scope of FAS 114 requiring individual classification. Nonetheless, the NCUA resists setting parameters defining "larger balance" as to do so would eliminate the intended discretion the Financial Accounting Standards Board (FASB) preserved in promulgating FAS 114. The IRPS includes illustrations to help guide a credit union's judgment as it implements the guidance.

In the Q&A Appendix to the IRPS, question #2 discusses "a $750,000 loan outstanding that is secured by real estate, which Credit Union B individually evaluates under FAS 114 *due to the loan's size* (emphasis added)." The example was originally published by the banking agencies as collateralized at $10 million. When drafting the proposed IRPS, NCUA staff reduced the dollar threshold from the $10 million level to make the example more realistic in relation to a credit union. Clearly only large balance, non-homogeneous loans are scoped within FAS 114, and since rarely would a credit union have a large balance, real estate-secured loan within the scope of FAS 114 unless it were a business loan, staff have concluded that the collateral value reduction included when drafting the proposed rule has proved misleading to readers of the IRPS in a proper interpretation of FAS 114. Accordingly, the dollar threshold for real estate collateral in the Q&A example for purposes of applying FAS 114 has been raised to the $10 million threshold consistent with the banking agencies similar policy statement.

G. Miscellaneous

The proposed IRPS mentioned that the American Institute of Certified Public Accountants (AICPA) is drafting and intends to issue a Statement of Position setting forth further GAAP with regard to the ALLL. Two commenters suggest the NCUA wait to issue its final IRPS until the AICPA issues its final SOP. Because the IRPS provides beneficial clarifying guidance within existing GAAP, and since the SOP document has yet to be advanced through the accounting standard-setting due process, NCUA chooses to proceed with issuing this IRPS. The AICPA continues to develop its guidance, and the NCUA along with the banking agencies are closely monitoring and actively contributing to that process.

One commenter objected to footnote language that seemed to obligate all insured credit unions to have a supervisory or audit committee. They argued the footnote language is inconsistent with the construction of Title II of the Federal Credit Union Act and applicable parts of the NCUA Rules and Regulations. Because of differing state requirements and the fact that some state credit unions have audit committees rather than supervisory committees, the footnote has been amended to provide that while federal credit unions are required to establish a supervisory committee; and while state chartered credit unions are encouraged to have either a supervisory or audit committee, in credit unions without either a supervisory or an audit committee, the board of directors retains this responsibility. The revised footnote more closely parallels a similar footnote included in the banking agencies' related final interagency policy statement.

One commenter noted that, for purposes of the Regulatory Flexibility Act (RFA), the Board considers credit unions under $1 million in assets to be small credit unions. The commenter suggested that the Board use a threshold of $10 million instead of $1 million. In suggesting that the threshold be raised, they argue that credit unions under $10 million do not need to comply with

GAAP in funding the ALLL. NCUA regulations mandate, however, that credit unions under $1 million be considered as small for purposes of the RFA. See 12 CFR 791.8(a) and Interpretive Ruling and Policy Statement 87–2. Additionally, all credit unions regardless of asset size must comply with GAAP in funding the allowance as discussed above in the section dealing with FAS 5.

V. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that NCUA prepare an analysis describing any significant economic impact agency rulemaking may have on a substantial number of small credit unions. 5 U.S.C. 601 *et seq.* For purposes of this analysis, NCUA considers credit unions under $1 million in assets as small credit unions.

Credit unions over $10 million in assets must follow GAAP in the call reports they file with the NCUA Board. All other credit unions must comply with GAAP in relation to the ALLL in order to meet regulatory requirements of full and fair disclosure. This IRPS describes simplified ALLL requirements for the less complex loan activities that small credit unions engage in. For example, small credit unions may satisfy their ALLL responsibilities with consolidated documentation, the use of standardized checklists and worksheets, and simplified loan categorizations and segmentation. Accordingly, the NCUA has determined and certifies that this IRPS will not have a significant economic impact on a substantial number of small credit unions beyond what is already required of them.

Paperwork Reduction Act

NCUA has determined that this IRPS does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This IRPS applies to all credit unions, but does not have 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. NCUA has determined that this IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

By the National Credit Union Administration Board, on May 16, 2002.

Becky Baker,

Secretary of the Board.

Authority: 12 U.S.C. 1782a; 12 CFR 702.402.

IRPS 02–3 is as follows:

Interpretive Ruling and Policy Statement No. 02–3

Allowance for Loan and Lease Losses. Methodologies and Documentation for Federally-Insured Credit Unions (IRPS 02–3)

Boards of directors of federally-insured credit unions are responsible for ensuring that their credit unions have controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with the credit union's stated policies and procedures, generally accepted accounting principles (GAAP), and ALLL supervisory guidance.[1] To fulfill this responsibility, boards of directors instruct management to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses. Management should create and implement suitable policies and procedures to communicate the ALLL process internally to all applicable personnel. Regardless of who develops and implements these policies, procedures, and the underlying controls, the board of directors should assure themselves that the policies specifically address the credit union's unique goals, systems, risk profile, personnel, and other resources before approving them. Additionally, by creating an environment that encourages personnel to follow these policies and procedures, management improves procedural discipline and compliance.

The determination of the amounts of the ALLL and provisions for loan and lease losses should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectibility as of the reporting date. The amounts to be reported each period for the provision for loan and lease losses and the ALLL should be reviewed and approved by the board of directors. To ensure the methodology remains appropriate for the credit union, the board of directors should have the methodology periodically validated and, if appropriate, revised. Further, the supervisory or audit committee[2] should oversee and monitor the internal controls over the ALLL determination process.[3]

The NCUA has a long-standing examination policy that calls for examiners to review a credit union's lending and loan review functions and recommend improvements, if needed. Agency guidance assists a credit union in estimating and establishing a sufficient ALLL supported by adequate documentation.

Additionally, guidance requires operational and managerial standards that are appropriate for a credit union's size and the nature and scope of its activities.

For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with GAAP. GAAP requires that allowances be well documented, with clear explanations of the supporting analyses and rationale.[4] This IRPS describes but does not increase the documentation requirements already existing within GAAP. Failure to maintain, analyze, or support an adequate ALLL in accordance with GAAP and supervisory

[1] A bibliography is attached that lists applicable ALLL GAAP guidance, interagency policy statements, and other reference materials that may assist in understanding and implementing an ALLL in accordance with GAAP. See "Application of GAAP" section for additional information on applying GAAP to determine the ALLL.

[2] All federal credit unions must establish a supervisory committee. If a federally insured state chartered credit union does not have either a supervisory or audit committee, the board of directors retains this responsibility.

[3] Credit union supervisory or audit committees and their auditors should refer to Statement on Auditing Standards No. 61, *Communication With Audit Committees* (as amended by Statement on Auditing Standards No. 90, *Audit Committee Communications*), which requires certain discussions between the auditor and the audit committee. These discussions should include items, such as accounting policies and estimates, judgments, and uncertainties, that have a significant impact on the accounting information included in the financial statements.

[4] The documentation guidance within this IRPS is predominantly based upon the GAAP guidance from Financial Accounting Standards Board Statement Numbers 5 and 114 (FAS 5 and FAS 114, respectively); Emerging Issues Task Force Topic No. D–80 (EITF Topic D–80 and attachments), *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (which includes the *Viewpoints* Article—an article issued in 1999 by FASB staff providing guidance on certain issues regarding the ALLL, particularly on the application of FAS 5 and FAS 114 and how these statements interrelate); and Chapter 6— *Allowance for Loan Losses,* the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide, *Audits of Credit Unions 2000* edition (AICPA Audit Guide).

guidance is generally an unsafe and unsound credit union practice. [5]

This guidance applies equally to all credit unions, regardless of the size. However, credit unions with less complex lending activities and products may find it more efficient to combine a number of procedures (e.g., information gathering, documentation, and internal approval processes) while continuing to ensure the credit union has a consistent and appropriate methodology. Thus, much of the supporting documentation required for a credit union with more complex products or portfolios may be combined into fewer supporting documents in a credit union with less complex products or portfolios. For example, simplified documentation can include spreadsheets, check lists, and other summary documents that many credit unions currently use. Illustrations B and D provide specific examples of how less complex credit unions may determine and document portions of their ALLL.

Documentation Standards

Appropriate written supporting documentation facilitates review of the ALLL process and reported amounts, builds discipline and consistency into the ALLL determination process, and improves the process for estimating loan and lease losses by helping to ensure that all relevant factors are appropriately considered in the ALLL analysis. A credit union should document the relationship between the findings of its detailed review of the loan portfolio and the amount of the ALLL and the provision for loan and lease losses reported in each period.

At a minimum, credit unions should maintain written supporting documentation for the following decisions, strategies, and processes:

1. Policies and procedures:

a. Over the systems and controls that maintain an appropriate ALLL, and

b. Over the ALLL methodology,

2. Loan grading system or process,

3. Summary or consolidation of the ALLL balance,

4. Validation of the ALLL methodology, and

5. Periodic adjustments to the ALLL process.

The following sections of this IRPS provide guidance on significant aspects of ALLL methodologies and documentation practices. Specifically, this IRPS provides documentation guidance on:

1. Application of GAAP,

2. Policies and Procedures,

3. Methodology,

4. ALLL Under FASB Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of a Loan* (FAS 114),

5. ALLL Under FASB Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5),

6. Consolidating the Loss Estimates, and

7. Validating the ALLL Methodology.

Application of GAAP

An ALLL recorded pursuant to GAAP is a credit union's best estimate of the probable amount of loans and lease-financing receivables that it will be unable to collect based on current information and events. [6] A creditor should record an ALLL when the criteria for accrual of a loss contingency as set forth in GAAP have been met. Estimating the amount of an ALLL involves a high degree of management judgment and is inevitably imprecise. Accordingly, a credit union may determine that the amount of loss falls within a range. A credit union should record its best estimate within the range of loan losses. [7]

Under GAAP, Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5), provides the basic guidance for recognition of a loss contingency, such as the collectibility of loans (receivables), when it is probable that a loss has been incurred and the amount can be reasonably estimated. Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of a Loan* (FAS 114) provides more specific guidance about the measurement and disclosure of impairment for certain types of loans. [8] Specifically, FAS 114 applies to loans that are identified for evaluation on an individual basis. Loans are considered impaired when, based on current information and events, it is probable that the creditor will be unable to collect all interest and principal payments due according to the contractual terms of the loan agreement.

For individually impaired loans, FAS 114 provides guidance on the acceptable methods to measure impairment. Specifically, FAS 114 states that when a loan is impaired, a creditor should measure impairment based on the present value of expected future principal and interest cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price or the fair value of collateral, if the loan is collateral dependent. When developing the estimate of expected future cash flows for a loan, a credit union should consider all available information reflecting past events and current conditions, including the effect of existing environmental factors. The Illustration A provides an example of a credit union estimating a loan's impairment when the loan has been partially charged-off. [9]

Large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment are not included in the scope of FAS 114. [10] Such groups of loans may include, but are not limited to, credit card, residential mortgage, and consumer installment loans. FAS 5 addresses the accounting for impairment of these loans. Also, FAS 5 provides the accounting guidance for impairment of loans that are not identified for evaluation on an individual basis and loans that are individually evaluated but are not individually considered impaired.

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[5] Failure to maintain adequate supporting documentation does not relieve a credit union of its obligation to record an appropriate ALLL.

[6] This section provides guidance on the ALLL and does not address allowances for credit losses for off-balance sheet instruments (*e.g.*, loan commitments, guarantees, and standby letters of credit). Credit unions should record liabilities for these exposures in accordance with GAAP. Further guidance on this topic is presented in the American Institute of Certified Public Accountants' Audit and Accounting Guide, *Audits of Credit Unions*, 2000 edition (AICPA Audit Guide). Additionally, this section does not address allowances or accounting for assets or portions of assets sold with recourse, which is described in Statement of Financial Accounting Standards No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125* (FAS 140).

[7] Refer to FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss*, and Emerging Issues Task Force Topic No. D-80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (EITF Topic D–80).

[8] Emerging Issues Taskforce (EITF) Topic D–80 includes additional guidance on the requirements of FAS 5 and FAS 114 and how they relate to each other. The AICPA is currently developing a Statement of Position (SOP) that will provide more specific guidance on accounting for loan losses.

[9] The referenced "gray box" illustrations are presented to assist credit unions in evaluating how to implement the guidance provided in this document. The methods described in the illustrations may not be suitable for all credit unions and are not considered required processes or actions. For additional descriptions of key aspects of ALLL guidance, a series of ALLL Questions and Answers (Q&As) are included in Appendix A of this paper.

[10] In addition, FAS 114 does not apply to loans measured at fair value or at the lower of cost or fair value, leases, or debt securities.

ILLUSTRATION A

INTERACTION OF FAS 114 WITH AN ADVERSELY CLASSIFIED LOAN, PARTIAL CHARGE-OFF, AND THE OVERALL ALLL

A credit union determined that a collateral dependent loan, which it identified for evaluation, was impaired. In accordance with FAS 114, the credit union established an ALLL for the amount that the recorded investment in the loan exceeded the fair value of the underlying collateral, less costs to sell.

Consistent with relevant regulatory guidance, the credit union classified as "Loss," the portion of the recorded investment deemed to be the confirmed loss, and classified the remaining recorded investment as "Substandard." For this loan, the amount classified "Loss" was less than the impairment amount (as determined under FAS 114). The credit union charged off the "Loss" portion of the loan. After the charge-off, the portion of the ALLL related to this "Substandard" loan (1) reflects an appropriate measure of impairment under FAS 114, and (2) is included in the aggregate FAS 114 ALLL for all loans that were identified for evaluation and individually considered impaired. The aggregate FAS 114 ALLL is included in the credit union's overall ALLL.

Credit unions should ensure that they do not layer their loan loss allowances. Layering is the inappropriate practice of recording in the ALLL more than one amount for the same probable loan loss. Layering can happen when a credit union includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an additional ALLL amount.[11]

While different credit unions may use different methods, there are certain common elements that should be included in any loan loss allowance methodology. Generally, a credit union's methodology should:[12]

1. Include a detailed analysis of the loan portfolio, performed on a regular basis;
2. Consider all loans (whether on an individual or group basis);
3. Identify loans to be evaluated for impairment on an individual basis under FAS 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under FAS 5;
4. Consider all known relevant internal and external factors that may affect loan collectibility;
5. Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;
6. Consider the particular risks inherent in different kinds of lending;
7. Consider current collateral values (less costs to sell), where applicable;
8. Require that analyses, estimates, reviews and other ALLL methodology functions be performed by competent and well-trained personnel;
9. Be based on current and reliable data;
10. Be well documented with clear explanations of the supporting analyses and rationale; and
11. Include a systematic and logical method to consolidate the loss estimates and ensure the ALLL balance is recorded in accordance with GAAP.

A systematic methodology that is properly designed and implemented should result in a credit union's best estimate of the ALLL. Accordingly, credit unions should adjust their ALLL balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted ALLL balance in the general ledger.[13]

Policies and Procedures

Credit unions use a wide range of policies, procedures, and control systems in their ALLL process. Sound policies should be appropriately tailored to the size and complexity of the credit union and its loan portfolio.

In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures for the systems and controls that maintain an appropriate ALLL should address but not be limited to:

(1) The roles and responsibilities of the credit union's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine, or review, as applicable, the ALLL to be reported in the financial statements;

(2) The credit union's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;

(3) The description of the credit union's systematic methodology, which should be consistent with the credit union's accounting policies for determining its ALLL;[14] and

(4) The system of internal controls used to ensure that the ALLL process is maintained in accordance with GAAP and supervisory guidance.

An internal control system for the ALLL estimation process should:

(1) Include measures to ensure the reliability and integrity of information

[11] According to the Federal Financial Institutions Examination Council's Federal Register Notice, *Implementation Issues Arising from FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan*, published February 10, 1995, institution-specific issues should be reviewed when estimating loan losses under FAS 114. This analysis should be conducted as part of the evaluation of each individual loan reviewed under FAS 114 to avoid potential ALLL layering.

[12] Refer to paragraph 6.04–6.10 of the AICPA Audit Guide.

[13] For informational purposes, credit unions may want to refer to the guidance on materiality provided in SEC Staff Accounting Bulletin No. 99, *Moteriolity*.

[14] Further explanation is presented in the Methodology section that appears below.

and compliance with laws, regulations, and internal policies and procedures;

(2) Reasonably ensure that the credit union's financial statements (including regulatory reports) are prepared in accordance with GAAP and ALLL supervisory guidance; and

(3) Include a well-defined loan review process containing:

(a) An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;

(b) Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved; and

(c) Clear formal communication and coordination between a credit union's credit administration function, financial reporting group, management, board of directors, and others who are involved in the ALLL determination process or review process, as applicable (*e.g.*, written policies and procedures, management reports, audit programs, and committee minutes).

Methodology

An ALLL methodology is a system that a credit union designs and implements to reasonably estimate loan and lease losses as of the financial statement date. It is critical that ALLL methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process.

A credit union's ALLL methodology is influenced by credit union-specific factors, such as a credit union's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, there are certain common elements a credit union should incorporate in its ALLL methodology. A summary of common elements was provided in *Application of GAAP* section of this IRPS.[15]

Documentation of ALLL Methodology in Written Policies and Procedures

A credit union's written policies and procedures should describe the primary elements of the credit union's ALLL methodology, including portfolio segmentation and impairment measurement. In order for a credit union's ALLL methodology to be effective, the credit union's written policies and procedures should describe the methodology:

(1) For segmenting the portfolio:

(a) How the segmentation process is performed (*i.e.*, by loan type, industry, risk rates, *etc.*),

(b) When a loan grading system is used to segment the portfolio:

(i) The definitions of each loan grade,

(ii) A reconciliation of the internal loan grades to supervisory loan grades, and

(iii) The delineation of responsibilities for the loan grading system.

(2) For determining and measuring impairment under FAS 114:

(a) The methods used to identify loans to be analyzed individually;

(b) For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

(i) Procedures describing the impairment measurement techniques available and

(ii) Steps performed to determine which technique is most appropriate in a given situation.

(c) The methods used to determine whether and how loans individually evaluated under FAS 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under FAS 5.

(3) For determining and measuring impairment under FAS 5:

(a) How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

(b) How loss rates are determined (*e.g.*, historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

(c) Descriptions of qualitative factors (*e.g.*, industry, geographical, economic and political factors) that may affect loss rates or other loss measurements.

The supporting documents for the ALLL may be integrated in a credit union's credit files, loan review reports or worksheets, board of directors' and committee meeting minutes, computer reports, or other appropriate documents and files.

ALLL Under FAS 114

A credit union's ALLL methodology related to FAS 114 loans begins with the use of its normal loan review procedures to identify whether a loan is impaired as defined by the accounting standard. Credit unions should document:

(1) The method and process for identifying loans to be evaluated under FAS 114 and

(2) The analysis that resulted in an impairment decision for each loan and the determination of the impairment measurement method to be used (*i.e.*, present value of expected future cash flows, fair value of collateral less costs to sell, or the loan's observable market price).

Once a credit union has determined which of the three available measurement methods to use for an impaired loan under FAS 114, it should maintain supporting documentation as follows:

(1) When using the present value of expected future cash flows method:

(a) The amount and timing of cash flows,

(b) The effective interest rate used to discount the cash flows, and

(c) The basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions.

(2) When using the fair value of collateral method:

(a) How fair value was determined, including the use of appraisals, valuation assumptions, and calculations,

(b) The supporting rationale for adjustments to appraised values, if any,

(c) The determination of costs to sell, if applicable, and

(d) Appraisal quality, and the expertise and independence of the appraiser.

(3) When using the observable market price of a loan method:

(a) The amount, source, and date of the observable market price.

Illustration B describes a practice used by a small credit union to document its FAS 114 measurement of impairment using a comprehensive worksheet. Q&A #1 and #2 in Appendix A provide examples of applying and documenting impairment measurement methods under FAS 114.

Some loans that are evaluated individually for impairment under FAS 114 may be fully collateralized and therefore require no ALLL. Q&A #3 in Appendix A presents an example of a credit union whose loan portfolio includes fully collateralized loans and describes the documentation

[15] Also, refer to paragraph 6.04–6.10 of the AICPA Audit Guide, 2000 edition.

maintained by that credit union to support its conclusion that no ALLL was needed for those loans.

ILLUSTRATION B
DOCUMENTING AN ALLL UNDER FAS 114

Comprehensive worksheet for the impairment measurement process

A small credit union uses a comprehensive worksheet for each loan being reviewed individually under FAS 114. Each worksheet includes a description of why the loan was selected for individual review, the impairment measurement technique used, the measurement calculation, a comparison to the current loan balance, and the amount of the ALLL for that loan. The rationale for the impairment measurement technique used (e.g., present value of expected future cash flows, observable market price of the loan, fair value of the collateral) is also described on the worksheet.

ALLL Under FAS 5

Segmenting the Portfolio

For loans evaluated on a group basis under FAS 5, management should segment the loan portfolio by identifying risk characteristics that are common to groups of loans. Credit unions typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Smaller credit unions that are involved in less complex activities often segment the portfolio into broad loan categories. This method of segmenting the portfolio is likely to be appropriate only in small credit unions offering a narrow range of loan products. Larger credit unions typically offer a more diverse and complex mix of loan products. Such credit unions may start by segmenting the portfolio into major loan types but typically have more detailed information available that allows them to further segregate the portfolio into product line segments based on the risk characteristics of each portfolio segment. Regardless of the segmentation method used, a credit union should maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics.

As economic and other business conditions change, credit unions often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. Illustration C presents an example in which a credit union refined its segmentation method to more effectively consider risk factors and maintains documentation to support this change.

Credit unions use a variety of documents to support the segmentation of their portfolios.

ILLUSTRATION C
DOCUMENTING SEGMENTING PRACTICES

Documenting a refinement in a segmentation method

A credit union with a significant portfolio of consumer loans performed a review of its ALLL methodology. The credit union had determined its ALLL based upon historical loss rates in the overall consumer portfolio. The ALLL methodology was validated by comparing actual loss rates (charge-offs) for the past two years to the estimated loss rates. During this process, the credit union decided to evaluate loss rates on an individual product basis (e.g., auto loans, unsecured loans, or home equity loans). This analysis disclosed significant differences in the loss rates on different products. With this additional information, the methodology was amended in the current period to segment the portfolio by product, resulting in a better estimation of the loan losses associated with the portfolio. To support this change in segmentation practice, the credit review committee records contain the analysis that was used as a basis for the change and the written report describing the need for the change.

Some of these documents include:

- Loan trial balances by categories and types of loans,
- Management reports about the mix of loans in the portfolio,
- Delinquency and nonaccrual reports, and

• A summary presentation of the results of an internal or external loan grading review.

Reports generated to assess the profitability of a loan product line may be useful in identifying areas in which to further segment the portfolio.

Estimating Loss on Groups of Loans

Based on the segmentation of the portfolio, a credit union should estimate the FAS 5 portion of the ALLL. For those segments that require an ALLL,[16] the credit union should estimate the loan and lease losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance. The credit union should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation. Regardless of the method used to measure losses, a credit union should demonstrate and document that the loss measurement methods used to estimate the ALLL for each segment are determined in accordance with GAAP as of the financial statement date.[17]

One method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.*, industry, geographical, economic, and political factors) over a defined period of time. If a credit union does not have loss experience of its own, it may be appropriate to reference the loss experience of other credit unions, provided that the credit union demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the credit union providing the loss experience.[18] Credit unions should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, credit unions should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses. An example of how a small credit union performs a comprehensive historical loss analysis is provided as the first item in Illustration D.

ILLUSTRATION D
DOCUMENTING THE SETTING LOSS RATES

Comprehensive loss analysis in a small credit union

A small credit union determines its loss rates based on loss rates over a three-year historical period. The analysis is conducted by type of loan and is further segmented by originating branch office. The analysis considers charge-offs and recoveries in determining the loss rate. The credit union also considers the loss rates for each loan grade and compares them to historical losses on similarly rated loans in arriving at the historical loss factor. The credit union maintains supporting documentation for its loss factor analysis, including historical losses by type of loan, originating branch office, and loan grade for the three-year period.

Adjustment of loss rates for changes in local economic conditions

A credit union develops a factor to adjust loss rates for its assessment of the impact of changes in the local economy. For example, when analyzing the loss rate on business real estate loans, the assessment identifies changes in recent commercial building occupancy rates. The credit union generally finds the occupancy statistics to be a good indicator of probable losses on these types of loans. The credit union maintains documentation that summarizes the relationship between current occupancy rates and its loss experience.

Before employing a loss estimation model, a credit union should evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, credit unions that use loss estimation models typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the support for adjustments to the model or its results.

In developing loss measurements, credit unions should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affect the loss measurements. Factors that should be considered in developing loss measurements include the following:[19]

(1) Levels of and trends in delinquencies and impaired loans;

(2) Levels of and trends in charge-offs and recoveries;

(3) Trends in volume and terms of loans;

(4) Effects of any changes in risk selection and underwriting standards,

[16] An example of a loan segment that does not generally require an ALLL is loans that are fully secured by deposits maintained at the lending credit union.

[17] Refer to paragraph 8(b) of FAS 5. Also, the AICPA is currently developing a Statement of Position that will provide more specific guidance on accounting for loan losses.

[18] Refer to paragraph 23 of FAS 5.

[19] Refer to paragraph 6.08 in the AICPA Audit Guide.

and other changes in lending policies, procedures, and practices;

(5) Experience, ability, and depth of lending management and other relevant staff;

(6) National and local economic trends and conditions;

(7) Industry conditions; and

(8) Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, the credit union should maintain sufficient, objective evidence to support the amount of the adjustment and to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

The second item in Illustration D provides an example of how a credit union adjusts its business real estate historical loss rates for changes in local economic conditions. Q&A #4 in Appendix A provides an example of maintaining supporting documentation for adjustments to portfolio segment loss rates for an environmental factor related to an economic downturn in the borrower's primary industry. Q&A #5 in Appendix A describes one credit union's process for determining and documenting an ALLL for loans that are not individually impaired but have characteristics indicating there are loan losses on a group basis.

Consolidating the Loss Estimates

To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.

Common elements in such summaries include:

(1) An estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.*, individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);

(2) The aggregate probable loss estimated using the credit union's methodology;

(3) A summary of the current ALLL balance;

(4) The amount, if any, by which the ALLL is to be adjusted; [20] and

(5) Depending on the level of detail that supports the ALLL analysis, detailed sub-schedules of loss estimates that reconcile to the summary schedule.

Illustration E describes how a credit union documents its estimated ALLL by adding comprehensive explanations to its summary schedule.

ILLUSTRATION E
SUMMARIZING LOSS ESTIMATES

Descriptive comments added to the consolidated ALLL summary schedule

To simplify the supporting documentation process and to eliminate redundancy, a credit union adds detailed supporting information to its summary schedule. For example, this credit union's board of directors receives, within the body of the ALLL summary schedule, a brief description of the credit union's policy for selecting loans for evaluation under FAS 114. Additionally, the credit union identifies which FAS 114 impairment measurement method was used for each individually reviewed impaired loan. Other items on the schedule include brief descriptions of loss factors for each segment of the loan portfolio, the basis for adjustments to loss rates, and explanations of changes in ALLL amounts from period to period, including cross-references to more detailed supporting documents.

Generally, a credit union's review and approval process for the ALLL relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the ALLL methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (*e.g.*, information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a FAS 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel. Additionally, the summary should provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, management should document the nature of any adjustments and the underlying rationale for making the changes. This documentation should be provided to those making the final determination of the ALLL amount. Q&A #6 in Appendix A addresses the documentation of the final amount of the ALLL.

Validating the ALLL Methodology

A credit union's ALLL methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the credit union's methodology should include procedures that adjust loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary.

To verify that the ALLL methodology is valid and conforms to GAAP and supervisory guidance, a credit union's directors should establish internal control policies, appropriate for the size of the credit union and the type and complexity of its loan products. These policies should include procedures for a

[20] Subsequent to adjustments, there should be no material differences between the consolidated loss estimate, as determined by the methodology, and the final ALLL balance reported in the financial statements.

review, by a party who is independent of the ALLL estimation process, of the ALLL methodology and its application in order to confirm its effectiveness.

In practice, credit unions employ numerous procedures when validating the reasonableness of their ALLL methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

(1) A review of trends in loan volume, delinquencies, restructurings, and concentrations.

(2) A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.

(3) A review by a party that is independent of the ALLL estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.

(4) An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

Supporting Documentation for the Validation Process

Management usually supports the validation process with the workpapers from the ALLL review function. Additional documentation often includes the summary findings of the independent reviewer. The credit union's board of directors, or its designee, reviews the findings and acknowledges its review in its meeting minutes. If the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes should be maintained.

Appendix A—ALLL Questions and Answers

Introduction

The Questions and Answers (Q&As) presented in this appendix serve several purposes, including (1) to illustrate the NCUA's views, as set forth in this IRPS, about the types of decisions, determinations, and processes a credit union should document with respect to its ALLL methodology and amounts; and (2) to illustrate the types of ALLL documentation and processes a credit union might prepare, retain, or use in a particular set of circumstances. The level and types of documentation described in the Q&As should be considered neither the minimum acceptable level of documentation nor an all-inclusive list. Credit unions are expected to apply the guidance in this IRPS to their individual facts, circumstances, and situations. If a credit union's fact pattern differs from the fact patterns incorporated in the following Q&As, the credit union may decide to prepare and maintain different types of documentation than did the credit unions depicted in these Q&As.

Q&A #1—ALLL Under FAS 114—Measuring and Documenting Impairment

Facts: Approximately one-third of Credit Union A's business loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Credit Union A's policies and procedures for individual review for impairment under FAS 114. Upon review of the large balance loans, Credit Union A determines that certain of the loans are impaired as defined by FAS 114.

Question: For the business loans reviewed under FAS 114 that are individually impaired, how should Credit Union A measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by FAS 114?

Interpretive Response: For those loans that are reviewed individually under FAS 114 and considered individually impaired, Credit Union A must use one of the methods for measuring impairment that is specified by FAS 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral). Accordingly, in the circumstances described above, for the loans considered individually impaired under FAS 114, it would not be appropriate for Credit Union A to choose a measurement method not prescribed by FAS 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its business loans for the past five years.

Credit Union A should maintain, as sufficient, objective evidence, written documentation to support its measurement of loan impairment under FAS 114. If Credit Union A uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors [1] and other information reflecting past events and current conditions. When Credit Union A uses the fair value of collateral to measure impairment, Credit Union A should document how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser. Similarly, Credit Union A should document the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

Q&A #2—ALLL Under FAS 114—Measuring Impairment for a Collateral Dependent Loan

Facts: Credit Union B has a $10 million loan outstanding to Member X that is secured by real estate, which Credit Union B individually evaluates under FAS 114 due to the loan's size. Member X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Credit Union B determines that its loan to Member X is impaired, as defined by FAS 114. Because the loan is collateral dependent, Credit Union B measures impairment of the loan based on the fair value of the collateral. Credit Union B determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $12 million.

Credit Union B believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Credit Union B adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[2] After

[1] Question #16 in Exhibit D–80A of EITF Topic D–80 and attachments indicates that environmental factors include existing industry, geographical, economic, and political factors.

[2] When reviewing collateral dependent loans, Credit Union B may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $8 million. Given that the recorded investment in the loan is $10 million, Credit Union B concludes that the loan is impaired by $2 million and records an allowance for loan losses of $2 million.

Question: What type of documentation should Credit Union B maintain to support its determination of the allowance for loan losses of $2 million for the loan to Member X?

Interpretive Response: Credit Union B should document that it measured impairment of the loan to Member X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $8 million. This documentation should include the credit union's rationale and basis for the $8 million valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable. Because Credit Union B arrived at the valuation of $8 million by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $12 million eighteen months ago to $8 million in the current period.[3]

Q&A #3—ALLL Under FAS 114—Fully Collateralized Loans

Facts: Credit Union C has $500,000 in business loans that are fully collateralized by purchased business equipment. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to fully secure each loan. The member borrowers have physical control of the collateral. Credit Union C perfected its security interest in the collateral when the funds were originally distributed. On an annual basis, Credit Union C determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. Semiannually or more frequently as needed, the Credit Union C's credit administration function physically inspects the equipment. If there are any collateral deficiencies, Credit Union C notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Credit Union C has historically not incurred any material losses on these loans. Credit Union C believes these loans are fully-collateralized and therefore does not maintain any ALLL balance for these loans.

Question: What documentation does Credit Union C maintain to adequately support its determination that no allowance is needed for this group of loans?

Interpretive Response: Credit Union C's management summary of the ALLL includes documentation indicating that, in accordance with the credit union's ALLL policy, the collateral protection on these loans has been verified by the credit union, no probable loss has been incurred, and no ALLL is necessary. Documentation in Credit Union C's loan files includes the two independent market quotes obtained annually for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Credit Union C's ALLL policy includes a discussion of how to determine when a loan is considered "fully collateralized" and does not require an ALLL. Credit Union C's policy requires the following factors to be considered and the credit union's findings concerning these factors to be fully documented:

1. Volatility of the market value of the collateral;
2. Recency and reliability of the appraisal or other valuation;
3. Recency of the credit union or other third party inspection of the collateral;
4. Historical losses on similar loans;
5. Confidence in the credit union's lien or security position including appropriate:
   a. Type of security perfection (*e.g.*, physical possession of collateral or secured filing);
   b. Filing of security perfection (*i.e.*, correct documents and with the appropriate officials); and
   c. Relationship to other liens.
6. Other factors as appropriate for the loan type

Q&A #4—ALLL Under FAS 5—Adjusting Loss Rates

Facts: Credit Union D's field of membership (lending area) includes a metropolitan area that is financially dependent upon the profitability of a number of sponsor manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these sponsor manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the sponsor manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the sponsor manufacturing businesses are experiencing financial difficulties and have recently announced downsizing plans.

Although Credit Union D has yet to confirm an increase in its loss experience as a result of these events, management knows that the credit union lends to a significant number of member's for business and individual purposes whose repayment ability depends upon the long-term viability of the sponsor manufacturing businesses. Credit Union D's management has identified particular segments of its business and consumer member bases that include member borrowers highly dependent upon sales or salary from the sponsor manufacturing businesses. Credit Union D's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the ALLL. In this particular case, Credit Union D has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question: How should Credit Union D document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?

Interpretive Response: Credit Union D should document its identification of the particular segments of its business and consumer loan portfolio for which it is probable that the sponsor manufacturing business' financial downturn has resulted in loan losses. In addition, Credit Union D should document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments. As part of its documentation, Credit Union D maintains copies of the documents supporting the analysis, including relevant newspaper articles, economic reports, and economic data, and notes from discussions with individual member borrowers.

Because in this case Credit Union D has had similar situations in the past, its supporting documentation also includes an analysis of how the current conditions compare to its previous loss

[3] In accordance with the FFIEC's **Federal Register** Notice, Implementation Issues Arising from FASB No. 114, "Accounting by Creditors for Impairment of a Loan," published February 10, 1995 (60 FR 7966, February 10, 1995), impaired, collateral-dependent loans must be reported at the fair value of collateral, less costs to sell, in regulatory reports. This treatment is to be applied to all collateral-dependent loans, regardless of type of collateral.

experiences in similar circumstances. As part of its effective ALLL methodology, Credit Union D creates a summary of the amount and rationale for the adjustment factor, which management presents to the audit committee and board for their review and approval prior to the issuance of the financial statements.

Q&A #5—ALLL Under FAS 5—Estimating Losses on Loans Individually Reviewed for Impairment but Not Considered Individually Impaired

Facts: Credit Union E has outstanding loans of $875,000 to Member Y and $725,000 to Member Z, both of which are paying as agreed upon in the loan documents. The credit union's ALLL policy specifies that all loans greater than $700,000 must be individually reviewed for impairment under FAS 114. Member Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Member Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the credit union's loan grading system. Despite its concern, management believes Member Z will resolve its problems and determines that neither loan is individually impaired as defined by FAS 114.

Credit Union E segments its loan portfolio to estimate loan losses under FAS 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Member Y has risk characteristics similar to the loans included in Segment 1 and the loan to Member Z has risk characteristics similar to the loans included in Segment 2.[4]

In its determination of the ALLL under FAS 5, Credit Union E includes its loans to Member Y and Member Z in the groups of loans with similar characteristics (*i.e.*, Segment 1 for Member Y's loan and Segment 2 for Member Z's loan). Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors provides a reasonable estimate of the credit union's probable loan losses in these segments.

Question: How does Credit Union E adequately support and document an ALLL under FAS 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: As part of Credit Union E's effective ALLL methodology, it documents the decision to include its loans to Member Y and Member Z in its determination of its ALLL under FAS 5. It also documents the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively. Credit Union E maintains documentation to support its method of estimating loan losses for Segment 1 and Segment 2, including the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates. The credit union also maintains copies of the economic and other reports that provided source data.

Q&A #6—Consolidating the Loss Estimates—Documenting the Reported ALLL

Facts: Credit Union F determines its ALLL using an established systematic process. At the end of each period, the accounting department prepares a summary schedule that includes the amount of each of the components of the ALLL, as well as the total ALLL amount, for review by senior management, the Credit Committee, and, ultimately, the board of directors. Members of senior management and the Credit Committee meet to discuss the ALLL. During these discussions, they identify changes to be made to certain of the ALLL estimates. As a result of the adjustments made by senior management, the total amount of the ALLL changes. However, senior management (or its designee) does not update the ALLL summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original ALLL summary schedule that was reviewed by management and the Credit Committee, as well as a verbal explanation of the changes made by senior management and the Credit Committee when they met to discuss the loan loss allowance.

Question: Are Credit Union F's documentation practices related to the balance of its loan loss allowance appropriate?

Interpretive Response: No. A credit union must maintain supporting documentation for the loan loss allowance amount reported in its financial statements. As illustrated above, there may be instances in which ALLL reviewers identify adjustments that need to be made to the loan loss estimates. The nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the ALLL balance should be documented. Appropriate documentation of the adjustments should be provided to the board of directors (or its designee) for review of the final ALLL amount to be reported in the financial statements. For credit unions subject to external audit, this documentation should also be made available to the supervisory committee and its independent accountants. If changes frequently occur during management or committee reviews of the ALLL, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the credit union uses.

Bibliography

GAAP and Auditing Guidance

American Institute of Certified Public Accountants' Audit and Accounting Guide, *Audits of Credit Unions*, 2000 edition.

Auditing Standards Board Statement on Auditing Standards No. 61, *Communication With Audit Committees* (AICPA, *Professional Standards*, vol. 1, AU sec. 380).

Emerging Issues Task Force Topic No. D–80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (EITF Topic D–80 and attachments), discussed on May 19–20, 1999.

Financial Accounting Standards Board Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss (An Interpretation of FASB Statement No. 5).*

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies.*

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of A Loan (An Amendment of FASB Statements No. 5 and 15).*

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 118, *Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures (An Amendment of FASB Statement No. 114).*

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities—a Replacement of FASB Statement No. 125.*

Regulatory Guidance

Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL), December 21, 1993.

[4] These groups of loans do not include any loans that have been individually reviewed for impairment under FAS 114 and determined to be impaired as defined by FAS 114.

United States General Accounting Office Report to Congressional Committees, *Depository Institutions: Divergent Loan Loss Methods Undermine Usefulness of Financial Reports*, (GAO/AIMD–95–8), October 1994.

[FR Doc. 02–12790 Filed 5–28–02; 8:45 am]
BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 450, "General Assignment".

3. *The form number if applicable:* NRC Form 450.

4. *How often the collection is required:* Once during the closeout process.

5. *Who will be required or asked to report:* Contractors, Grantees, and Cooperators.

6. *An estimate of the number of responses:* 100.

7. *The estimated number of annual respondents:* 100.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 200 hours (2 hours per response).

9. *An indication of whether Section 3507(d), Pub.L. 104–13 applies:* N/A.

10. *Abstract:* During the contract closeout process, the NRC requires the contractor to execute a NRC Form 450, General Assignment. Completion of the form grants the government all rights, titles, and interest to refunds arising out of the contractor performance.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide 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 of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 28, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0114), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of May, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13339 Filed 5–28–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Grant and Cooperative Agreement Provisions.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion, one time.

5. *Who will be required or asked to report:* Contractors, Grantees, and Cooperators.

6. *An estimate of the number of responses:* 88 per year.

7. *The estimated number of annual respondents:* 60.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,055 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* The Division of Contracts and Property Management uses provisions, required to obtain or retain a benefit in its awards and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

A copy of the final 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 World Wide 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 should be directed to the OMB reviewer listed below by June 28, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0107), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of May, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13340 Filed 5–28–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 135th meeting on June 18–20, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, June 18, 2002

A. *12:30–12:40 p.m.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *12:40–3:30 p.m.: Igneous Activity Considerations at the Proposed High Level-Waste Repository at Yucca Mountain* (Open)—The Committee will hear presentations by several Nuclear Waste Technical Review Board (NWTRB) consultants on their perception on igneous activity efforts by both DOE and NRC.

C. *3:45–5:15 p.m.: NRC's Package Performance Study* (Open)—The Committee will hear an update by representatives of the Spent Fuel Project Office and Sandia National Laboratories on the current and future transportation safety studies and potential confirmatory testing.

D. *5:15–6:00 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- High-Level Waste Risk Insights Initiative
- Final Research Plan on Radionuclide Transport in the Environment

Wednesday, June 19, 2002

E. *8:30–8:35 a.m.: Opening Statement* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–10:00 a.m.: Entombment Option for Decommissioning Power Reactors* (Open)—The Committee will hear from the NRC staff on comments received on the Rulemaking Plan and Advance Notice of Proposed Rulemaking: Entombment Options for Power Reactors.

G. *10:15–1:00 p.m.: Long-Term Behavior of Waste Packages* (Open)—The Committee will hear presentations from the NRC and CNWRA staff on issues and activities related to the projected performance of waste packages in the proposed high-level waste repository at Yucca Mountain, NV. This will include presentations on risk insights from performance assessment analyses, and presentations on work related to confirming performance and understanding potential failure mechanisms such as from corrosion.

H. *2:00–3:00 p.m.: Yucca Mountain Review Plan, Revision 2* (Open)—The Committee will discuss the elements of a letter report on the Yucca Mountain Review Plan, Revision 2.

I. *3:15–6:00 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- ACNW Action Plan for FY 2002 and FY 2003
- Entombment Option for Decommissioning Power Reactors
- Long-Term Behavior of Waste Packages
- Igneous Activity Considerations
- NRC's Package Performance Study
- High-Level Waste Risk Insights Initiative
- Final Research Plan on Radionuclide Transport in the Environment
- High-Level Waste Performance Assessment Sensitivity Studies

Thursday, June 20, 2002

J. *8:30–8:35 a.m.: Opening Statement* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

K. *8:35–8:45 a.m.: Election of ACNW Officers* (Open)—Members will nominate and elect members to the positions of Chairman and Vice Chairman for the period July 1, 2002 through June 30, 2003.

L. *8:45–2:45 p.m.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports noted in item I.

M. *2:45–3:00 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 a.m. and 4 p.m. EDT, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 23, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–13336 Filed 5–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on June 18, 2002,

Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 18, 2002–8:30 a.m.–10:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: May 22, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–13337 Filed 5–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1748, Draft Report]

Environmental Review Guidance for Licensing Actions Associated With NMSS Programs; Notice of Extended Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Extended Comment Period.

SUMMARY: The Nuclear Regulatory Commission (NRC) is extending the public comment period on the draft document "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG–1748) until November 30, 2002. The availability of this document was originally noticed in the **Federal Register** on October 18, 2001 (66 FR 52951). This document provides guidance for the planning and implementation of National Environmental Policy Act requirements. The guidance is intended for use by NRC staff and licensees/applicants, and provides information to the public. The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is available to the NRC staff. This document was issued for interim use and comment in September 2001. The NRC will review public comments received on the draft document. Suggested changes will be incorporated, where appropriate, in response to those comments.

DATES: Comments received by November 30, 2002, will be considered. Comments received after that date will be considered to the extent practical.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be sent electronically to *nmssnepa@nrc.gov*.

NUREG–1748 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

A free single copy of NUREG–1748 will be made available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting an e-mail to *distribution@nrc.gov*. NUREG–1748 is available on the World Wide Web at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1748/index.html*.

FOR FURTHER INFORMATION CONTACT: Either of the following: Matthew Blevins, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555, Phone Number: (301) 415–7684, e-mail: *mxb6@nrc.gov*; or Melanie Wong, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555, Phone Number: (301) 415–6262, e-mail: *mcw@nrc.gov*. Please e-mail comments to *nmssnepa@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of May, 2002.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief. Environmental and Performance Assessment Branch, Division of Waste Management. NMSS.

[FR Doc. 02–13338 Filed 5–28–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Committee Management; Notice of Establishment

NAME OF COMMITTEE: Performance Measurement Advisory Council.

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee Establishment.

SUMMARY: The Director of the Office of Management and Budget ("OMB") has determined that the establishment of the Performance Measurement Advisory Council ("PMAC") is necessary and is in the public interest in connection with the performance of his duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Matthew Schneider, Assistant General Counsel, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–3503 (not a toll-free call).

Purpose and Objectives: The Performance Measurement Advisory Council will provide independent expert advice and recommendations to the Office of Management and Budget

regarding measures of program performance and the use of such measures in making management and budget decisions. Council members will advise OMB regarding the particular processes and means utilized to assess the effectiveness of Federal programs and initiatives. Council members will draw upon their expertise in creating, implementing and evaluating performance measurement standards and will make recommendations regarding the types of measures and benchmarking systems that departments and agencies can employ most effectively to track program performance.

The Council's proposed functions are essential to OMB's successful implementation of an effective system of program evaluation. The independent expert advice and recommendations sought through this Council cannot be provided internally by OMB, by another existing committee, or by other means such as a public hearing.

Balanced Membership Plans: The Council shall consist of approximately six members. Every effort shall be made to select Council members who are outstanding in their professional field and who are objective. A balance is needed and individuals with expertise in performance measurement are essential. In selecting Council members, weight is given to viewpoint diversity, expertise in performance measurement, and professional qualifications.

Duration: The Council shall exist for nine months from the date of the Charter, unless earlier renewed.

Designated Federal Officer: Mr. Thomas M. Reilly, Chief, Public Health Branch, Executive Office of the President; Office of Management and Budget, 7002 New Executive Office Building, Washington, DC 20503. Telephone: 202–395–4926; Facsimile: 202–395–5648; Email: *Thomas_Reilly@omb.eop.gov.*

Dated: May 21, 2002.

Mitchell E. Daniels, Jr.,

Director, Office of Management and Budget.

[FR Doc. 02–13308 Filed 5–28–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25591; 812–12346]

USAA Mutual Fund, Inc., et al.; Notice of Application

May 22, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 ("Act") from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: USAA Mutual Fund, Inc. ("Company"), and USAA Investment Management Company ("IMCO").

FILING DATES: The application was filed on November 30, 2000, and amended on May 21, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 9800 Fredericksburg Road, A–O3–W, San Antonio, Texas 78288.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a Maryland corporation registered under the Act as an open-end management investment company. The Company currently is comprised of eighteen series (each, a "Portfolio," and together, the "Portfolios"), each with its own investment objectives, policies, and restrictions.[1] IMCO serves as the investment adviser to the Portfolios and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). IMCO is a wholly owned indirect subsidiary of United Services Automobile Association, a diversified financial services institution.

2. The Company, on behalf of each Portfolio, has entered into investment advisory or investment management agreements with IMCO (collectively, the "Management Agreements") that were approved by the Company's board of directors ("Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Company or the Manager ("Independent Directors"), and each Portfolio's shareholders.

3. The Management Agreements permit the Manager to enter into separate investment advisory agreements ("Sub-Advisory Agreements") with sub-advisers ("Sub-Advisers") to whom the Manager may delegate responsibility for providing investment advice and making investment decisions for a Portfolio. The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, termination, and replacement. Each Sub-Adviser is, or will be, an investment adviser registered, or exempt from registration, under the Advisers Act. The Manager compensates the Sub-Advisers out of the fees paid to the Manager by the Portfolio. Applicants request relief to permit the Manager to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Portfolios ("Affiliated

[1] The Applicants request that any relief granted pursuant to the application apply to each existing and future Portfolio of the Company and each existing and future series (included in the Term "Portfolios") of any other existing or futured registered open-end management investment company that: (a) Is advised by IMCO or any entity controlling, controlled by, or under common control with IMCO (any such entity together with IMCO, the "Manager"); (b) is managed in a manner consistent with the application; and (c) complies with the terms and conditions in the application (together with the Company, a "Fund"). The Company is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Portfolio contains the name of any Sub-Adviser (as defined below), the Sub-Adviser's name will be preceded by the name of the Manager.

Sub-Adviser"). None of the current Sub-Advisers is an Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Portfolio's shareholders rely on the Manager to select the Sub-Advisers best suited to achieve a Portfolio's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Portfolios, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants also note that the Management Agreements will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the requested order, the operation of the Portfolio as described in the application will be approved by the vote of a majority of the Portfolio's outstanding voting securities, as defined in the Act, or in the case of a Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2, by the initial shareholder(s) before the shares of such Portfolio are offered to the public.

2. Each Portfolio relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Portfolio relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus with respect to each such Portfolio will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. The Manager will provide general management and administrative services to each Fund and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's assets, and, subject to review and approval by the Board, will: (i) Set each Portfolio's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of a Portfolio's assets; (iii) when appropriate, allocate and reallocate a Portfolio's assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of Sub-Advisers; and (v) implement procedures reasonable designed to ensure that the Sub-Advisers comply with the relevant Portfolio's investment objectives, policies and restrictions.

4. At all times, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

5. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

6. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. No director or officer of a Fund or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for: (i) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Manager will furnish shareholders all information about the new Sub-Adviser that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Sub-Adviser. To meet this condition, the Manager will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13341 Filed 5–28–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Carroll County Regional Airport, Westminster, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately 12 acres of land at the Carroll County Regional Airport, Westminster, Maryland. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be paid to the Airport sponsor, and used for Airport purposes.

DATES: Comments must be received on or before June 28, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steve Brown,

Manager, Carroll County Regional Airport, at the following address: Steve Brown, Airport Manager, Carroll County Department of Enterprise and Recreation Services, 225 North Center Street, Room 100, Westminster, Maryland 21157.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on May 8, 2002.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 02–13376 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held June 17–21, 2002 starting at 9 am. Please note that on June 19 and June 20 the Plenary Session starting times are 1 pm and 1:30 pm, respectively.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting.

Note: Specific working group sessions will be held on June 17–19. The plenary agenda will include:

- June 19–21
  - Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
  - SC–186 Activity Reports
  - WG–1, Operations & Implementation
  - WG–2, Traffic Information Service—Broadcast (TIS–B)
  - WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
  - WG–4, Application Technical Requirements
  - WG–5, Universal Access Transceiver (UAT) MOPS
  - WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS)
  - EUROCAE WG–51 Report; Discuss Joint RTCA/EUROCAE Work
  - Review and Approve Proposed Final Draft UAT MOPS, RTCA Paper No. 098–02/SC186–195
  - Review and Approve Proposed Final Draft TIS–B MASPS, RTCA Paper No. 095–02/SC186–193
  - Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 20, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–13372 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

RTCA Special Committee 193/EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held June 10–14, 2002 from 9 am–5 pm.

ADDRESSES: The meeting will be held at ICAO Headquarters, 999 University Street, Montreal, PQ, Canada, H3C 5H7.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www/rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- June 10
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda, Review Summary of Previous Meeting)
  - Presentations/Discussions
  - Subgroup 4 (Database Exchange Format)
  - Resolution of Action Items; Continue goals and objectives for new subgroup; Start work on new document
- June 11, 12, 13
  - Subgroup 4 (Continue previous day activities)
  - June 14
  - Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statements to the committee at any time.

Issued in Washington, DC, on May 20, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–13373 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on June 11, 2002 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- June 11:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting, Action Items from Last Meeting)
  - Workgroup Reports, New Standard Text, and Comments from Members, as appropriate (Document Sections 1–4, Biometrics workgroup, Smart card workgroup, Database workgroup)
  - Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)
  - Workgroups Breakout Session

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on May 20, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–13374 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–BWI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Baltimore/Washington International Airport, Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baltimore/Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990)(Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 28, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Washington Airport District Office, 23723 Air Freight Ln., Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Beverly K. Swaim-Staley, Acting Executive Director, of the Maryland Aviation Administration (MAA) at the following address: P.O. Box 8766, BWI Airport, Baltimore, MD 21240–0766.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the MAA under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, PFC Program Manager, Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica 11434 at (718) 553–3354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baltimore/Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 26, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by MAA was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 1, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–04–C–00–BWI.

Level of the proposed PFC: $4.50

Proposed charge effective date: May 1, 2004.

Proposed charge expiration date: May 1, 2011.

Total estimated PFC revenue: $371,417,115.

Brief description of proposed project(s):

—Terminal Roadway Expansion and Improvement
—Terminal Pedestrian Access Expansion and Improvement
—15R Parallel Taxiway and Airfield Ramp Construction
—CUTE for International Terminal Fitout
—SMGCS Equipment—Phase 1

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial operators (ATCO) filing form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at MAA.

Eleanor Schifflin,

Manager, PFC Program, Eastern Region.

[FR Doc. 02–13375 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–BLI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bellingham International Airport, Submitted by the Port of Bellingham, Bellingham International Airport, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Bellingham International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before June 28, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian Henshaw, Aviation Analyst, at the following address: P.O. Box 1677, Bellingham, WA 98227.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bellingham International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–05–C–00–BLI to impose and use PFC revenue at Bellingham International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 17, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Port of Bellingham. Bellingham International Airport, and Bellingham, Washington was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 27, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2004.

Proposed charge expiration date: January 1, 2007.

Total requested for use approval: $954,210.

Brief description of proposed project: Extension of Runway 16/34 New HIRL System, and Taxiway Lighting/Wetlands Mitigation; Airport Sign System; Master Plan (completed); Construct & Rehabilitate Aircraft Apron; Acquisition of Snow Removal Equipment; Construct Snow Removal Equipment building; Upgrades on Security Gates/Installation of Wildlife Fence; Reconstruct & Rehabilitate Taxiway D; Construct/Reconstruct Terminal Apron; Construct Deicing Facility; Acquisition of Passenger Lift Device; Master Plan (new); Acquire Aircraft Rescue & Firefighting.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Non-scheduled air taxi/commercial operators, utilizing aircraft having seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bellingham International Airport.

Issued in Renton, Washington, on May 17, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–13371 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12371]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FAIR TRADES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12371. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FAIR TRADES. Owner: Michael and Frances Plitman.

(2) Size, capacity and tonnage of vessel. According to the applicant: "FAIR TRADES is 50 feet long, and has a Gross tonnage of 35 tons as calculated pursuant to 46 U.S.C. 14502."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: We intend to operate FAIR TRADES on day and overnight charter trips along the Gulf Coast for up to 12 passengers. FAIR TRADES is now berthed at St. Andrews marina in Panama City and most charters will operate within 50 nautical miles of the entrance to St. Andrews Bay."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1990. Place of construction: France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Approval of this waiver will have minimal impact on other commercial passenger vessel operators. FAIR TRADES will not be competing with the large majority of coastwise operators that offer daily excursions. We have absolutely no interest in providing hourly harbor tour type services. Rates for chartering FAIR TRADES will be based on comparable market prices for similar vessels regardless of place of construction, most of which are operated in "bareboat" charter. There will be no attempt to undercut competitors; in fact, we are seeking to make a profit based on quality of service—not volume. Therefore our rates will be comparable to other high end charters. There are many foreign-built and U.S.-built boats, including French-built BENETEAUS, that operate legally in the Bareboat trade. It is these types of vessels with which we will really compete and their owners are not truly in the commercial service—they are individuals looking to offset the high costs of boat ownership."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Any impact on domestic shipbuilders should be positive. In fact, successful operations with FAIR TRADES may stimulate interest among U.S. builders to design and construct similar type vessels. Since we purchased FAIR TRADES, we have spent over $75,000 for U.S. manufactured equipment to upgrade her thereby helping the local marine industry. All repair work contracted for has been performed by U.S. yards. It should be evident that FAIR TRADES is, in fact, stimulating many related marine industries."

Dated: May 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–13362 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12369]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GECKO GECKO.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12369. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: GECKO GECKO. Owner: George Randall Boelsems.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Size: 15 Gross ton, 14 Net ton, Length 41.6 ft, Breadth 21.4 ft, Depth 6.8 ft."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Vessel is intended to be used in Southern California coastal waters as an overnight crewed recreational charter vessel."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1992. Place of construction: France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver should have minimal impact on other commercial passenger vessel operators due the current demand for this type of vessel in the area for recreational purposes. Most charter vessels in this size are sportfisher designs used for day fishing charter trips. This vessel is a power Catamaran and there is only one other

operating 100 miles south, out of San Diego that offers an overnight recreational application."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "A waiver for the GECKO GECKO should have a positive impact on shipyards building power catamarans. The crewed charter by people interested in the power multihull design will give potential buyers an opportunity to try the multihull experience, which should increase sales in this type of vessel."

Dated: May 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–13361 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number:MARAD–2002–12373]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LAUREN ASHLEY.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12373. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: LAUREN ASHLEY. Owner: Tilcom, Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross Tonnage: 53 GRT; Net Tonnage: 48 NRT; Length: 72 ft.; Breadth: 21 ft.; Depth: 9.5 ft.; Capacity: 6 passengers."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: If a waiver is granted, the Vessel will be used for luxury, week-long, captained voyage charters. The geographic region of intended operation will be from Key West, Florida to Fort Lauderdale, Florida, no more than 90 nautical miles from the Florida Coastline. The vessel will not carry more than 6 passengers at any one time."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1987. Place of construction: Hong Kong.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver is not expected to have any measurable impact on commercial passenger vessel operators in the Key West area. There are several companies in Key West that offer day charters of all different kinds of pleasure vessels for fishing or sightseeing * * *. However, to this owner's knowledge, there is no company in Key West currently offering captained voyage charters of a luxury yacht on a week-to-week basis."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver is not expected to have any detrimental effect on U.S. shipyards. There are no U.S. builders that are currently building motor yachts anything the LAUREN ASHLEY * * *. If the waiver is granted, the owner anticipates that * * * marinas in the Key West and Fort Lauderdale areas will continue to provide regular maintenance and repair services to the vessel."

Dated: May 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–13364 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12374]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEA–YA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD

determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12374. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: SEA–YA. Owner: Edwin H. Dolatowski.

(2) Size, capacity and tonnage of vessel. According to the applicant: "35′0″long, 12′2″ breadth, 6′8″ depth and the weight is 17000."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Charter a 6 man uninspected passenger vessel on Lake Michigan waters (sports trolling charters)."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1971. Place of construction: Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I see no reason why documentation of this vessel will interfere with any other existing operators."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There will be no impact * * * to the U.S. Shipyards."

Dated: May 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–13365 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12372]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VALHALLA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 28, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12372. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* VALHALLA. Owner: Donald Allen Brunnell.

(2) Size, capacity and tonnage of vessel. According to the applicant: "She is 13 gross tons and 12 net registered tons * * * length is 35.0 feet, breadth is 11.9 feet and depth is 6.4 feet."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of the vessel is to operate in the coastwise trade in the Hawaiian Islands and the South Pacific Ocean."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of construction: Cheoy Lee Shipyard, Kowloon, Hong Kong. Date of reconstruction: 1990. Place of reconstruction: Pearl Harbor, Hawaii.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I do not expect any significant impact on other commercial passenger vessel operators. Most of the other small commercial operators in this area operate off the beaches, or operate short duration dinner cruises, with larger (149 or more) passenger vessels."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "I expect no significant impact on U.S. shipyards."

Dated: May 22, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–13363 Filed 5–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34201]

International Steel Group, Inc.—Continuance in Control Exemption—ISG South Chicago & Indiana Harbor Railway Company and ISG Cleveland Works Railway Company

International Steel Group, Inc. (ISG), a noncarrier, has filed a verified notice of exemption to continue in control of ISG South Chicago & Indiana Harbor Railway Company (SCIH) [1] and ISG Cleveland Works Railway Company (CWRO),[2] upon CWRO's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34182, *ISG Cleveland Works Railway Company—Acquisition and Operation Exemption—Rail Lines of The Cuyahoga Valley Railway Company and River Terminal Railway Company*, wherein CWRO seeks to acquire the railroad lines and trackage rights of The Cuyahoga Valley Railway Company and River Terminal Railway Company, Class III rail carrier subsidiaries of LTV Steel Company, Inc. The railroad lines are located in Cuyahoga County, OH, south of Cleveland.

The transaction was expected to be consummated when the transaction covered by STB Finance Docket No. 34182 was consummated.[3]

ISG states that: (i) The properties of SCIH and CWRO will not connect with each other or any railroads in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines of the two railroads with each other or any railroads in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34201, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at "*WWW.STB.DOT.GOV*."

Decided: May 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–13383 Filed 5–28–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34182]

ISG Cleveland Works Railway Company—Acquisition and Operation Exemption—Rail Lines of The Cuyahoga Valley Railway Company and River Terminal Railway Company

ISG Cleveland Works Railway Company (CWRO), a noncarrier and indirect wholly owned subsidiary of International Steel Group, Inc. (ISG), has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate 9.5 miles of railroad lines of The Cuyahoga Valley Railway Company (CVRC) and River Terminal Railway Company (RTRC), Class III rail carrier subsidiaries of LTV Steel Company, Inc., as follows: (a) CVRC's approximately 3.4-mile line within and in the vicinity of the Cleveland Works West steel facility located on the west side of the Cuyahoga River in Cuyahoga County, OH; (b) RTRC's approximately 3.9-mile line within and in the vicinity of the Cleveland Works East steel facility located on the east side of the Cuyahoga River in Cuyahoga County; [1] and (c) CVRC's and RTRC's approximately 2.2-mile jointly owned line between approximately station 25 + 49.7 and approximately station 140 + 5 that extends between and through the Cleveland Works West facility and the Cleveland Works East facility. In addition, CWRO will acquire overhead trackage rights of CVRC over approximately 1,750 feet of rail line formerly owned by the Baltimore and Ohio Railroad Company and currently owned by CSX Transportation, Inc., between approximately P.S. 250 + 68 near Cleveland and approximately O.P. 20 + 73 in Cuyahoga Heights, OH.[2]

This transaction is related to STB Finance Docket No. 34201, *International*

[1] SCIH, a Class III rail carrier, is a wholly owned subsidiary of ISG Indiana Harbor Inc., which is a wholly owned subsidiary of ISG. SCIH operates over lines located in Illinois and Indiana.

[2] ISG indirectly controls CWRO, a noncarrier at the time of the filing of the verified notice. CWRO is a wholly owned subsidiary of ISG Cleveland Inc., which is a wholly owned subsidiary of ISG.

[3] The exemption in STB Finance Docket No. 34182, became effective on May 15, 2002, when the Board denied a petition to revoke the exemption and lifted the stay of the effectiveness of the exemption. The stay had been issued to allow orderly consideration of the parties' arguments.

[1] The CVRC lines and the RTRC lines do not have milepost designations.

[2] By decision served on May 6, 2002, the Chairman issued a "housekeeping" stay of the effective date of the notice of exemption to permit the orderly consideration of a petition filed by United Transportation Union (UTU) to revoke the exemption. Subsequently, by decision served on May 15, 2002, the Board denied UTU's petition to revoke the exemption in this proceeding. The May 15 decision also vacated the housekeeping stay, making the exemption effective on that date.

Steel Group, Inc.—Continuance in Control Exemption—ISG South Chicago & Indiana Harbor Railway Company and ISG Cleveland Works Railway Company, wherein ISG seeks to continue in control of ISG South Chicago & Indiana Harbor Railway Company and CWRO, upon CWRO's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on the effective date of the exemption, which, as noted, was May 15, 2002.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34182, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., 2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our website at "*WWW.STB.DOT.GOV*."

Decided: May 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–13384 Filed 5–28–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2002

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 2002 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 2002 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 2002 inflation adjustment factor and reference prices apply to calendar year 2002 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2002 is 1.1908.

Reference Prices: The reference prices for calendar year 2002 are 5.54¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass and poultry waste.

Because the 2002 reference prices for electricity produced from wind, closed-loop biomass, and poultry waste energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 2002.

Credit Amount: As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 2002 under section 45(a) is 1.8¢ per kilowatt hour on the sale of electricity produced from wind, closed-loop biomass, and poultry waste energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:PSI:5, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3040 (not a toll-free call).

Paul F. Kugler,

Associate Chief Counsel, (Passthroughs & Special Industries).

[FR Doc. 02–13399 Filed 5–28–02; 8:45 am]

BILLING CODE 4030–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC on Thursday, June 6, 2002. The meeting will be held in the Swissotel Watergate, 2650 Virginia Avenue, NW., Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC, call Robin Marusin at 202–622–8184.

SUPPLEMENTARY INFORMATION:

Summarized Agenda for Meeting Thursday, June 6, 2002

9:00 Meeting Opens
11:30 Break for Lunch
1:00 Meeting Resumes
3:00 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Large and Mid-Size Business Plans.

(2) Review of 2002 Filing Season and Plans for the Future.

(3) Change in Filing Date.

(4) EZ Tax Filing.

(5) Preview of Report to Congress.

Note: Last minute changes to these topics are possible and could prevent advance notice.

Background

ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service's (IRS's) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Meeting Information

The meeting will be open to the public, and will be in a room that accommodates approximately 80

people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend the meeting should be made with Ms. Robin Marusin by May 31, 2002. Ms. Marusin can be reached at 202–622–8184.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Thursday May 30 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 02–13177 Filed 5–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Software Developer's Conference

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Software Developer's Conference notification.

SUMMARY: The Software Developer's Conference will be held on June 26–27, 2002. The conference will be held in the Ritz-Carlton, Pentagon City, Arlington, VA. A summarized version of the agenda, along with a list of topics that are planned to be discussed are listed below.

SUPPLEMENTARY INFORMATION:

Summarized Agenda for Conference Wednesday, June 26, 2002

8:00—Conference Begins
12:15—Break for Lunch
1:15—Conference Resumes
5:00—Conference Adjourns

The topics that are planned to be covered are as follows:

(1) Privacy
(2) Security
(3) EMS
(4) Help Desk
(5) ETA Transition
(6) Operations, Form 1040
(7) Change in Due Date
(8) Payments & Business Returns
(9) Internet-Based Fee/Transaction Service for Credit Card Processing
(10) Form 1041
(11) Form 1065
(12) Employment Tax

Summarized Agenda for Conference Wednesday, June 27, 2002

8:00—Conference Begins
12:00—Break for Lunch
1:00—Conference Resumes
5:00—Conference Adjourns

The topics that are planned to be covered are as follows

(1) Modernized e-file
(2) Form 1120 Architecture
(3) Form 1120 e-file
(4) Form 990 e-file
(5) EZ Tax Filing Consortium
(6) e-services
(7) 2 D Bar Code
(8) Break Out Groups

Note: Last minute changes to these topics are possible and could prevent advance notice.

The conference is being sponsored by the Electronic Tax Administration.

The conference will be in a room that accommodates approximately 150 people, including IRS officials. *Registration forms for the IRS e-file Software Developers Conference may be obtained by visiting our Web site: www.irs.gov. Click on the IRS e-file logo at the bottom and then click Software Developers & Transmitters. Registration should be received by May 24, 2002.* In addition, a draft agenda is available.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 02–13176 Filed 5–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Internal Revenue Service, Tax Exempt and Government Entities Division; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Advisory Committee on Tax Exempt and Government Entities (ACT) will hold a public meeting on Friday, June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Rick Trevino; Office of Communication and Liaison; 1111 Constitution Avenue, NW., T:CL—Penn Bldg; Washington, DC 20224. Telephone: 202–283–9950 (not a toll-free number). E-mail address: *Rick.Trevino@irs.gov.*

SUPPLEMENTARY INFORMATION: By notice herein given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the ACT will be held on Friday, June 21, 2002, from 9 a.m. to 4 p.m. in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed relate to Employee Plans, Exempt Organizations, and Government Entities. Reports from five ACT subgroups will be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRPAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Demetrice Tuppince to confirm your attendance. Ms. Tuppince can be reached at (202) 283–9954. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building.

Should you wish the ACT to consider a written statement, please call (202) 283–9966, or write to: Internal Revenue Service; Tax Exempt/Government Entities Division; ATTN: Rick Trevino; 1111 Constitution Avenue, NW., T:CL—Penn Bldg; Washington, DC. 20224, or e-mail: *Rick.Trevino@irs.gov.*

Dated: May 22, 2002.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division.

[FR Doc. 02–13398 Filed 5–28–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 103
Wednesday, May 29, 2002

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.

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Standard Tender of Service

Correction

In notice document 02–11638 beginning on page 31307 in the issue of Thursday, May 9, 2002 make the following correction:

On page 31308, in the first column, in the footnote, in the first line, "U.S." should read "U.S. Mint".

[FR Doc. C2–11638 Filed 5–28–02; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0044]

Proposed Collection Application/ Permit for Use of Space in Public Buildings and Grounds

Correction

In notice document 02–11223, beginning on page 30686 in the issue of Tuesday, May 7, 2002 make the following corrections:

1. On page 30686, in the third column, the "**AGENCY**" heading is corrected to read as set forth above.

2. On page 30686, in the same column, under the "**SUMMARY:**" heading, in the second line, "paperwork" should read "Paperwork".

3. On page 30686, in the same column, under the same heading, in the third line, "chapter" should read "Chapter ".

[FR Doc. C2–11223 Filed 5–28–02; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0259]

Submission for OMB Review; Comment Request Entitled Market Research Questionnaire

Correction

In notice document 02–11224 appearing on page 30687 in the issue of Tuesday, May 7, 2002, make the following correction:

On page 30687, in the second column, under the "**ADDRESSES:**" heading, in the sixth line, "Service" should read "Services".

[FR Doc. C2–11224 Filed 5–28–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–14]

Modification of Class D Airspace; Columbus, OH

Correction

In rule document 02–11501 beginning on page 30776 in the issue of Wednesday, May 8, 2002, make the following corrections:

§ 71.1 [Corrected]

1. On page 30777, in the first column, in § 71.1, under the heading **AGL OH D Columbus, OH [Revised]**, in the first line, "Airprt" should read, "Airport".

2. On the same page, in the same column, in the same section, under the heading **AGL OH D Columbus, OH [Revised]**, in the second line, "Lat. 30°" should read, "Lat. 39°".

[FR Doc. C2–11501 Filed 5–28–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–04]

Modification of Class E Airspace; Winona, MN

Correction

In rule document 02–11502 beginning on page 30780 in the issue of Wednesday, May 8, 2002, make the following correction:

§ 71.1 [Corrected]

On page 30781, in the first column, in § 71.1, under the heading **AGL MN E5 Winona, MN [Revised]**, in the second line, "Lat. 40°" should read, "Lat. 44°".

[FR Doc. C2–11502 Filed 5–28–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
May 29, 2002

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines, effective November 1, 2002.

SUMMARY: Pursuant to its authority under 28 U.S.C. § 994(a) and (p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index.

This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2002, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michaël Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov*.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p). Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on November 27, 2001 (*see* 66 FR 59330–59340), and January 17, 2002 (*see* 67 FR 2456–2475). The Commission held three public hearings on the proposed amendments in Washington, DC, on February 25, 2002, February 26, 2002, and March 19, 2002. After a review of hearing testimony and additional public comment, the Commission promulgated the amendments set forth in this notice. On May 1, 2002, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2002.

Authority: 28 U.S.C. § 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Diana E. Murphy,

Chair.

1. Amendment: The Commentary to § 2A1.1 captioned "Statutory Provisions" is amended by inserting ", 2332b(a)(1), 2340A" after "2118(c)(2)".

The Commentary to § 2A1.2 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; by inserting "§ " before "1111"; and by inserting ", 2332b(a)(1), 2340A" after "1111".

The Commentary to § 2A1.3 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; by inserting "§ " before "1112"; and by inserting ", 2332b(a)(1)" after "1112".

The Commentary to § 2A1.4 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; by inserting "§ " before "1112"; and by inserting ", 2332b(a)(1)" after "1112".

The Commentary to § 2A2.1 captioned "Statutory Provisions" is amended by inserting ", 1993(a)(6)" after "1751(c)".

The Commentary to § 2A2.2 captioned "Statutory Provisions" is amended by inserting ", 1993(a)(6), 2332b(a)(1), 2340A" after "1751(e)".

The Commentary to § 2A4.1 captioned "Statutory Provisions" is amended by inserting ", 2340A" after "1751(b)".

Chapter Two, Part A is amended in the heading of subpart 5 by adding at the end "AND OFFENSES AGAINST MASS TRANSPORTATION SYSTEMS".

Section 2A5.2 is amended in the heading by adding at the end "; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or Ferry".

Section 2A5.2(a)(1) is amended by striking "the aircraft and passengers; or" and inserting ": (A) an airport or an aircraft; or (B) a mass transportation facility, a mass transportation vehicle, or a ferry;".

Section 2A5.2(a)(2) is amended by striking "the aircraft and passengers; or" and inserting ": (A) an airport or an aircraft; or (B) a mass transportation facility, a mass transportation vehicle, or a ferry;".

Section 2A5.2 is amended by inserting after subsection (a) the following:

"(b) Specific Offense Characteristic.

(1) If (A) subsection (a)(1) or (a)(2) applies; and (B)(i) a firearm was discharged, increase by 5 levels; (ii) a dangerous weapon was otherwise used, increase by 4 levels; or (iii) a dangerous weapon was brandished or its use was threatened, increase by 3 levels. If the resulting offense level is less than level 24, increase to level 24.

(c) Cross References.

(1) If death resulted, apply the most analogous guideline from Chapter Two, Part A, subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

(2) If the offense involved possession of, or a threat to use (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply § 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.".

The Commentary to § 2A5.2 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 1993(a)(4), (5), (6), (b);" before "49 U.S.C."; and by inserting "46503," after "46308,".

Section 2A5.2 is amended by striking the Commentary captioned "Background" and inserting the following:

"Application Note:

1. Definitions.—For purposes of this guideline:

'Biological agent', 'chemical weapon', 'nuclear byproduct material', 'nuclear material', 'toxin', and 'weapon of mass destruction' have the meaning given those terms in Application Note 1 of the Commentary to § 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction).

'Brandished', 'dangerous weapon', 'firearm', and 'otherwise used' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'Mass transportation' has the meaning given that term in 18 U.S.C. 1993(c)(5).".

Section 2A6.1 is amended by redesignating subsection (b)(4) as subsection (b)(5); by striking "and (3)" in subsection (b)(5), as redesignated by this amendment, and inserting "(3), and (4)"; and by inserting after subsection (b)(3) the following:

"(4) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.".

The Commentary to § 2A6.1 captioned "Statutory Provisions" is amended by inserting "32(c), 35(b)," before "871"; by inserting ", 1993(a)(7), (8), 2332b(a)(2)" after "879"; and by inserting "; 49 U.S.C. 46507" after "(C)–(E)".

The Commentary to § 2A6.1 captioned "Application Notes" is amended by striking Note 1; and by redesignating Note 2 as Note 1.

The Commentary to § 2A6.1 captioned "Application Notes" is amended in . Note 1, as redesignated by this amendment, by inserting "Scope of Conduct to Be Considered.—" before "In determining"; and by striking the last two paragraphs.

The Commentary to § 2A6.1 captioned "Application Notes" is amended by adding at the end the following:

"2. Grouping.—For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving making a threatening or harassing communication to the same victim are grouped together under § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving different victims are not to be grouped under § 3D1.2.

3. Departure Provisions.—

(A) In General.—The Commission recognizes that offenses covered by this guideline may include a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).

(B) Multiple Threats or Victims.—If the offense involved substantially more than two threatening communications to the same victim or a prolonged period of making harassing communications to the same victim, or if the offense involved multiple victims, an upward departure may be warranted.".

Section 2B1.1 is amended by striking subsection (d).

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "1992, 1993(a)(1), (a)(4)," after "1832,"; by inserting ", 2332b(a)(1)" after "2317"; and by inserting ", 60123(b)" after "46317(a)".

The Commentary to § 2B1.1 captioned "Background" is amended by striking the last paragraph.

Section 2B2.3(b)(1) is amended by inserting "(A)" after "occurred"; by striking the comma after "government facility" and inserting "; (B) at"; and by striking ", or" after "energy facility" and inserting "; (C) on a vessel or aircraft of the United States; (D) in a secured area of an airport; or (E) at".

Section 2B2.3 is amended by inserting after subsection (b) the following:

"(c) Cross Reference.

(1) If the offense was committed with the intent to commit a felony offense, apply § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above.".

The Commentary to § 2B2.3 captioned "Statutory Provisions" is amended by inserting "§ " before "1030"; and by inserting ", 1036" after "(a)(3)".

The Commentary to § 2B2.3 captioned "Application Notes" is amended in Note 1 by striking "For purposes of this guideline—" and inserting the following:

"Definitions.—For purposes of this guideline:

"Airport" has the meaning given that term in section 47102 of title 49, United States Code.

"Felony offense" means any offense (federal, state, or local) punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought or a conviction was obtained.".

Section 2K1.4(a)(1)(B) is amended by inserting ", an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, or a ferry" after "dwelling".

Section 2K1.4(a)(2) is amended by striking "a dwelling; or (C) endangered a dwelling, or a structure other than a dwelling" and inserting "(i) a dwelling, or (ii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, or a ferry; or (C) endangered (i) a dwelling, (ii) a structure other than a dwelling, or (iii) an aircraft, a mass transportation vehicle, or a ferry".

The Commentary to § 2K1.4 captioned "Statutory Provisions" is amended by inserting "1992, 1993(a)(1), (a)(2), (a)(3), (b)," after "1855,"; and by inserting ", 2332a; 49 U.S.C. 60123(b)" after "2275".

The Commentary to § 2K1.4 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Definitions.—For purposes of this guideline:

"Explosives" includes any explosive, explosive material, or destructive device.

"National cemetery" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"Mass transportation" has the meaning given that term in 18 U.S.C. 1993(c)(5).".

The Commentary to § 2K1.4 captioned "Application Notes" is amended in Note 2 by inserting "Risk of Death or Serious Bodily Injury.—" before "Creating".

The Commentary to § 2K1.4 captioned "Application Notes" is amended by striking Notes 3 and 4 and inserting the following:

"3. Upward Departure Provision.—If bodily injury resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).".

The Commentary to § 2L1.2 captioned "Application Notes" is amended by inserting at the end of subdivision (B) of Note 1 the following:

"(vi) 'Terrorism offense' means any offense involving, or intending to promote, a 'federal crime of terrorism', as that term is defined in 18 U.S.C. 2332b(g)(5).".

The Commentary to § 2M2.1 captioned "Statutory Provisions" is amended by inserting "; 49 U.S.C. 60123(b)" after "2284".

The Commentary to § 2M2.3 captioned "Statutory Provisions" is amended by inserting "; 49 U.S.C. 60123(b)" after "2284".

Chapter Two, Part M is amended in the heading of subpart 5 by adding at the end ", AND PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS".

Section 2M5.1 is amended in the heading by adding at the end "; Financial Transactions with Countries Supporting International Terrorism".

Section 2M5.1(a)(1) is amended by inserting "(A)" after "26, if"; and by inserting "; or (B) the offense involved a financial transaction with a country supporting international terrorism" after "evaded".

The Commentary to § 2M5.1 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 2332d;" before "50 U.S.C.".

The Commentary to § 2M5.1 captioned "Application Notes" is amended by adding at the end the following:

"4. For purposes of subsection (a)(1)(B), 'a country supporting international terrorism' means a country designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405).".

Chapter Two, Part M, subpart 5 is amended by adding at the end the following:

"§ 2M5.3. Providing Material Support or Resources to Designated Foreign Terrorist Organizations

(a) Base Offense Level: 26

(b) Specific Offense Characteristic

(1) If the offense involved the provision of (A) dangerous weapons; (B) firearms; (C) explosives; or (D) funds

with knowledge or reason to believe such funds would be used to purchase any of the items described in subdivisions (A) through (C), increase by 2 levels.

(c) Cross References

(1) If the offense resulted in death, apply § 2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or § 2A1.2 (Second Degree Murder) otherwise, if the resulting offense level is greater than that determined above.

(2) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), if the resulting offense level is greater than that determined above.

(3) If the offense involved the provision of (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply § 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 18 U.S.C. 2339B.

Application Notes:

1. Definitions—For purposes of this guideline:

"Biological agent", "chemical weapon", "nuclear byproduct material", "nuclear material", "toxin", and "weapon of mass destruction" have the meaning given those terms in Application Note 1 of the Commentary to § 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction).

"Dangerous weapon", "firearm", and "destructive device" have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

"Explosives" has the meaning given that term in Application Note 1 of the Commentary to § 2K1.4 (Arson; Property Damage by Use of Explosives).

"Foreign terrorist organization" has the meaning given the term "terrorist organization" in 18 U.S.C. 2339B(g)(6).

"Material support or resources" has the meaning given that term in 18 U.S.C. 2339B(g)(4).

2. Departure Provisions.—

(A) In General.—In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of the material support or resources involved, the extent of planning or sophistication, and whether there were multiple occurrences. In a case in which such factors are present in an extreme form, a departure from the guidelines may be warranted. See Chapter Five, Part K (Departures).

(B) War or Armed Conflict.—In the case of a violation during time of war or armed conflict, an upward departure may be warranted.".

Section 2M6.1(a)(2) is amended by striking "and" and inserting a comma; by inserting ", (a)(4), and (a)(5)" after "(a)(3)"; and by striking "or".

Section 2M6.1(a) is amended by redesignating subdivision (3) as subdivision (5); by inserting after subdivision (2) the following:

"(3) 22, if the defendant is convicted under 18 U.S.C. 175b;

(4) 20, if the defendant is convicted under 18 U.S.C. 175(b); or"; and by striking "by-product" in subdivision (5), as redesignated by this amendment, and inserting "byproduct".

Section 2M6.1(b)(1) is amended by striking "or (a)(3)" and inserting ", (a)(4), or (a)(5)".

Section 2M6.1(b)(2) is amended by inserting ", (a)(3), or (a)(4)" after "(a)(2)".

Section 2M6.1(b)(3) is amended by striking "or" after "(a)(2)" and inserting a comma; and by inserting ", (a)(4), or (a)(5)" after "(a)(3)".

The Commentary to § 2M6.1 captioned "Statutory Provisions" is amended by inserting "175b," after "175,"; and by inserting "1993(a)(2), (3), (b)," after "842(p)(2),".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 1 by inserting after "18 U.S.C. 831(f)(1)." the following paragraph:

"'Restricted person' has the meaning given that term in 18 U.S.C. 175b(b)(2).".

Section 2S1.3 is amended in the heading by adding at the end "; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts".

Section 2S1.3(a) is amended to read as follows:

"(a) Base Offense Level:

(1) 8, if the defendant was convicted under 31 U.S.C. 5318 or 5318A; or

(2) 6 plus the number of offense levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the funds, if subsection (a)(1) does not apply.".

Section 2S1.3(b)(1) is amended by inserting "(A)" after "If"; and by inserting "; or (B) the offense involved bulk cash smuggling" after "promote unlawful activity".

Section 2S1.3(b) is amended by redesignating subdivision (2) as subdivision (3); and by inserting after subdivision (1) the following:

"(2) If the defendant (A) was convicted of an offense under subchapter II of chapter 53 of title 31, United States Code; and (B) committed the offense as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period, increase by 2 levels.".

Section 2S1.3(b)(3), as redesignated by this amendment, is amended by striking "subsection (b)(1) does not apply" and inserting "subsection (a)(2) applies and subsections (b)(1) and (b)(2) do not apply".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "5318, 5318A(b), 5322," after "5316,"; and by inserting ", 5331, 5332" after "5326".

The Commentary to § 2S1.3 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; by inserting "Definition of "Value of the Funds'.—" before "For purposes of this guideline"; and by adding after Note 1 the following:

"2. Bulk Cash Smuggling.—For purposes of subsection (b)(1)(B), 'bulk cash smuggling' means (A) knowingly concealing, with the intent to evade a currency reporting requirement under 31 U.S.C. 5316, more than $10,000 in currency or other monetary instruments; and (B) transporting or transferring (or attempting to transport or transfer) such currency or monetary instruments into or outside of the United States. 'United States' has the meaning given that term in Application Note 1 of the Commentary to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States).

3. Enhancement for Pattern of Unlawful Activity.—For purposes of subsection (b)(2), 'pattern of unlawful activity' means at least two separate occasions of unlawful activity involving a total amount of more than $100,000 in a 12-month period, without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion.".

The Commentary to § 2S1.3 captioned "Background" is amended by striking "The" and inserting "Some of the"; and by adding at the end the following:

" This guideline also covers offenses under 31 U.S.C. 5318 and 5318A, pertaining to records, reporting and identification requirements, prohibited accounts involving certain foreign jurisdictions, foreign institutions, and foreign banks, and other types of transactions and types of accounts.".

Section 2X1.1 is amended by adding after subsection (c) the following:

"(d) Special Instruction

(1) Subsection (b) shall not apply to any of the following offenses, if such offense involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5):

18 U.S.C. 81;
18 U.S.C. 930(c);
18 U.S.C. 1362;
18 U.S.C. 1363;
18 U.S.C. 1992;
18 U.S.C. 2339A;
18 U.S.C. 2340A;
49 U.S.C. 46504;
49 U.S.C. 46505; and 49 U.S.C. 60123(b).".

The Commentary to § 2X2.1 captioned "Statutory Provision" is amended to read as follows:

"Statutory Provisions: 18 U.S.C. 2, 2339, 2339A.".

The Commentary to § 2X2.1 captioned "Application Note" is amended in Note 1 by striking "'Underlying" and inserting "Definition.—For purposes of this guideline, 'underlying"; and by inserting ", or in the case of a violation of 18 U.S.C. 2339A, "underlying offense" means the offense the defendant is convicted of having materially supported prior to or during its commission" after "abetting".

Section 2X3.1(a) is amended by striking "Provided, that where" and inserting "However, in a case in which"; and by striking "offense level shall" and inserting "base offense level under this subsection shall".

The Commentary to § 2X3.1 captioned "Statutory Provisions" is amended by inserting ", 2339, 2339A" after "1072".

The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by striking "Underlying" and inserting "Definition."—For purposes of this guideline, "underlying"; and by inserting", or in the case of a violation of 18 U.S.C. 2339A, 'underlying offense' means the offense the defendant is convicted of having materially supported after its commission (*i.e.,* in connection with the concealment of or an escape from that offense)" after "accessory".

The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 2 by inserting "Application of Mitigating Role Adjustment.—"before "The adjustment".

The Commentary to § 3A1.4 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. 'Federal Crime of Terrorism' Defined.—For purposes of this guideline, "federal crime of terrorism" has the meaning given that term in 18 U.S.C. 2332b(g)(5).".

The Commentary to § 3A1.4 captioned "Application Notes" is amended by redesignating Note 2 as Note 3; and by inserting after Note 1 the following:

"2. Harboring, Concealing, and Obstruction Offenses.—For purposes of this guideline, an offense that involved (A) harboring or concealing a terrorist who committed a federal crime of terrorism (such as an offense under 18 U.S.C. 2339 or 2339A); or (B) obstructing an investigation of a federal crime of terrorism, shall be considered to have involved, or to have been intended to promote, that federal crime of terrorism.".

The Commentary to § 3A1.4 captioned "Application Notes" is amended in Note 3, as redesignated by this amendment, by inserting "Computation of Criminal History Category.—" before "Under subsection (b)".

The Commentary to § 3A1.4 captioned "Application Notes" is amended by adding at the end the following:

"4. Upward Departure Provision.—By the terms of the directive to the Commission in section 730 of the Antiterrorism and Effective Death Penalty Act of 1996, the adjustment provided by this guideline applies only to federal crimes of terrorism. However, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B), but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the sentence resulting from such a departure may not exceed the top of the guideline range that would have resulted if the adjustment under this guideline had been applied.".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by striking the period at the end of subdivision (i) and inserting a semicolon; and by inserting after subdivision (i) the following:

"(j) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).".

Section 5D1.2(a) is amended by adding at the end the following:

"Notwithstanding subdivisions (1) through (3), the length of the term of supervised release for any offense listed in 18 U.S.C. 2332b(g)(5)(B) the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person (A) shall be not less than the minimum term of years specified for that class of offense under subdivisions (1) through (3); and (B) may be up to life.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 175 the following new line:

"18 U.S.C. 175b 2M6.1";

by inserting after the line referenced to 18 U.S.C. 1992 the following new lines:

"18 U.S.C. 1993(a)(1) 2B1.1, 2K1.4
18 U.S.C. 1993(a)(2) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(3) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(4) 2A5.2, 2B1.1
18 U.S.C. 1993(a)(5) 2A5.2
18 U.S.C. 1993(a)(6) 2A2.1, 2A2.2, 2A5.2
18 U.S.C. 1993(a)(7) 2A6.1
18 U.S.C. 1993(a)(8) 2A6.1
18 U.S.C. 1993(b) 2A5.2, 2K1.4, 2M6.1";

by inserting after the line referenced to 18 U.S.C. 2332a the following new lines:

"18 U.S.C. 2332b(a)(1) 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A4.1, 2B1.1
18 U.S.C. 2332b(a)(2) 2A6.1
18 U.S.C. 2332d 2M5.1
18 U.S.C. 2339 2X2.1, 2X3.1
18 U.S.C. 2339A 2X2.1, 2X3.1
18 U.S.C. 2339B 2M5.3
18 U.S.C. 2340A 2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A4.1";

by inserting after the line referenced to 30 U.S.C. 1463 the following new line:

"31 U.S.C. 5311 note (section 329 of the USA PATRIOT Act of 2001) 2C1.1";

by inserting after the line referenced to 31 U.S.C. 5316 the following new lines:

"31 U.S.C. 5318 2S1.3
31 U.S.C. 5318 2S1.3";

by inserting after the line referenced to 31 U.S.C. 5326 the following new lines:

"31 U.S.C. 5331 2S1.3
31 U.S.C. 5332 2S1.3";

by inserting after the line referenced to 49 U.S.C. 46502(a),(b) the following new line:

"49 U.S.C. 46503 2A5.2"; and

by inserting after the line referenced to 49 U.S.C. 46506 the following new lines:

"49 U.S.C. 46507 2A6.1
49 U.S.C. 60123(b) 2B1.1, 2K1.4, 2M2.1, 2M2.3".

Reason for Amendment: This amendment is a six-part amendment

that responds to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Public Law 107–56 (the "Act").

Among its many provisions are appropriately severe penalties for offenses against mass transportation systems and interstate gas or hazardous liquid pipelines. The amendment also increases sentences for threats that substantially disrupt governmental or business operations or result in costly cleanup measures. It expands the guideline coverage of offenses involving bioterrorism, and it creates a new guideline for providing material support to foreign terrorist organizations. It punishes attempts and conspiracies to commit terrorism as if the offense had been carried out and adds an invited upward departure to the guidelines' terrorism enhancement for appropriate cases. Finally, it authorizes a term of supervised release up to life for a defendant convicted of a federal crime of terrorism that resulted in substantial risk of death or serious bodily injury to another person.

First, this amendment makes a number of changes to Appendix A (Statutory Index) and several guidelines in Chapter Two (Offense Conduct) in order to incorporate several new predicate offenses to federal crimes of terrorism. This amendment addresses section 801 of the Act, which added 18 U.S.C. 1993, generally pertaining to offenses against mass transportation systems and facilities. The amendment also addresses 49 U.S.C. 46507 pertaining to false information and threats, that heretofore was not listed in the Statutory Index, as well as the new offense at 49 U.S.C. 46503, pertaining to interference with security screening personnel.

Specifically, the amendment makes a number of changes to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant) and the guidelines in Chapter Two, part A, subpart 2 (Assault). First, this amendment references violations of 18 U.S.C. 1993(a)(4), (a)(5), (a)(6), and (b) and 49 U.S.C. 46503 to 2A5.2 because that guideline presently covers other similar offenses and because the guideline's alternative base offense levels cover offenses that involve reckless or intentional endangerment, conduct which is an element of some of these new offenses.

In order to take into account aggravating conduct which may occur in such offenses, the amendment adds a specific offense characteristic for use of a weapon, borrowing language from § 2A2.2 (Aggravated Assault). The specific offense characteristic provides a graduated enhancement with a minimum offense level of level 24 at § 2A5.2(b)(1) for the involvement of a dangerous weapon in the offense. This enhancement addresses concerns that the current base offense level of level 18 (in § 2A5.2(a)(2)) for reckless endangerment may be inadequate in situations involving a dangerous weapon and reckless disregard for the safety of human life. The minimum offense level of level 24 mirrors the offense level that applies for conduct amounting to reckless endangerment under subsection (b)(1) of § 2K1.5 (Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft). A cross reference to the appropriate homicide guideline also is provided for offenses in which death results; death as an aggravating circumstance is included in 18 U.S.C. 1993(b).

The amendment also amends § 2A6.1 (Threatening or Harassing Communications) to incorporate offenses against mass transportation systems under 18 U.S.C. 1993(a)(7) and (a)(8) and 49 U.S.C. 46507 and provides corresponding references in the Statutory Index. These three provisions require the same type of threatening conduct or conveyance of false information as two other offenses referenced to § 2A6.1, specifically 18 U.S.C. 32(c) and 35(b), which cover aircraft, railroads, and shipping, rather than mass transportation systems. Additionally, a specific offense characteristic is added if the offense resulted in a substantial disruption of public, governmental, or business functions or services, or a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense. This enhancement recognizes that a terrorist threat usually will be directed at a large number of individuals, governmental buildings or operations, or infrastructure. Unless such a terrorist threat is immediately dismissed as not credible, the conduct may result in significant disruption and response costs. This specific offense characteristic is the same as that contained in subsection (b)(3) of § 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction). An invited upward departure provision is added for situations in which the offense involved multiple victims, a circumstance which might occur in the context of these new offenses.

This amendment also amends § 2K1.4 (Arson; Property Damage by Use of Explosives) and § 2B1.1 (Theft, Property Destruction, and Fraud) to cover violations of 18 U.S.C. 1993(a)(1) and (b). Offenses under 18 U.S.C. 1993(a)(1) are similar to another offense referenced to these guidelines, 18 U.S.C. 32(a)(1), with respect to the intent standard required to commit the offense, offense conduct, and resulting harm. The amendment references violations of 18 U.S.C. 1993(a)(2), (a)(3), and (b) to §§ 2K1.4 and 2M6.1. These offenses encompass a wide range of conduct. For example, a violation of 18 U.S.C. 1993(a)(3) may occur if the defendant sets fire to a garage or places a biological agent or toxin for use as a destructive substance near an aircraft and this likely endangered the safety of that aircraft.

The amendment expands § 2M6.1 to cover 18 U.S.C. 175(b) and 175b, two new offenses created by section 817 of the Act, involving possession of biological agents, toxins, and delivery systems. Section 2M6.1 is the most appropriate guideline for these offenses because they involve the knowing possession of certain biological substances. A base offense level of level 20 is provided for 18 U.S.C. 175(b) offenses, the same base offense level as is currently provided for threat cases under that guideline. The current two level increase for particularly dangerous biological agents would be available for the most serious substances.

A base offense level of level 22 is provided for offenses under 18 U.S.C. 175b, which forbids certain restricted persons (defined in the statute) to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or to receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent (e.g., ebola, anthrax). Because this offense already takes into account the serious nature of a select agent, the amendment treats these offenses separately from offenses under 18 U.S.C. 175(b), with a higher base offense level and an instruction that the enhancement for select biological agents does not apply.

The amendment also amends the Statutory Index to reference 18 U.S.C. 2339 to 2X2.1 (Aiding and Abetting) and 2X3.1 (Accessory After the Fact). This offense prohibits harboring or concealing any person who the defendant knows, or has reasonable grounds to believe, has committed or is about to commit, one of several enumerated offenses.

Second, this amendment provides Statutory Index references, as well as modifications to various Chapter Two guidelines, for a number of offenses

that, prior to enactment of the Act, were enumerated in 18 U.S.C. 2332b(g)(5) as predicate offenses for federal crimes of terrorism but were not explicitly incorporated in the guidelines.

Specifically, the amendment references 18 U.S.C. 2332b(a)(1) offenses to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A1.4 (Involuntary Manslaughter), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault), and 2A4.1 (Kidnapping, Abduction, Unlawful Restraint), inasmuch as 18 U.S.C. 2332b offenses are analogous to offenses currently referenced to those guidelines.

The amendment also provides a Statutory Index reference to § 2A6.1 (Threatening or Harassing Communications) for cases under 18 U.S.C. 2332b(a)(2), which prohibits threats, attempts and conspiracies to commit an offense under 18 U.S.C. 2332b(a)(1).

This amendment also creates a new guideline, at § 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations), for offenses under 18 U.S.C. 2339B, which prohibits the provision of material support or resources to a foreign terrorist organization. The amendment references offenses under 18 U.S.C. 2339A to §§ 2X2.1 and 2X3.1. Section 2339A offenses concern providing material support to terrorists that the defendant knows or intends will be used in preparation for, or in carrying out, certain specified predicate offenses. Thus, the essence of 18 U.S.C. 2339A offenses is akin to aiding and abetting or accessory after the fact offenses, which warrants reference to §§ 2X2.1 and 2X3.1. In contrast, 18 U.S.C. 2339B offenses are referenced to a new guideline, § 2M5.3, primarily because they are not statutorily linked to the commission of any specified predicate offenses. To account for the variety of ways in which such offenses may be committed, the proposed new guideline provides two specific offense characteristics that enhance the sentence for cases in which the material support involved dangerous weapons and in which the material support involved nuclear, biological, or chemical weapons.

The amendment references torture offenses under 18 U.S.C. 2340A to §§ 2A1.1, 2A1.2, 2A2.1, 2A2.2, and 2A4.1. The amendment also references 49 U.S.C. 60123(b), pertaining to damaging or destroying an interstate gas or hazardous liquid pipeline facility, to §§ 2B1.1, 2K1.4, 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities), and 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities).

Third, the amendment responds to section 811 of the Act, which amended a number of offenses to ensure that attempts and conspiracies to commit any of those offenses subject the offender to the same penalties prescribed for the object offense. This amendment provides a special instruction in § 2X1.1 (Attempt, Solicitation, or Conspiracy) that the three level reduction in § 2X1.1(b) does not apply to these offenses when committed for a terrorist objective.

Fourth, the amendment adds an encouraged, structured upward departure in § 3A1.4 (Terrorism) for offenses that involve terrorism but do not otherwise qualify as offenses that involved or were intended to promote "federal crimes of terrorism" for purposes of the terrorism adjustment in § 3A1.4. The amendment provides an upward departure, rather than a specified guideline adjustment, because of the expected infrequency of these terrorism offenses and to provide the court with a viable tool to account for the harm involved during the commission of these offenses on a case-by-case basis. In addition, the structured upward departure provision makes it possible to impose punishment equal in severity to that which would be imposed if the § 3A1.4 adjustment actually applied.

The amendment adds an application note to § 3A1.4 regarding harboring and concealing offenses to clarify that § 3A1.4 may apply in the case of offenses that occurred after the commission of the federal crime of terrorism (*e.g.*, a case in which the defendant, in violation of 18 U.S.C. 2339A, concealed an individual who had committed a federal crime of terrorism).

Fifth, the amendment amends § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) to incorporate new money laundering provisions created by the Act.

Specifically, the amendment provides an alternative base offense level of level 8 in § 2S1.3(a) in order to incorporate offenses under 31 U.S.C. 5318 and 5318A. The base offense level of level 8 recognizes the heightened due diligence requirements placed on financial institutions with respect to payable-through accounts, correspondent accounts, and shell banks.

The amendment also amends § 2S1.3(b)(1), relating to the promotion of unlawful activity, to provide an alternative prong if the offense involved bulk cash smuggling. This amendment addresses 31 U.S.C. 5332, added by section 371 of the Act, which prohibits concealing, with intent to evade a currency reporting requirement under 31 U.S.C. 5316, more than $10,000 in currency or other monetary instruments and transporting or transferring such currency or monetary instruments into or outside of the United States. Findings set forth in that section of the Act indicate that bulk cash smuggling typically involves the promotion of unlawful activity.

The amendment also provides an enhancement in § 2S1.3(b) to give effect to the enhanced penalty provisions under 31 U.S.C. 5322(b) for offenses under subchapter II of chapter 53 of title 31, United Stated Code, if such offenses were committed as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period.

Sixth, the amendment addresses a number of miscellaneous issues related to terrorism. Specifically, it provides a definition of terrorism for purposes of the prior conviction enhancement in § 2L1.2 (Unlawfully Entering or Remaining in the United States). For consistency, the definition is the same as that found in the current Chapter Three terrorism adjustment.

It also amends § 3C1.1 (Obstructing or Impeding the Administration of Justice), in response to section 319(d) of the Act, which amends the Controlled Substances Act at 21 U.S.C. 853(e) to require a defendant to repatriate any property that may be seized and forfeited and to deposit that property in the registry of the court or with the United States Marshals Service or the Secretary of the Treasury. Section 319(d) of the Act also states that the failure to comply with a protective order and an order to repatriate property "may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines." Accordingly, the amendment adds Application Note 4(j) to § 3C1.1 to provide that failure to comply with an order issued pursuant to 21 U.S.C. 835(e) is an example of the types of conduct to which the adjustment applies.

It also amends § 5D1.2 (Term of Supervised Release), in response to section 812 of the Act, which authorizes a term of supervised release of any term of years or life for a defendant convicted

of a federal crime of terrorism the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.

It also amends § 2B1.1 to delete the special instruction pertaining to the imposition of not less than six months' imprisonment for a defendant convicted under 18 U.S.C. 1030(a)(4) or (5). This amendment is in response to section 814(f) of the Act, which directed the Commission to amend the guidelines "to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment."

It also adds a reference in the Statutory Index to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), for the new offense created by section 329 of the Act, which prohibits a federal official or employee, in connection with administration of the money laundering provisions of the Act, to corruptly demand, seek, receive, accept, or agree to receive or accept anything of value in return for being influenced in the performance of an official act, being influenced to commit or aid in committing any fraud on the United States, or being induced to do or omit to do any act in violation of official duties.

It also amends § 2M5.1 (Evasion of Export Controls) to incorporate 18 U.S.C. 2332d, which prohibits a United States person, knowing or having reasonable cause to know that a country is designated under the Export Administration Act as a country supporting international terrorism, to engage in a financial transaction with the government of that country. The amendment provides a base offense level of level 26 for these offenses.

Finally, it amends § 2B2.3 (Trespass) to incorporate the offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Public Law 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The amendment amends the existing two level enhancement in § 2B2.3(b)(1) to provide an additional ground for application of the enhancement if the trespass involved a vessel, aircraft of the United States, or secure area of an airport. It also adds a cross reference to § 2X1.1 if the offense involved the intent to commit another felony.

2. Amendment: Section 2B1.1(c) is amended by adding at the end the following:

"(4) If the offense involved a cultural heritage resource, apply § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), if the resulting offense level is greater than that determined above.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting after "For purposes of this guideline:" the following paragraph:

"'Cultural heritage resource' has the meaning given that term in Application Note 1 of the Commentary to § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in subdivision (F) of Note 2 by adding at the end the following:

"(vii) Value of Cultural Heritage Resources.—In a case involving a cultural heritage resource, loss attributable to that cultural heritage resource shall be determined in accordance with the rules for determining the "value of the cultural heritage resource' set forth in Application Note 2 of the Commentary to § 2B1.5.".

Chapter Two, Part B, subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

"§ 2B1.5. Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources.

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the cultural heritage resource (A) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (B) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) If the offense involved a cultural heritage resource from, or that, prior to the offense, was on, in, or in the custody of (A) the national park system; (B) a National Historic Landmark; (C) a national monument or national memorial; (D) a national marine sanctuary; (E) a national cemetery; (F) a museum; or (G) the World Heritage List, increase by 2 levels.

(3) If the offense involved a cultural heritage resource constituting (A) human remains; (B) a funerary object; (C) cultural patrimony; (D) a sacred object; (E) cultural property; (F) designated archaeological or ethnological material; or (G) a pre-Columbian monumental or architectural sculpture or mural, increase by 2 levels.

(4) If the offense was committed for pecuniary gain or otherwise involved a commercial purpose, increase by 2 levels.

(5) If the defendant engaged in a pattern of misconduct involving cultural heritage resources, increase by 2 levels.

(6) If a dangerous weapon was brandished or its use was threatened, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(c) Cross Reference

(1) If the offense involved arson, or property damage by the use of any explosive, explosive material, or destructive device, apply § 2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 16 U.S.C. 470ee, 668(a), 707(b); 18 U.S.C. 541–546, 641, 661–662, 666, 668, 1152–1153, 1163, 1168, 1170, 1361, 2232, 2314–2315.

Application Notes:

1. 'Cultural Heritage Resource' Defined.—For purposes of this guideline, 'cultural heritage resource' means any of the following:

(A) A historic property, as defined in 16 U.S.C. 470w(5) (see also section 16(l) of 36 CFR part 800).

(B) A historic resource, as defined in 16 U.S.C. 470w(5).

(C) An archaeological resource, as defined in 16 U.S.C. § 470bb(1) (see also section 3(a) of 43 CFR part 7; 36 CFR part 296; 32 CFR part 299; 18 CFR part 1312).

(D) A cultural item, as defined in section 2(3) of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001(3) (see also 43 CFR 10.2(d)).

(E) A commemorative work. "Commemorative work" (A) has the meaning given that term in section 2(c) of Public Law 99–652 (40 U.S.C. 1002(c)); and (B) includes any national monument or national memorial.

(F) An object of cultural heritage, as defined in 18 U.S.C. 668(a)(2).

(G) Designated ethnological material, as described in 19 U.S.C. 2601(2)(ii), 2601(7), and 2604.

2. Value of the Cultural Heritage Resource Under Subsection (b)(1)."This application note applies to the determination of the value of the

cultural heritage resource under subsection (b)(1).

(A) General Rule."For purposes of subsection (b)(1), the value of the cultural heritage resource shall include, as applicable to the particular resource involved, the following:

(i) The archaeological value. (Archaeological value shall be included in the case of any cultural heritage resource that is an archaeological resource.)

(ii) The commercial value.

(iii) The cost of restoration and repair.

(B) Estimation of Value."For purposes of subsection (b)(1), the court need only make a reasonable estimate of the value of the cultural heritage resource based on available information.

(C) Definitions."For purposes of this application note:

(i) "Archaeological value" of a cultural heritage resource means the cost of the retrieval of the scientific information which would have been obtainable prior to the offense, including the cost of preparing a research design, conducting field work, conducting laboratory analysis, and preparing reports, as would be necessary to realize the information potential. (See 43 CFR 7.14(a); 36 CFR 296.14(a); 32 CFR 229.14(a); 18 CFR 1312.14(a).)

(ii) "Commercial value" of a cultural heritage resource means the fair market value of the cultural heritage resource at the time of the offense. (See 43 CFR 7.14(b); 36 CFR 296.14(b); 32 CFR 229.14(b); 18 CFR 1312.14(b).)

(iii) "Cost of restoration and repair" includes all actual and projected costs of curation, disposition, and appropriate reburial of, and consultation with respect to, the cultural heritage resource; and any other actual and projected costs to complete restoration and repair of the cultural heritage resource, including (I) its reconstruction and stabilization; (II) reconstruction and stabilization of ground contour and surface; (III) research necessary to conduct reconstruction and stabilization; (IV) the construction of physical barriers and other protective devices; (V) examination and analysis of the cultural heritage resource as part of efforts to salvage remaining information about the resource; and (VI) preparation of reports. (See 43 CFR 7.14(c); 36 CFR 296.14(c); 32 CFR 229.14(c); 18 CFR 1312.14(c).)

(D) Determination of Value in Cases Involving a Variety of Cultural Heritage Resources.—In a case involving a variety of cultural heritage resources, the value of the cultural heritage resources is the sum of all calculations made for those resources under this application note.

3. Enhancement in Subsection (b)(2).__For purposes of subsection (b)(2):

(A) "Museum" has the meaning given that term in 18 U.S.C. 668(a)(1) except that the museum may be situated outside the United States.

(B) "National cemetery" has the meaning given that term in Application Note 1 of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud).

(C) "National Historic Landmark" means a property designated as such pursuant to 16 U.S.C. 470a(a)(1)(B).

(D) "National marine sanctuary" means a national marine sanctuary designated as such by the Secretary of Commerce pursuant to 16 U.S.C. 1433.

(E) "National monument or national memorial" means any national monument or national memorial established as such by Act of Congress or by proclamation pursuant to the Antiquities Act of 1906 (16 U.S.C. 431).

(F) "National park system" has the meaning given that term in 16 U.S.C. 1c(a).

(G) "World Heritage List" means the World Heritage List maintained by the World Heritage Committee of the United Nations Educational, Scientific, and Cultural Organization in accordance with the Convention Concerning the Protection of the World Cultural and Natural Heritage.

4. Enhancement in Subsection (b)(3)."For purposes of subsection (b)(3):

(A) "Cultural patrimony" has the meaning given that term in 25 U.S.C. 3001(3)(D) (see also 43 CFR 10.2(d)(4)).

(B) "Cultural property" has the meaning given that term in 19 U.S.C. 2601(6).

(C) "Designated archaeological or ethnological material" means archaeological or ethnological material described in 19 U.S.C. 2601(7) (see also 19 U.S.C. 2601(2) and 2604).

(D) "Funerary object" means an object that, as a part of the death rite or ceremony of a culture, was placed intentionally, at the time of death or later, with or near human remains.

(E) "Human remains" (i) means the physical remains of the body of a human; and (ii) does not include remains that reasonably may be determined to have been freely disposed of or naturally shed by the human from whose body the remains were obtained, such as hair made into ropes or nets.

(F) "Pre-Columbian monumental or architectural sculpture or mural" has the meaning given that term in 19 U.S.C. 2095(3).

(G) "Sacred object" has the meaning given that term in 25 U.S.C. 3001(3)(C) (see also 43 CFR 10.2(d)(3)).

5. Pecuniary Gain and Commercial Purpose Enhancement Under Subsection (b)(4).__

(A) "For Pecuniary Gain'.__For purposes of subsection (b)(4), "for pecuniary gain" means for receipt of, or in anticipation of receipt of, anything of value, whether monetary or in goods or services. Therefore, offenses committed for pecuniary gain include both monetary and barter transactions, as well as activities designed to increase gross revenue.

(B) Commercial Purpose.__The acquisition of cultural heritage resources for display to the public, whether for a fee or donation and whether by an individual or an organization, including a governmental entity, a private non-profit organization, or a private for-profit organization, shall be considered to involve a "commercial purpose" for purposes of subsection (b)(4).

6. Pattern of Misconduct Enhancement Under Subsection (b)(5).—

(A) Definition.__For purposes of subsection (b)(5), "pattern of misconduct involving cultural heritage resources" means two or more separate instances of offense conduct involving a cultural heritage resource that did not occur during the course of the offense (i.e., that did not occur during the course of the instant offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct)). Offense conduct involving a cultural heritage resource may be considered for purposes of subsection (b)(5) regardless of whether the defendant was convicted of that conduct.

(B) Computation of Criminal History Points.__A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

7. Dangerous Weapons Enhancement Under Subsection (b)(6).__For purposes of subsection (b)(6), "brandished" and "dangerous weapon" have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

8. Multiple Counts.__For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving cultural heritage offenses covered by this guideline are grouped together under subsection (d) of § 3D1.2 (Groups of Closely Related Counts). Multiple counts involving cultural heritage offenses covered by this guideline and

offenses covered by other guidelines are not to be grouped under § 3D1.2(d).

9. Upward Departure Provision.__There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if (A) in addition to cultural heritage resources, the offense involved theft of, damage to, or destruction of, items that are not cultural heritage resources (such as an offense involving the theft from a national cemetery of lawnmowers and other administrative property in addition to historic gravemarkers or other cultural heritage resources); or (B) the offense involved a cultural heritage resource that has profound significance to cultural identity (e.g., the Statue of Liberty or the Liberty Bell).".

Section 2Q2.1 is amended by adding after subsection (b) the following:

"(c) Cross Reference

(1) If the offense involved a cultural heritage resource, apply § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), if the resulting offense level is greater than that determined above.".

The Commentary to § 2Q2.1 captioned "Application Notes" is amended by adding at the end the following:

"6. For purposes of subsection (c)(1), "cultural heritage resource" has the meaning given that term in Application Note 1 of the Commentary to § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).".

Section 3D1.2(d) is amended by inserting "2B1.5," after "2B1.4,".

Appendix A (Statutory Index) is amended by striking the line referenced to 16 U.S.C. 433; by inserting before the line referenced to 16 U.S.C. 668(a) the following new line: "16 U.S.C. 470ee 2B1.5";

in the line referenced to 16 U.S.C. 668(a) by inserting "2B1.5," before "2Q2.1";

in the line referenced to 16 U.S.C. 707(b) by inserting "2B1.5," before "2Q2.1";

in the line referenced to 18 U.S.C. 541 by inserting "2B1.5," before "2T3.1";

in the line referenced to 18 U.S.C. 542 by inserting "2B1.5," before "2T3.1";

in the line referenced to 18 U.S.C. 543 by inserting "2B1.5," before "2T3.1";

in the line referenced to 18 U.S.C. 544 by inserting "2B1.5," before "2T3.1";

in the line referenced to 18 U.S.C. 545 by inserting "2B1.5," before "2Q2.1";

by inserting after the line referenced to 18 U.S.C. 545 the following new line: "18 U.S.C. 546 2B1.5";

in the line referenced to 18 U.S.C. 641 by inserting ", 2B1.5" after "2B1.1";

in the line referenced to 18 U.S.C. 661 by inserting ", 2B1.5" after "2B1.1";

in the line referenced to 18 U.S.C. 662 by inserting ", 2B1.5" after "2B1.1";

in the line referenced to 18 U.S.C. 666(a)(1)(A) by inserting ", 2B1.5" after "2B1.1"; in the line referenced to 18 U.S.C. 668 by striking "2B1.1" and inserting "2B1.5";

by inserting after the line referenced to 18 U.S.C. 1121 the following new line: "18 U.S.C. 1152 2B1.5";

in the line referenced to 18 U.S.C. 1153 by inserting "2B1.5," after "2B1.1,";

in the line referenced to 18 U.S.C. 1163 by inserting ", 2B1.5" after "2B1.1";

by inserting after the line referenced to 18 U.S.C. 1168 the following new line: "18 U.S.C. 1170 2B1.5";

in the line referenced to 18 U.S.C. 1361 by inserting ", 2B1.5" after "2B1.1";

in the line referenced to 18 U.S.C. 2232 by inserting "2B1.5," before "2J1.2";

in the line referenced to 18 U.S.C. 2314 by inserting ", 2B1.5" after "2B1.1"; and

in the line referenced to 18 U.S.C. 2315 by inserting ", 2B1.5" after "2B1.1".

Reason for Amendment: This amendment provides a new guideline at § 2B1.5 (Theft of, Damage to, Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources) for offenses involving cultural heritage resources. This amendment reflects the Commission's conclusion that the existing sentencing guidelines for economic and property destruction crimes are inadequate to punish in an appropriate and proportional way the variety of federal crimes involving the theft of, damage to, destruction of, or illicit trafficking in, cultural heritage resources. The Commission has determined that a separate guideline, which specifically recognizes both the federal government's long-standing obligation and role in preserving such resources, and the harm caused to both the nation and its inhabitants when its history is degraded through the destruction of cultural heritage resources, is needed.

Cultural heritage resources include national memorials, landmarks, parks, archaeological and other historic and cultural resources, specifically designated by Congress and the President for the preservation of the cultural heritage of this nation and its ancestors. The federal government acts either as a trustee for the public generally, or as a fiduciary on behalf of American Indians, Alaska Natives and Native Hawaiian Organizations, to protect these cultural heritage resources. Because individuals, communities, and nations identify themselves through intellectual, emotional, and spiritual connections to places and objects, the effects of cultural heritage resource crimes transcend mere monetary considerations. Accordingly, this new guideline takes into account the transcendent and irreplaceable value of cultural heritage resources and punishes in a proportionate way the aggravating conduct associated with cultural heritage resource crimes.

This guideline incorporates into the definition of "cultural heritage resource" a broad range of existing federal statutory definitions for various historical, cultural, and archaeological items. If a defendant is convicted of an offense that charges illegal conduct involving a cultural heritage resource, this guideline will apply, irrespective of whether the conviction is obtained under general property theft or damage statutes, such as laws concerning the theft and destruction of government property, 18 U.S.C. 641, interstate sale or receipt of stolen property, 18 U.S.C. 2314–15, and smuggling, 18 U.S.C. 541 *et seq.*, or under specific cultural heritage statutes, such as the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470ee (ARPA), the criminal provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) at 18 U.S.C. 1170, and 18 U.S.C. 668, which concerns theft from museums. In addition, if a more general offense is charged that is referenced in Appendix A to § 2B1.1 (Theft, Property Destruction, and Fraud), this guideline will apply by cross reference if the offense conduct involves a cultural heritage resource and results in a higher offense level.

This new guideline has a base offense level of level 8, which is two levels higher than the base offense level for general economic and property destruction crimes. The higher base offense level represents the Commission's determination that offenses involving cultural heritage resources are more serious because they involve essentially irreplaceable resources and cause intangible harm to society.

The new guideline also provides that the monetary value of the cultural heritage resource is an important, although not the sole, factor in determining the appropriate

punishment. The Commission has elected not to use the concept of "loss," which is an integral part of the theft, fraud, and property destruction guideline at § 2B1.1, because cultural heritage offenses do not involve the same fungible and compensatory values embodied in "loss." Instead, under this new guideline, value is to be based on commercial value, archaeological value, and the cost of restoration and repair. These methods of valuation are derived from existing federal law. See 16 U.S.C. 470ee(d); 43 CFR 7.14.

The Commission has recognized that archaeological value shall be used in calculating the value of archaeological resources but has provided flexibility for the sentencing court to determine whether either commercial value or the cost of restoration and repair, or both, should be added to archaeological value in determining the appropriate value of archaeological resources. For all other types of cultural heritage resources covered by this guideline, the Commission has provided flexibility for the sentencing court regarding whether and when to use all or some of the methods of valuation, as appropriate, for calculating the total value associated with the harm to the particular resource caused by the defendant's offense conduct. The value of the cultural heritage resource is then referenced to the monetary table provided at § 2B1.1(b)(1) in order to determine appropriate and proportionate offense levels in a manner consistent with the overall guidelines structure.

The new guideline provides five additional specific offense characteristics to provide proportionate enhancements for aggravating conduct that may occur in connection with cultural heritage resource offenses. In providing enhancements for these non-pecuniary aggravating factors, the Commission seeks to ensure that the nonquantifiable harm caused by the offense to affected cultural groups, and society as a whole, is adequately reflected in the penalty structure.

The first two of these enhancements, at subsections (b)(2) and (b)(3), relate to whether the offense involves a place or resource that Congress has designated for special protection. A two level enhancement attaches if the offense involves a resource from one of eight locations specifically designated by Congress for historic commemoration, resource preservation, or public education. These are the national park system, national historic landmarks, national monuments, national memorials, national marine sanctuaries, national cemeteries, sites contained on the World Heritage List, and museums.

Consistent with the definition in 18 U.S.C. 668(a)(1), museums are defined broadly to include all organized and permanent institutions, with an essentially educational or aesthetic purpose, which exhibit tangible objects to the public on a regular schedule. Adoption of this definition reflects the Commission's recognition that cultural heritage resource crimes affecting institutions dedicated to the preservation of resources and associated knowledge, irrespective of the institution's size, ownership, or funding, deprive the public and future generations of the opportunity to learn and appreciate the richness of the nation's heritage. Similarly, this enhancement reflects the Commission's assessment that damage to the other listed places degrades not only the resource itself but also the historical and cultural aspects which the resource commemorates.

An additional two level enhancement attaches to offense conduct that involves any of a number of specified resources, including human remains and other resources that have been designated by Congress for special treatment and heightened protection under federal law. Funerary objects, items of cultural patrimony, and sacred objects are included because they are domestic cultural heritage resources protected under NAGPRA. See 25 U.S.C. 3001. Cultural property, designated archaeological and ethnological material, and pre-Columbian monumental and architectural sculpture and murals are included in the enhancement because these are cultural heritage resources of foreign provenance for which Congress has chosen, in the implementation of international treaties and bilateral agreements, to impose import restrictions. See 19 U.S.C. 2092, 2606, and 2607.

This guideline also provides a two level enhancement at subsection (b)(4) if the offense was committed for pecuniary gain or otherwise involved a commercial purpose. This increase is based on a determination that offenders who are motivated by financial gain or other commercial incentive are more culpable than offenders who are motivated solely by their personal interest in possessing cultural heritage resources. Those motivated by financial gain contribute to illicit trafficking and support dealers and brokers who earn a livelihood from illegal activities. Mindful of INTERPOL's findings, as reported by the Department of Justice, that the annual dollar value of art and cultural property theft is exceeded only by trafficking in illicit narcotics, money laundering, and arms trafficking, the Commission seeks to ensure that the penalty structure adequately accounts for these increased harms.

This guideline also provides a two level enhancement at subsection (b)(5) if the offense involves a pattern of misconduct, and provides a definition of "pattern of misconduct" that is designed to interact with other requirements of the guidelines regarding relevant conduct and criminal history. "Pattern of misconduct" is defined as "two or more separate instances of offense conduct involving cultural heritage resources that did not occur during the course of the instant offense (i.e., that did not occur during the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct))". Accordingly, under this guideline, separate instances of offense conduct need not result in a criminal conviction or legal adjudication in order for this enhancement to apply. Separate instances of offense conduct involving cultural heritage resources that are included in the defendant's criminal history may also form the factual basis for the application of this enhancement. The Commission considers such increased punishment to be appropriate for offenders who repeatedly disregard cultural heritage resource laws and regulations and the social values underlying them. These repeat offenders cause serious harm, not only to the resources themselves, but to the nation and the individuals who treasure them.

This guideline also provides at subsection (b)(6) a two level enhancement and a minimum offense level of level 14 if a dangerous weapon, including a firearm, is brandished or its use threatened. This enhancement reflects the increased culpability of offenders who pose a threat to law enforcement officers and innocent passersby. Recognizing that there are legitimate uses in remote expanses of tribal and federal land for certain tools and firearms that may otherwise qualify as "dangerous weapons" under the guideline definitions, the Commission has limited the scope of this enhancement by requiring that the dangerous weapon or firearm be brandished or its use threatened, in order for increased punishment to attach under this provision.

In light of the increased potential for the symbols of our nation's heritage and culture to be targets of violent individuals, including terrorists, the Commission also has provided for increased punishment through a cross reference to § 2K1.4 (Arson; Property Damage by Use of Explosives), if the offense involved arson or property damage by the use of any explosive,

explosive material, or destructive devices, when the resulting offense level is greater under § 2K1.4 than the offense level under this guideline.

This guideline also includes a special rule in the Commentary to address multiple counts of cultural heritage resource offenses, as well as multiple counts of conviction involving offenses under this and other guidelines. Consistent with the principles underlying the rules for grouping multiple counts of conviction in § 3D1.2 (Groups of Closely Related Counts) and the unique concerns sought to be addressed by this amendment, the new guideline provides that multiple counts of cultural heritage resource offenses are to be grouped under § 3D1.2(d). However, because the monetary harm is measured differently, a count of conviction for an offense sentenced under § 2B1.5 may not be grouped under this provision with a conviction for an offense sentenced under a different guideline.

This guideline also invites an upward departure if the determined offense level substantially understates the seriousness of the cultural heritage resource offense. Two illustrations of such situations are given. Finally, this amendment provides a cross reference within § 2B1.1. Theft, fraud, and property destruction offenses which also involve cultural heritage resources are cross referenced to the new guideline at § 2B1.5 if the resulting offense level under it would be greater than under § 2B1.1. When a case involving a cultural heritage resource is sentenced under § 2B1.1, loss attributable to that cultural heritage resource is to be determined using the definition of "value of the cultural heritage resource" from § 2B1.5.

The Commission recognizes that the full implementation of this new guideline for the most serious offenders often will be limited in its application because of the extremely low statutory maxima of some of the potentially applicable statutes, such as the criminal provisions of ARPA, NAGPRA, and 18 U.S.C. 1163 (covering the theft of tribal property). Currently ARPA has either a one year or two year statutory maximum term of imprisonment for the first offense, depending on whether the value exceeds $500, and NAGPRA has a statutory maximum term of imprisonment of one year for the first offense irrespective of value. These statutes all have five year statutory maximum terms of imprisonment for second and subsequent offenses. Consequently, the statutory ceiling may limit the full range of proportionate guideline sentencing, but the Commission has promulgated this new guideline to cover the wide variety of potential offense conduct that can occur in connection with cultural heritage resources. The Commission has recommended to Congress that the statutory maximum terms of imprisonment for these offenses be raised appropriately.

3. Amendment: The Commentary to § 2B4.1 captioned "Statutory Provisions" is amended by striking "15 U.S.C. 78dd-1, 78dd-2;".

The Commentary to § 2B4.1 captioned "Application Notes" is amended in Note 1 by inserting ", foreign governments, or public international organizations" after "local government"; and by striking "governmental" and inserting "any such".

The Commentary to § 2B4.1 captioned "Background" is amended in the sixth paragraph by striking "to violations of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 and 78dd-2, and".

The Commentary to § 2C1.1 captioned "Statutory Provisions" is amended by inserting "15 U.S.C. 78dd-1, 78dd-2, 78dd-3;" before "18 U.S.C.".

The Commentary to § 2C1.1 captioned "Background" is amended by inserting after the ninth paragraph the following:

"Section 2C1.1 also applies to offenses under 15 U.S.C. 78dd-1, 78dd-2, and 78dd-3. Such offenses generally involve a payment to a foreign public official, candidate for public office, or agent or intermediary, with the intent to influence an official act or decision of a foreign government or political party. Typically, a case prosecuted under these provisions will involve an intent to influence governmental action.".

Appendix A (Statutory Index) is amended in the line referenced to 15 U.S.C. 78dd-1 by striking "2B4.1" and inserting "2C1.1";

in the line referenced to 15 U.S.C. 78dd-2 by striking "2B4.1" and inserting "2C1.1"; by inserting after the line referenced to 15 U.S.C. 78dd-2 following new line:

"15 U.S.C. 78dd-3 2C1.1";

and in the line referenced to 15 U.S.C. 78ff by striking "2B4.1" and inserting "2C1.1".

Reason for Amendment: This amendment changes the Statutory Index reference for violations of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2 and 78dd-3), from § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery) to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right).

This change is made because violations of 15 U.S.C. 78dd-1 through 78dd-3 involve public corruption of foreign officials and are, therefore, more akin to public corruption cases than commercial bribery cases. Violations of the 15 U.S.C. 78dd-1 through 78dd-3 typically involve payments to foreign officials for the purposes of influencing their official acts or decisions, inducing them to do or omit an act in violation of their lawful duty, inducing them to influence a foreign government, or securing any improper advantage. These cases also involve payments to foreign political parties or officials, candidates for foreign political office, or persons who act as conduits to these individuals. Most cases prosecuted under 15 U.S.C. 78dd-1 through 78dd-3 involve an intent to influence governmental action.

Conversely, commercial bribery cases sentenced under § 2B4.1 often involve kickback and gratuity payments made to bank officials or others who accept payments in return for influence or some type of exchange from the other person. These cases typically do not involve bribery of public or governmental officials and indeed, the Commentary to the guideline makes this clear in Application Note 1.

This change also is made to comply with the mandate of a mulitlateral treaty entered into by the United States, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In part, this Convention requires signatory countries to impose comparable sentences in both domestic and foreign bribery cases. Domestic public bribery cases are referenced to § 2C1.1. To comply with the treaty, offenses committed in violation of 15 U.S.C. 78dd-1 through 78dd-3 are now similarly referenced to § 2C1.1.

4. Amendment: Section 2D1.1(a)(3) is amended by striking "below." and inserting ", except that if the defendant receives an adjustment under § 3B1.2 (Mitigating Role), the base offense level under this subsection shall be not more than level 30.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 11 in the "TYPICAL WEIGHT PER UNIT (DOSE, PILL, OR CAPSULE) TABLE" by striking the line referenced to MDA and inserting the following:

"MDA 250 mg
MDMA 250 mg".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by adding at the end the following:

"21. Applicability of Subsection (b)(6).—The applicability of subsection

(b)(6) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the determination of whether subsection (b)(6) applies.".

Section 2D1.8(a)(2) is amended by striking "16" and inserting "26".

The Commentary to § 3B1.2 captioned "Application Notes" is amended by adding at the end the following:

"6. Application of Role Adjustment in Certain Drug Cases.—In a case in which the court applied § 2D1.1 and the defendant's base offense level under that guideline was reduced by operation of the maximum base offense level in § 2D1.1(a)(3), the court also shall apply the appropriate adjustment under this guideline.".

Reason for Amendment: This amendment responds to concerns that the guidelines pertaining to drug offenses do not satisfactorily reflect the culpability of certain offenders. The amendment also clarifies the operation of certain provisions in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).

First, the amendment increases the maximum base offense level under subsection (a)(2) of § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy) from level 16 to level 26. This part of the amendment responds to concerns that § 2D1.8 did not adequately punish defendants convicted under 21 U.S.C. 856, pertaining to the establishment of manufacturing operations. That statute originally was enacted to target defendants who maintain, manage, or control so-called "crack houses" and more recently has been applied to defendants who facilitate drug use at commercial dance clubs, frequently called "raves".

Prior to this amendment, § 2D1.8(a)(2) provided a maximum base offense level of level 16 for defendants convicted under 21 U.S.C. 856 who had no participation in the underlying controlled substance offense other than allowing use of their premises. The Commission determined that the maximum base offense level of level 16 did not adequately reflect the culpability of offenders who permit distribution of drugs in quantities that under § 2D1.1 result in offense levels higher than level 16. Such offenders knowingly and intentionally facilitate and profit, at least indirectly, from the trafficking of illegal drugs, even though they may not participate directly in the underlying controlled substance offense.

Second, the amendment modifies § 2D1.1(a)(3) to provide a maximum base offense level of level 30 if the defendant receives an adjustment under § 3B1.2 (Mitigating Role). The maximum base offense level somewhat limits the sentencing impact of drug quantity for offenders who perform relatively low level trafficking functions, have little authority in the drug trafficking organization, and have a lower degree of individual culpability (e.g., "mules" or "couriers" whose most serious trafficking function is transporting drugs and who qualify for a mitigating role adjustment).

This part of the amendment responds to concerns that base offense levels derived from the Drug Quantity Table in § 2D1.1 overstate the culpability of certain drug offenders who meet the criteria for a mitigating role adjustment under § 3B1.2. The Commission determined that, ordinarily, a maximum base offense level of level 30 adequately reflects the culpability of a defendant who qualifies for a mitigating role adjustment. Other aggravating adjustments in the trafficking guideline (e.g., the weapon enhancement at § 2D1.1(b)(1)), or other general, aggravating adjustments in Chapter Three (Adjustments), may increase the offense level above level 30. The maximum base offense level is expected to apply narrowly, affecting approximately six percent of all drug trafficking offenders.

The amendment also adds an application note in § 3B1.2 that instructs the court to apply the appropriate adjustment under that guideline in a case in which the maximum base offense level in § 2D1.1(a)(3) operates to reduce the defendant's base offense level under § 2D1.1.

Third, the amendment modifies the Typical Weight Per Unit (Dose, Pill, or Capsule) Table in the commentary to § 2D1.1 to reflect more accurately the type and weight of ecstasy pills typically trafficked and consumed. Specifically, the amendment adds a reference for MDMA (3,4-methylenedioxymethamphetamine) in the Typical Weight Per Unit Table and lists the typical weight as 250 milligrams per pill. The amendment also revises the typical weight for MDA to 250 milligrams of the mixture or substance containing the controlled substance. Prior to this amendment, the Table listed the typical weight of MDA as 100 milligrams of the actual controlled substance.

Information provided by the Drug Enforcement Administration indicates that ecstasy usually is trafficked and used as MDMA in pills weighing approximately 250 to 350 milligrams.

The absence of MDMA from the Typical Weight Per Unit (Dose, Pill, or Capsule) Table and the listing for MDA of an estimate of the actual weight of the controlled substance created the potential for misapplying the MDA estimate in a case in which MDMA is involved, which could result in underpunishment in some ecstasy cases. This part of the amendment thus promotes uniform application of § 2D1.1 for offenses involving ecstasy by adding a reference for MDMA and revising the estimated weight for MDA.

Fourth, the amendment addresses two application concerns regarding the two level reduction under § 2D1.1(b)(6) for defendants who meet the criteria set forth in § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases). The amendment provides an application note that clarifies that the two level reduction under § 2D1.1(b)(6) does not depend on whether the defendant is convicted under a statute that carries a mandatory minimum term of imprisonment. The application note also clarifies that § 5C1.2(b), which provides a minimum offense level of level 17 for certain offenders, is not applicable to § 2D1.1(b)(6).

5. Amendment: Chapter Two is amended in the heading of Part G by striking "PROSTITUTION" and inserting "COMMERCIAL SEX ACTS".

Chapter Two, Part G is amended in the heading of subpart 1 by striking "PROSTITUTION" and inserting "A COMMERCIAL SEX ACT".

Section 2G1.1 is amended in the heading by striking "Prostitution" and inserting "A Commercial Sex Act".

Section 2G1.1(b)(1) is amended by striking "prostitution" and inserting "a commercial sex act"; by inserting "fraud," after "force,"; and by striking "by threats or drugs or in any manner".

Section 2G1.1(b)(4) is amended by striking "prostitution" each place it appears and inserting "a commercial sex act".

Section 2G1.1(b)(5) is amended by striking "prostitution" and inserting "a commercial sex act".

Section 2G1.1(c)(3) is amended by striking "prostitution" and inserting "a commercial sex act".

Section 2G1.1(d)(1) is amended by striking "prostitution" and inserting "a commercial sex act".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 1 by inserting after "For purposes of this guideline—" the following paragraph:

"'Commercial sex act' has the meaning given that term in 18 U.S.C. 1591(c)(1)."; and by striking "'Promoting prostitution' means" and all that follows through "law enforcement officer." and inserting the following:

"'Promoting a commercial sex act' means persuading, inducing, enticing, or coercing a person to engage in a commercial sex act, or to travel to engage in, a commercial sex act.

"Victim" means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, a commercial sex act or prohibited sexual conduct, whether or not the person consented to the commercial sex act or prohibited sexual conduct. Accordingly, 'victim' may include an undercover law enforcement officer.".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 2 by inserting "fraud," after "force,"; and by striking "prostitution" and inserting "commercial sex act".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Notes 3, 4, 7, 8, and 11 by striking "prostitution" each place it appears and inserting "a commercial sex act".

The Commentary to § 2G1.1 captioned "Application Notes" is amended by striking Note 12 and inserting the following:

"12. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than 10 victims.".

Reason for Amendment: This amendment ensures that appropriately severe sentences for sex trafficking crimes apply to commercial sex acts such as production of child pornography, in addition to prostitution, and also targets offenders who use fraud to entrap victims. It proposes several changes to § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct) to address more adequately the portion of section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000 (the "Act"), Public Law 106–386, pertaining to the new offense at 18 U.S.C. 1591, which prohibits knowingly transporting or harboring any person, or benefitting from such transporting or harboring, knowing either that force, fraud, or coercion will be used to cause that person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be forced to engage in a commercial sex act.

In response to the Act, the Commission in 2001 promulgated an amendment that referenced 18 U.S.C. 1591 to 2G1.1 and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material) and provided an encouraged upward departure in those guidelines to address cases in which (1) the defendant was convicted under 18 U.S.C. 1591 and the offense involved a victim who had not attained the age of 14 years; or (2) the offense involved more than 10 victims. (See Supplement to Appendix C, Amendment 612, effective May 1, 2001, and Amendment 627, effective November 1, 2001).

This amendment proposes three substantive changes to § 2G1.1. First, this amendment broadens the conduct covered by the guideline beyond prostitution to encompass all commercial sex acts, consistent with the scope of the Act. Second, this amendment expands the "force or coercion" prong of § 2G1.1(b)(1) to also cover offenses involving fraud. This change addresses the increased punishment provided by 18 U.S.C. 1591 for offenses effected by force, fraud, or coercion. Third, the amendment deletes the portion of the encouraged upward departure provision in § 2G1.1 pertaining to the age of the victim because such conduct already is taken into account by that guideline.

6. Amendment: Section 2K2.4 is amended by redesignating subsection (b) as subsection (d); and by striking subsection (a) and inserting the following:

"(a) If the defendant, whether or not convicted of another crime, was convicted of violating section 844(h) of title 18, United States Code, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

(b) Except as provided in subsection (c), if the defendant, whether or not convicted of another crime, was convicted of violating section 924(c) or section 929(a) of title 18, United States Code, the guideline sentence is the minimum term of imprisonment required by statute. Chapters Three and Four shall not apply to that count of conviction.

(c) If the defendant (1) was convicted of violating section 924(c) or section 929(a) of title 18, United States Code; and (2) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under § 4B1.1 (Career Offender), the guideline sentence shall be determined under § 4B1.1(c). Except for §§ 3E1.1 (Acceptance of Responsibility), 4B1.1, and 4B1.2 (Definitions of Terms Used in Section 4B1.1), Chapters Three and Four shall not apply to that count of conviction.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by redesignating Notes 2 through 5 as Notes 4 through 7, respectively; and by striking Note 1 and inserting the following:

"1. Application of Subsection (a).—Section 844(h) of title 18, United State Code, provides a mandatory term of imprisonment of 10 years (or 20 years for the second or subsequent offense). Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. 844(h) is the term required by that statute. Section 844(h) of title 18, United State Code, also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. Application of Subsection (b).—

(A) In General.—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (e.g., not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. 924(c) or 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.

(B) Upward Departure Provision.—In a case in which the guideline sentence is determined under subsection (b), a sentence above the minimum term required by 18 U.S.C. 924(c) or 929(a) is an upward departure from the guideline sentence. A departure may be warranted, for example, to reflect the seriousness of the defendant's criminal history in a case in which the defendant is convicted of an 18 U.S.C. 924(c) or 929(a) offense but is not determined to be a career offender under § 4B1.1.

3. Application of Subsection (c).—In a case in which the defendant (A) was convicted of violating 18 U.S.C. 924(c) or 18 U.S.C. 929(a); and (B) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under § 4B1.1 (Career Offender), the guideline sentence shall be determined under § 4B1.1(c). In a case involving multiple counts, the sentence shall be imposed according to the rules in subsection (e) of § 5G1.2 (Sentencing on Multiple Counts of Conviction).".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 4, as redesignated by this amendment, by inserting "Weapon Enhancement.—" before "If a sentence under"; and by inserting in the last

paragraph "in which the defendant is determined not to be a career offender" after "In a few cases".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by striking Note 5, as redesignated by this amendment, and inserting the following:

"5. Chapters Three and Four.—Except for those cases covered by subsection (c), do not apply Chapter Three (Adjustments) and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. See §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2. In determining the guideline sentence for those cases covered by subsection (c): (A) the adjustment in § 3E1.1 (Acceptance of Responsibility) may apply, as provided in § 4B1.1(c); and (B) no other adjustments in Chapter Three and no provisions of Chapter Four, other than §§ 4B1.1 and 4B1.2, shall apply.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 6, as redesignated by this amendment, by inserting "Terms of Supervised Release.—" before "Imposition of a term".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 7, as redesignated by this amendment, by inserting "Fines.—" before "Subsection"; and by striking "(b)" and inserting "(d)"; and by striking "Note 2" and inserting "Note 4".

Section 4B1.1 is amended by striking "A defendant is a career offender" and all that follows through "Category VI." and inserting the following:

"(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

(b) Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI.".

Section 4B1.1 is amended by adding after "corresponding to that adjustment." the following:

"(c) If the defendant is convicted of 18 U.S.C. 924(c) or 929(a), and the defendant is determined to be a career offender under subsection (a), the applicable guideline range shall be determined as follows:

(1) If the only count of conviction is 18 U.S.C. 924(c) or 929(a), the applicable guideline range shall be determined using the table in subsection (c)(3).

(2) In the case of multiple counts of conviction in which at least one of the counts is a conviction other than a conviction for 18 U.S.C. 924(c) or 929(a), the guideline range shall be the greater of—

(A) the guideline range that results by adding the mandatory minimum consecutive penalty required by the 18 U.S.C. 924(c) or 929(a) count(s) to the minimum and the maximum of the otherwise applicable guideline range determined for the count(s) of conviction other than the 18 U.S.C. 924(c) or 929(a) count(s); and

(B) the guideline range determined using the table in subsection (c)(3).

(3) Career Offender Table for 18 U.S.C. 924(c) or 929(a) Offenders

§ 3E1.1 Reduction	Guideline Range for the 18 U.S.C. 924(c) or 929(a) Count(s)
No reduction	360-life
2-level reduction	292–365
3-level reduction	262–327.".

The Commentary to § 4B1.1 captioned "Application Notes" is amended by adding at the end the following:

"3. Application of Subsection (c).—

(A) In General.—Subsection (c) applies in any case in which the defendant (i) was convicted of violating 18 U.S.C. 924(c) or 929(a); and (ii) as a result of that conviction (alone or in addition to another offense of conviction), is determined to be a career offender under § 4B1.1(a).

(B) Subsection (c)(2).—To determine the greater guideline range under subsection (c)(2), the court shall use the guideline range with the highest minimum term of imprisonment.

(C) 'Otherwise Applicable Guideline Range'.—For purposes of subsection (c)(2)(A), 'otherwise applicable guideline range' for the count(s) of conviction other than the 18 U.S.C. 924(c) or 18 U.S.C. 929(a) count(s) is determined as follows:

(i) If the count(s) of conviction other than the 18 U.S.C. 924(c) or 18 U.S.C. 929(a) count(s) does not qualify the defendant as a career offender, the otherwise applicable guideline range for that count(s) is the guideline range determined using: (I) the Chapter Two and Three offense level for that count(s); and (II) the appropriate criminal history category determined under §§ 4A1.1 (Criminal History Category) and 4A1.2 (Definitions and Instructions for Computing Criminal History).

(ii) If the count(s) of conviction other than the 18 U.S.C. 924(c) or 18 U.S.C. 929(a) count(s) qualifies the defendant as a career offender, the otherwise applicable guideline range for that count(s) is the guideline range determined for that count(s) under § 4B1.1(a) and (b).

(D) Imposition of Consecutive Term of Imprisonment.—In a case involving multiple counts, the sentence shall be imposed according to the rules in subsection (e) of § 5G1.2 (Sentencing on Multiple Counts of Conviction).

(E) Example.—The following example illustrates the application of subsection (c)(2) in a multiple count situation:

The defendant is convicted of one count of violating 18 U.S.C. 924(c) for possessing a firearm in furtherance of a drug trafficking offense (5 year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(B) (5 year mandatory minimum, 40 year statutory maximum). Applying subsection (c)(2)(A), the court determines that the drug count (without regard to the 18 U.S.C. 924(c) count) qualifies the defendant as a career offender under § 4B1.1(a). Under § 4B1.1(a), the otherwise applicable guideline range for the drug count is 188–235 months (using offense level 34 (because the statutory maximum for the drug count is 40 years), minus 3 levels for acceptance of responsibility, and criminal history category VI). The court adds 60 months (the minimum required by 18 U.S.C. 924(c)) to the minimum and the maximum of that range, resulting in a guideline range of 248–295 months. Applying subsection (c)(2)(B), the court then determines the career offender guideline range from the table in subsection (c)(3) is 262–327 months. The range with the greatest minimum, 262–327 months, is used to impose the sentence in accordance with § 5G1.2(e).".

The Commentary to § 4B1.1 captioned "Background" is amended by adding at the end the following:

"Subsection (c) provides rules for determining the sentence for career offenders who have been convicted of 18 U.S.C. 924(c) or 929(a). The Career Offender Table in subsection (c)(3) provides a sentence at or near the statutory maximum for these offenders by using guideline ranges that correspond to criminal history category

VI and offense level 37 (assuming § 3E.1.1 (Acceptance of Responsibility) does not apply), offense level 35 (assuming a 2-level reduction under § 3E.1.1 applies), and offense level 34 (assuming a 3-level reduction under § 3E1.1 applies).".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 by striking "A prior conviction for violating 18 U.S.C. 924(c)" and all that follows through the end of that paragraph and inserting the following:

"A violation of 18 U.S.C. 924(c) or 929(a) is a 'crime of violence' or a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'crime of violence' or a 'controlled substance offense'. (Note that in the case of a prior 18 U.S.C. 924(c) or 929(a) conviction, if the defendant also was convicted of the underlying offense, the two prior convictions will be treated as related cases under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by striking Note 2; and by redesignating Notes 3 and 4 as Notes 2 and 3, respectively.

Section 5G1.2(a) is amended by striking "The" and inserting "Except as provided in subsection (e), the"; and by inserting a comma after "other term of imprisonment".

Section 5G1.2 is amended by adding after subsection (d) the following:

"(e) In a case in which subsection (c) of § 4B1.1 (Career Offender) applies, to the extent possible, the total punishment is to be apportioned among the counts of conviction, except that (1) the sentence to be imposed on a count requiring a minimum term of imprisonment shall be at least the minimum required by statute; and (2) the sentence to be imposed on the 18 U.S.C. 924(c) or 929(a) count shall be imposed to run consecutively to any other count.".

The Commentary to § 5G1.2 is amended by striking the first paragraph and inserting the following:

"Application Notes:

1. In General.—This section specifies the procedure for determining the specific sentence to be formally imposed on each count in a multiple-count case. The combined length of the sentences ('total punishment') is determined by the court after determining the adjusted combined offense level and the Criminal History Category. Except as otherwise required by subsection (e) or any other law, the total punishment is to be imposed on each count and the sentences on all counts are to be imposed to run concurrently to the extent allowed by the statutory maximum sentence of imprisonment for each count of conviction.";

by indenting the second and third paragraphs 2 ems from the left margin; and by striking the fourth paragraph and inserting the following:

"2. Mandatory Minimum and Mandatory Consecutive Terms of Imprisonment (Not Covered by Subsection (e)).—Subsection (a) applies if a statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. See, e.g., 18 U.S.C. 924(c) (requiring mandatory minimum terms of imprisonment, based on the conduct involved, and also requiring the sentence imposed to run consecutively to any other term of imprisonment). Except for certain career offender situations in which subsection (c) of § 4B1.1 (Career Offender) applies, the term of years to be imposed consecutively is the minimum required by the statute of conviction and is independent of the guideline sentence on any other count. See, e.g., the Commentary to §§ 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) and 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) regarding the determination of the offense levels for related counts when a conviction under 18 U.S.C. 924(c) is involved. Note, however, that even in the case of a consecutive term of imprisonment imposed under subsection (a), any term of supervised release imposed is to run concurrently with any other term of supervised release imposed. See 18 U.S.C. 3624(e). Subsection (a) also applies in certain other instances in which an independently determined and consecutive sentence is required. See, e.g., Application Note 3 of the Commentary to § 2J1.6 (Failure to Appear by Defendant), relating to failure to appear for service of sentence.

3. Career Offenders Covered under Subsection (e).—

(A) Imposing Sentence.—The sentence imposed for a conviction under 18 U.S.C. 924(c) or 929(a) shall, under that statute, consist of a minimum term of imprisonment imposed to run consecutively to the sentence on any other count. Subsection (e) requires that the total punishment determined under § 4B1.1(c) be apportioned among all the counts of conviction. In most cases this can be achieved by imposing the statutory minimum term of imprisonment on the 18 U.S.C. 924(c) or 929(a) count, subtracting that minimum term of imprisonment from the total punishment determined under § 4B1.1(c), and then imposing the balance of the total punishment on the other counts of conviction. In some cases covered by subsection (e). a consecutive term of imprisonment longer than the minimum required by 18 U.S.C. 924(c) or 929(a) will be necessary in order both to achieve the total punishment determined by the court and to comply with the applicable statutory requirements.

(B) Examples.—The following examples illustrate the application of subsection (e) in a multiple count situation:

(i) The defendant is convicted of one count of violating 18 U.S.C. 924(c) for possessing a firearm in furtherance of a drug trafficking offense (5 year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(C) (20 year statutory maximum). Applying § 4B1.1(c), the court determines that a sentence of 300 months is appropriate (applicable guideline range of 262–327). The court then imposes a sentence of 60 months on the 18 U.S.C. 924(c) count, subtracts that 60 months from the total punishment of 300 months and imposes the remainder of 240 months on the 21 U.S.C. 841 count. As required by statute, the sentence on the 18 U.S.C. 924(c) count is imposed to run consecutively.

(ii) The defendant is convicted of one count of 18 U.S.C. 924(c) (5 year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(C) (20 year statutory maximum). Applying § 4B1.1(c), the court determines that a sentence of 327 months is appropriate (applicable guideline range of 262–327). The court then imposes a sentence of 240 months on the 21 U.S.C. 841 count and a sentence of 87 months on the 18 U.S.C. 924(c) count to run consecutively to the sentence on the 21 U.S.C. 841 count.

(iii) The defendant is convicted of two counts of 18 U.S.C. 924(c) (5 year mandatory minimum on first count, 25 year mandatory minimum on second count) and one count of violating 18 U.S.C. 2113(a) (20 year statutory maximum). Applying § 4B1.1(c), the court determines that a sentence of 400 months is appropriate (applicable guideline range of 360-life). The court then imposes (I) a sentence of 60 months on the first 18 U.S.C. 924(c) count; (II) a sentence of 300 months on the second 18 U.S.C. 924(c) count; and (III) a sentence of 40 months on the 18 U.S.C. 2113(a) count. The sentence on each count is imposed to run consecutively to the other counts.".

Reason for Amendment: This amendment is intended to comply with the statutory directive in 28 U.S.C. 994(h) by providing a guideline sentence at or near the statutory maximum of life imprisonment for cases in which certain serious firearm offenses establish the defendant as a career offender.

This amendment provides special rules in §§ 4B1.1 (Career Offender) and 5G1.2 (Sentencing on Multiple Counts of Conviction) for determining and imposing a guideline sentence in a case in which the defendant is convicted of an offense under 18 U.S.C. 924(c) or 929(a) and, as a result of that conviction, is determined to be a career offender under §§ 4B1.1 and 4B1.2 (Definitions of Terms Used in Section 4B1.1). The amendment supplements Amendment 600 (effective November 1, 2000) in which the Commission first addressed implementation of the statutory changes in penalties for 18 U.S.C. 924(c) and 929(a) offenses made by the Act to Throttle the Criminal Use of Guns, Public Law 105–386. At that time, the Commission deferred addressing the more complicated issues of whether convictions under 18 U.S.C. 924(c) and 929(a) can qualify as instant offenses for purposes of § 4B1.1, and if they do so qualify, how the sentence would be imposed. Promulgation of this amendment reflects the Commission's decision that the amendment, while somewhat complex, is necessary to comply appropriately with 28 U.S.C. 994(h).

Operationally, this amendment achieves two goals. First, it permits 18 U.S.C. 924(c) or 929(a) offenses, whether as the instant or prior offense of conviction, to qualify for career offender purposes. Second, it ensures that, in a case in which such an instant offense establishes the defendant as a career offender, the resulting guideline sentence is determined under § 4B1.1 using a count of conviction that has a statutory maximum of life imprisonment. The special rule necessarily is somewhat more complex because of the need to address certain anomalies that infrequently would occur in the absence of such a rule, i.e., that a very serious offender could receive a lower sentence by virtue of the application of § 4B1.1 than that which would otherwise be received by imposing the statutorily required minimum sentence consecutively to the otherwise applicable guideline range.

This amendment does not change the current guideline rules precluding application of guideline weapon enhancements in a case in which the defendant is convicted of a 18 U.S.C. 924(c) or 929(a) offense. Furthermore, under this amendment, in a case in which the defendant is convicted of a 18 U.S.C. 924(c) or 929(a) offense but that offense, together with any prior convictions, does not establish the defendant as a career offender, the current guideline rules for sentencing on that 18 U.S.C. 924(c) or 929(a) count continue to apply. Accordingly, under § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes), the guideline sentence on that count is the statutory minimum, and that sentence is imposed independently and consecutively to the sentence on other counts. No adjustments in Chapter Three (Adjustments) or Chapter Four (Criminal History and Criminal Livelihood) apply to adjust the guideline sentence for that 18 U.S.C. 924(c) or 929(a) count.

However, under this amendment, in a case in which the 18 U.S.C. 924(c) or 929(a) count establishes the defendant as a career offender, which the court will determine under §§ 4B1.1 and 4B1.2, new special rules and instructions will apply. To determine the guideline sentence on the 18 U.S.C. 924(c) or 929(a) count, the court moves directly from § 2K2.4 to § 4B1.1 and applies the new special instruction therein. New special instructions for imposing sentence in these cases also have been added to § 5G1.2.

7. Amendment: Section 3A1.2 is amended to read as follows:

"§ 3A1.2. Official Victim

(a) If (1) the victim was (A) a government officer or employee; (B) a former government officer or employee; or (C) a member of the immediate family of a person described in subdivision (A) or (B); and (2) the offense of conviction was motivated by such status, increase by 3 levels.

(b) If, in a manner creating a substantial risk of serious bodily injury, the defendant or a person for whose conduct the defendant is otherwise accountable——

(1) knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom; or

(2) knowing or having reasonable cause to believe that a person was a prison official, assaulted such official while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility,

increase by 3 levels.".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 1 by inserting "Applicability to Certain Victims.—" before "This guideline applies".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by striking Note 2 and by redesignating Notes 3 through 6 as Notes 2 through 5, respectively.

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 2, as redesignated by this amendment, by inserting "Nonapplicability in Case of Incorporation of Factor in Chapter Two.—" before "Do not apply".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3, as redesignated by this amendment, by inserting "Application of Subsection (a).—" before "Motivated by such"; and by striking "subdivision" and inserting "subsection".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by striking Note 4, as redesignated by this amendment, and inserting the following:

"4. Application of Subsection (b).—

(A) In General.—Subsection (b) applies in circumstances tantamount to aggravated assault (i) against a law enforcement officer, committed in the course of, or in immediate flight following, another offense; or (ii) against a prison official, while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility. While subsection (b) may apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability is limited to assaultive conduct against such official victims that is sufficiently serious to create at least a 'substantial risk of serious bodily injury'.

(B) Definitions.—For purposes of subsection (b):

"Custody and control" includes "non-secure custody", i.e., custody with no significant physical restraint. For example, a defendant is in the custody and control of a prison or other correctional facility if the defendant (i) is on a work detail outside the security perimeter of the prison or correctional facility; (ii) is physically away from the prison or correctional facility while on a pass or furlough; or (iii) is in custody at a community corrections center, community treatment center, 'halfway house', or similar facility. The defendant also shall be deemed to be in the custody and control of a prison or other correctional facility while the defendant is in the status of having

escaped from that prison or correctional facility.

"Prison official" means any individual (including a director, officer, employee, independent contractor, or volunteer, but not including an inmate) authorized to act on behalf of a prison or correctional facility. For example, this enhancement would be applicable to any of the following: (i) An individual employed by a prison as a corrections officer; (ii) an individual employed by a prison as a work detail supervisor; and (iii) a nurse who, under contract, provides medical services to prisoners in a prison health facility.

"Substantial risk of serious bodily injury" includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious injury) if it occurs.".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by striking Note 5, as redesignated by this amendment, and inserting the following:

"5. Upward Departure Provision.—Certain high level officials, e.g., the President and Vice President, although covered by this section, do not represent the heartland of the conduct covered. An upward departure to reflect the potential disruption of the governmental function in such cases typically would be warranted.".

Reason for Amendment: This amendment expands the category of persons who may be considered official victims for purposes of triggering the two level enhancement at § 3A1.2 (Official Victim). This amendment is promulgated in response to concerns expressed by the Bureau of Prisons regarding *United States* v. *Walker*, 202 F.3d 181 (3d Cir. 2000). Walker held that an individual employed by the prison to supervise food service functions who was attacked by an inmate subordinate was not a "corrections officer" within the scope of § 3A1.2. The Bureau of Prisons advised the Commission that the Bureau uses a variety of employees, contractors, and volunteers to supervise inmates and that maintenance of a safe and stable institutional environment is fostered by knowledge on the part of inmates that anyone in prison employment or performing an authorized role within a prison is afforded the protection of § 3A1.2. In accord with the Bureau's recommendation, the amendment includes a broad definition of "prison official" to include prison employees, as well as independent contractors and volunteers on prison premises with official authorization, but does not include inmates.

8. Amendment: Section 5B1.3(a) is amended by striking the period at the end of subdivision (9) and inserting a semicolon; and by adding after subdivision (9) the following:

"(10) the defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a).".

Section 5D1.3(a) is amended by striking the period at the end of subdivision (7) and inserting a semicolon; and by adding after subdivision (7) the following:

"(8) the defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a).".

Reason for Amendment: This amendment adds a mandatory condition to §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release) that the defendant provide a DNA sample if the defendant is required to do so by the DNA Analysis Backlog Elimination Act of 2000, Public Law 106–546. Pursuant to section 3 of the Act, a defendant is required to provide a DNA sample if the defendant is convicted of certain offenses (e.g., murder, kidnapping).

9. Amendment: The Commentary to § 5G1.3 captioned "Application Notes" is amended by adding at the end the following:

"7. Downward Departure Provision.—In the case of a discharged term of imprisonment, a downward departure is not prohibited if subsection (b) would have applied to that term of imprisonment had the term been undischarged. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.".

Reason for Amendment: This amendment modifies § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to include certain discharged terms of imprisonment. Specifically, the amendment adds commentary to § 5G1.3 to provide that courts are not prohibited from considering a downward departure in a case in which § 5G1.3(b) would have applied if the term of imprisonment had not been discharged. In the case of undischarged terms of imprisonment, § 5G1.3(b) currently authorizes a court to adjust the sentence if the conduct underlying the undischarged term of imprisonment has been fully taken into account in the offense level for the instant federal offense. See Application Note 2 of the Commentary to § 5G1.3. By adding the new commentary, the Commission makes clear that discharged terms of imprisonment may merit a downward departure for a similar reason. The amendment thereby addresses a circuit conflict regarding the propriety of a downward departure under such circumstances. Compare, e.g., *United States* v. *O'Hagan*, 139 F.3d 641, 657 (8th Cir. 1998) (holding that a sentencing court could downwardly depart to adjust for time served on a discharged state sentence); *United States* v. *Blackwell*, 49 F.3d 1232, 1241–42 (7th Cir. 1995) (same) with *United States* v. *McHan*, 101 F.3d 1027, 1040 (4th Cir. 1996) (holding that downward departure to allow an adjustment for a discharged term was based on an error of law and therefore an abuse of discretion), cert. denied, 520 U.S. 1281 (1997).

10. Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended in subdivision (A) of Note 7 by striking "18 U.S.C. 1028(d)(3)" and inserting "18 U.S.C. 1028(d)(4)".

Section 2B4.1(b)(2) is amended to read as follows:

"(2) (Apply the greater) If—

(A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels; or

(B) the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels.

If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.".

The Commentary to § 2B4.1 captioned "Application Notes" is amended by striking Notes 4 and 5 and inserting the following:

"4. Gross Receipts Enhancement under Subsection (b)(2)(A).—

(A) In General.—For purposes of subsection (b)(2)(A), the defendant shall be considered to have derived more than $1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000.

(B) Definition.—"Gross receipts from the offense" includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

5. Enhancement for Substantially Jeopardizing the Safety and Soundness

of a Financial Institution under Subsection (b)(2)(B).—For purposes of subsection (b)(2)(B), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of any of subdivisions (A) through (D) of this note.".

The Commentary to § 2D1.9 captioned "Statutory Provision" is amended by striking "(e)" and inserting "(d)".

Section 2D1.11(a) is amended by striking "below" and inserting "or (e), as appropriate".

Section 2D1.11(e) is amended in Note (A) of the Notes following the "CHEMICAL QUANTITY TABLE" by striking "of this guideline" and inserting "or (e) of this guideline, as appropriate".

The Commentary to § 2D1.11 captioned "Statutory Provisions" is amended by striking "841(d)(1)" and inserting "841(c)(1)"; and by striking "(g)(1)" and inserting "(f)(1)".

The Commentary to § 2D1.13 captioned "Statutory Provisions" is amended by striking "841(d)(3)" and inserting "841(c)(3)"; and by striking "(g)(1)" and inserting "(f)(1)".

The Commentary to § 2N2.1 captioned "Application Notes" is amended in Note 2 by striking "theft, property destruction, or".

Section 2Q1.6(a)(3) is amended by inserting "or" after "(Aggravated Assault);".

Section 2T1.1(c) is amended in Note (D) of subdivision (1) by striking "subdivisions" and inserting "subdivision".

Amendment 568 (effective November 1, 1997) is repromulgated with the following changes: Section 4B1.4(b)(3)(A) is amended to read as follows:

"(3) (A) 34, if the defendant used or possessed the firearm or ammunition in connection with either a crime of violence, as defined in § 4B1.2(a), or a controlled substance offense, as defined in § 4B1.2(b), or if the firearm possessed by the defendant was of a type described in 26 U.S.C. 5845(a)*; or"; and

section 4B1.4(c)(2) is amended to read as follows:

"(2) Category VI, if the defendant used or possessed the firearm or ammunition in connection with either a crime of violence, as defined in § 4B1.2(a), or a controlled substance offense, as defined in § 4B1.2(b), or if the firearm possessed by the defendant was of a type described in 26 U.S.C. 5845(a); or".

Section 5C1.1(c)(2) is amended by inserting an asterisk after "confinement".

Section 5C1.1(d)(2) is amended by inserting an asterisk after "confinement".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in the first sentence of subdivision (C) of Note 3 by inserting an asterisk after "confinement".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in the first sentence of subdivision (B) of Note 4 by inserting an asterisk after "confinement".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in the first sentence of Note 6 by inserting an asterisk after "confinement".

The Commentary to § 5C1.1 captioned "Application Notes" is amended by inserting after Application Note 8 the following:

"***Note:** Section 3583(d) of title 18, United States Code, provides that "[t]he court may order, as a further condition of supervised release...any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate." Subsection (b)(11) of section 3563 of title 18, United States Code, is explicitly excluded as a condition of supervised release. Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the condition at 18 U.S.C. 3563(b)(11) was intermittent confinement. The Act deleted 18 U.S.C. 3563(b)(2), authorizing the payment of a fine as a condition of probation, and redesignated the remaining conditions of probation set forth in 18 U.S.C. 3563(b); intermittent confinement is now set forth at subsection (b)(10), whereas subsection (b)(11) sets forth the condition of residency at a community corrections facility. It would appear that intermittent confinement now is authorized as a condition of supervised release and that community confinement now is not authorized as a condition of supervised release.

However, there is some question as to whether Congress intended this result. Although the Antiterrorism and Effective Death Penalty Act of 1996 redesignated the remaining paragraphs of section 3563(b), it failed to make the corresponding redesignations in 18 U.S.C. 3583(d), regarding discretionary conditions of supervised release.".

Section 5D1.2(c) is amended by inserting "(Policy Statement)" before "If the".

Section 5D1.3 is amended by inserting an asterisk after "Confinement" in the heading of subsection (e)(1); and by inserting after subsection (e)(1) the following:

"***Note:** Section 3583(d) of title 18, United States Code, provides that "[t]he court may order, as a further condition of supervised release...any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate." Subsection (b)(11) of section 3563 of title 18, United States Code, is explicitly excluded as a condition of supervised release. Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the condition at 18 U.S.C. 3563(b)(11) was intermittent confinement. The Act deleted 18 U.S.C. 3563(b)(2), authorizing the payment of a fine as a condition of probation, and redesignated the remaining conditions of probation set forth in 18 U.S.C. 3563(b); intermittent confinement is now set forth at subsection (b)(10), whereas subsection (b)(11) sets forth the condition of residency at a community corrections facility. It would appear that intermittent confinement now is authorized as a condition of supervised release and that community confinement now is not authorized as a condition of supervised release.

However, there is some question as to whether Congress intended this result. Although the Antiterrorism and Effective Death Penalty Act of 1996 redesignated the remaining paragraphs of section 3563(b), it failed to make the corresponding redesignations in 18 U.S.C. 3583(d), regarding discretionary conditions of supervised release.".

The Commentary to § 5E1.2 captioned "Application Notes" is amended in Note 5 by striking "; and 42 U.S.C. 7413(c), which authorizes a fine of up to $25,000 per day for violations of the Clean Air Act".

Section 5F1.1 is amended by striking "release." and inserting the following: "release.*

"***Note:** Section 3583(d) of title 18, United States Code, provides that "[t]he court may order, as a further condition of supervised release...any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate." Subsection (b)(11) of section 3563 of title 18, United States Code, is explicitly excluded as a condition of supervised release. Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the condition at 18 U.S.C. 3563(b)(11) was intermittent confinement. The Act deleted 18 U.S.C. 3563(b)(2), authorizing the payment of a fine as a condition of probation, and redesignated the remaining conditions of probation set forth in 18 U.S.C. 3563(b); intermittent confinement is now set forth at subsection (b)(10), whereas subsection (b)(11) sets forth

the condition of residency at a community corrections facility. It would appear that intermittent confinement now is authorized as a condition of supervised release and that community confinement now is not authorized as a condition of supervised release.

However, there is some question as to whether Congress intended this result. Although the Antiterrorism and Effective Death Penalty Act of 1996 redesignated the remaining paragraphs of section 3563(b), it failed to make the corresponding redesignations in 18 U.S.C. 3583(d), regarding discretionary conditions of supervised release.".

The Commentary to § 5F1.5 captioned "Background" is amended in the first paragraph by striking "(b)(6)" each place it appears and inserting "(b)(5)".

The Commentary to § 5F1.5 captioned "Background" is amended by striking the last paragraph and inserting the following:

"The appellate review provisions permit a defendant to challenge the imposition of a probation condition under 18 U.S.C. 3563(b)(5) if the sentence includes a more limiting condition of probation or supervised release than the maximum established in the guideline. See 18 U.S.C. 3742(a)(3). The government may appeal if the sentence includes a less limiting condition of probation than the minimum established in the guideline. See 18 U.S.C. 3742(b)(3).".

The Commentary to § 5F1.7 is amended in the first paragraph by inserting "Background:" before "Section 4046".

Chapter Seven, Part A, subpart 2 is amended in the second paragraph of subdivision (b) by striking "intermittent confinement," and inserting "residency in, or participation in the program of, a community corrections facility,*"; and by inserting after subdivision (b) the following:

***Note:** Section 3583(d) of title 18, United States Code, provides that "[t]he court may order, as a further condition of supervised release...any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate." Subsection (b)(11) of section 3563 of title 18, United States Code, is explicitly excluded as a condition of supervised release. Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the condition at 18 U.S.C. 3563(b)(11) was intermittent confinement. The Act deleted 18 U.S.C. 3563(b)(2), authorizing the payment of a fine as a condition of probation, and redesignated the remaining conditions of probation set forth in 18 U.S.C. 3563(b); intermittent confinement is now set forth at subsection (b)(10), whereas subsection (b)(11) sets forth the condition of residency at a community corrections facility. It would appear that intermittent confinement now is authorized as a condition of supervised release and that community confinement now is not authorized as a condition of supervised release.

However, there is some question as to whether Congress intended this result. Although the Antiterrorism and Effective Death Penalty Act of 1996 redesignated the remaining paragraphs of section 3563(b), it failed to make the corresponding redesignations in 18 U.S.C. 3583(d), regarding discretionary conditions of supervised release.".

The Commentary to § 7B1.3 captioned "Application Notes" is amended in Note 5 by striking "(11). Intermittent confinement is not authorized as a condition of supervised release. 18 U.S.C. 3583(d)." and inserting the following:

"(10).*

***Note:** Section 3583(d) of title 18, United States Code, provides that "[t]he court may order, as a further condition of supervised release...any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate." Subsection (b)(11) of section 3563 of title 18, United States Code, is explicitly excluded as a condition of supervised release. Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the condition at 18 U.S.C. 3563(b)(11) was intermittent confinement. The Act deleted 18 U.S.C. 3563(b)(2), authorizing the payment of a fine as a condition of probation, and redesignated the remaining conditions of probation set forth in 18 U.S.C. 3563(b); intermittent confinement is now set forth at subsection (b)(10), whereas subsection (b)(11) sets forth the condition of residency at a community corrections facility. It would appear that intermittent confinement now is authorized as a condition of supervised release and that community confinement now is not authorized as a condition of supervised release.

However, there is some question as to whether Congress intended this result. Although the Antiterrorism and Effective Death Penalty Act of 1996 redesignated the remaining paragraphs of section 3563(b), it failed to make the corresponding redesignations in 18 U.S.C. 3583(d), regarding discretionary conditions of supervised release.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 16 U.S.C. 1417(a)(5),(6),(b)(2) the following new line:

"16 U.S.C. 1437(c) 2A2.4";

by inserting after the line referenced to 18 U.S.C. 2244 the following new line:

"18 U.S.C. 2245 2A1.1";

in the line referenced to 21 U.S.C. 841(d)(1),(2) by striking "(d)" and inserting "(c)";

in the line referenced to 21 U.S.C. 841(d)(3) by striking "(d)" and inserting "(c)";

in the line referenced to 21 U.S.C. 841(e) by striking "(e)" and inserting "(d)";

in the line referenced to 21 U.S.C. 841(g)(1) by striking "(g)" and inserting "(f)";

by inserting after the line referenced to 42 U.S.C. 5157(a) the following new line:

"42 U.S.C. 5409 2N2.1"; and

by inserting after the line referenced to 42 U.S.C. 9603(d) the following new line:

"42 U.S.C. 14905 2B1.1".

Reason for Amendment: This thirteen-part amendment makes several technical and conforming changes to various guideline provisions.

First, the amendment conforms the language concerning offenses that "affected a financial institution" in subsection (b)(2) of § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery) with subsection (b)(12) of § 2B1.1 (Theft, Property Destruction, and Fraud).

Second, the amendment: (1) updates statutory references in §§ 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy), 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), and 2D1.13 (Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical; Attempt or Conspiracy) and Appendix A (Statutory Index) to correspond to statutory redesignations made by the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000, Public Law 106–172; and (2) corrects references to the new chemical quantity tables in § 2D1.11.

Third, the amendment corrects a change to the commentary of § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) that was inadvertently made as part of the conforming package of amendments in the Economic Crime Package (see Supplement to Appendix C, Amendment 617, effective November 1, 2001).

Fourth, the amendment inserts a missing "or" in subsection (a)(3) of

§ 2Q1.6 (Hazardous or Injurious Devices on Federal Lands).

Fifth, the amendment corrects a grammatical error in Note (D) of subsection (c)(1) of § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents) by replacing "subdivisions (A), (B), or (C)" with "subdivision (A), (B), or (C)".

Sixth, the amendment repromulgates amendment 568, effective November 1, 1997, to correct an inadvertent omission of a conforming amendment to § 4B1.4 (Armed Career Criminal) from amendment 568.

Seventh, the amendment conforms §§ 5C1.1 (Imposition of a Term of Imprisonment), 5D1.3 (Conditions of Supervised Release), and 5F1.1 (Community Confinement), Part A of Chapter Seven (Violations of Probation and Supervised Release), and § 7B1.3 (Revocation of Probation or Supervised Release) to current statutory provisions at 18 U.S.C. 3563 and 3583 and provides an explanatory note concerning the status of intermittent confinement and community confinement as conditions of supervised release.

Eighth, the amendment clarifies that language in subsection (c) of § 5D1.2 (Term of Supervised Release) is a policy statement (because it recommends the maximum term of supervised release for sex offenders rather than requires it).

Ninth, the amendment deletes from Application Note 5 of § 5E1.2 (Fines for Individual Defendants) an incorrect statement concerning the Clean Air Act.

Tenth, the amendment updates statutory references in § 5F1.5 (Occupational Restrictions).

Eleventh, the amendment inserts a missing "Background" heading in § 5F1.7 (Shock Incarceration Program).

Twelfth, the amendment references 18 U.S.C. 2245, which covers sexual abuse resulting in death, to § 2A1.1 (First Degree Murder) in Appendix A (Statutory Index) because the offense requires the death of a person.

Finally, the amendment responds to new legislation as follows:

(1) It updates, in § 2B1.1, a statutory reference in the definition of "means of identification" to correspond to a redesignation made by the Internet False Identification Prevention Act of 2000, Public Law 106–578.

(2) It provides guideline references in Appendix A for two new offenses created by the American Homeownership and Economic Opportunity Act of 2000, Public Law 106–569 ("the Act"). First, section 608 of the Act amends section 610(a) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5409(a)) which makes it unlawful to fail to comply with a state's installation program. Under section 611 of the National Housing Construction and Safety Standard Act of 1974 (42 U.S.C. 5410(b)), knowing and willful violations of subsection 610(a) are punishable by imprisonment of not more than one year. The amendment references this provision to § 2N2.1. Second, section 708 of the Act created section 543 in Title V of the Housing Act of 1949 (42 U.S.C. 1490(s)(a)), which provides a criminal penalty of not more than five years' imprisonment for equity skimming. The amendment references this provision to § 2B1.1.

(3) It references offenses under section 307(c) of the National Marine Sanctuaries Act (16 U.S.C. 1437(c)) to § 2A2.4 (Obstructing or Impeding Officers). Section 307(c) of the National Marine Sanctuaries Act, as amended by the National Marine Sanctuaries Amendments Act of 2000, Public Law 106–513, prohibits the interference with the enforcement of conservation activities authorized in title 16, United States Code, including refusing to permit any officer authorized to enforce such title to board a vessel for purposes of conducting a search or inspection in connection with the enforcement of such title.

[FR Doc. 02–13049 Filed 5–28–02; 8:45 am]
BILLING CODE 2210–40–P

Federal Register

Wednesday,
May 29, 2002

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 *Chorizanthe pungens* var. *pungens* (Monterey Spineflower); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AHO4

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Chorizanthe pungens* var. *pungens* (Monterey Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Chorizanthe pungens* var. *pungens* (Monterey spineflower) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 7,620 hectares (18,830 acres) of land in Santa Cruz and Monterey Counties, California, are within the boundaries of the critical habitat designation.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 7(a)(2) of the Act requires that each Federal agency shall, in consultation with and with the assistance of the Service, insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

DATES: This rule is effective June 28, 2002.

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 Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe pungens var. *pungens* (Monterey spineflower) is endemic to sandy soils in coastal areas in southern Santa Cruz and northern Monterey Counties, and in the Salinas Valley in interior Monterey County. In California, the spineflower genus, *Chorizanthe,* in the buckwheat family (Polygonaceae) is comprised of species of slender, stiff, and tough annual herbs that inhabit dry sandy soils. They occur along the coast and inland, but because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distribution.

Chorizanthe pungens var. *pungens* is one of two varieties of the species *Chorizanthe pungens*. The other variety, *C. p.* var. *hartwegiana* (Ben Lomond spineflower) is restricted to the Santa Cruz Mountains, generally between Scotts Valley and Ben Lomond. The ranges of these two varieties of *C. pungens* do not overlap. The range of *C. p.* var. *pungens* partially overlaps with another closely related taxon, *Chorizanthe robusta* var. *robusta* (robust spineflower), in southern Santa Cruz County. *Chorizanthe pungens* var. *hartwegiana* and *C. r.* var. *robusta* are both endangered species (59 FR 5499). A detailed description of these related taxa is available in the Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly (Service 1998), the Draft Recovery Plan for the Robust Spineflower (Service 2000), and references within these plans.

The overall appearance of *Chorizanthe pungens* var. *pungens* is of a low-growing herb that is soft, hairy and grayish or reddish in color. The plant generally grows flat along the ground or curves upward from the base. Large individuals may reach 50 centimeters (cm) (20 inches (in)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious (translucent) margins on the lobes of the involucre (circle or collection of modified leaves surrounding a flower cluster) or head that occur immediately below the white- to rose-colored flowers. The aggregate of flowers (heads) tend to be small (less than 1 cm (0.4 in) in diameter) and either distinctly or indistinctly aggregate.

Chorizanthe pungens var. *pungens* is a short-lived annual species. It germinates during the winter months and flowers from April through June. Although pollination ecology has not been studied for this taxon, *C. p.* var. *pungens* is likely visited by a wide array of pollinators. Observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids) and at least six species of butterflies, flies, and sphecid wasps (R. Morgan, biologist, Soquel, CA, pers. comm., 2000). In other annual species of *Chorizanthe,* the flowers are protandrous, a reproductive strategy in which the anthers (part of flower that produces pollen) mature and shed pollen prior to the maturation of the style (part of the female reproductive structure of a flower) to receive pollen, with a delay of style receptivity being 1 or 2 days. Protandry facilitates cross-pollination by insects. However, if cross-pollination does not occur within 1 or 2 days, self-pollination may occur as the flower closes at the end of the day (Reveal 2001). The relative importance of cross-pollination by insects and self-pollination to seed set or development is unknown; however, in *C. p.* var. *pungens,* the importance of pollinator activity to production of viable seed was indicated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000).

Seed is mature by August. The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed dispersal is facilitated by the involucral spines, which attach the seed to passing animals. Black-tailed hares *(Lepus californicus)* and ground squirrels *(Otospermophilus beecheyi)* have been observed to browse on *Chorizanthe pungens* var. *pungens* (L. Otter, Coastal Commission, pers. comm., 2001; Schettler, in litt., 2000), and other animals likely to contribute to seed dispersal include, but are not limited to: mule deer *(Odocoileus hemionus)*, gray foxes *(Urocyon cinereoargenteus)*, coyotes *(Canis latrans)*, bobcats *(Felis rufus)*, striped skunks *(Mephitis mephitis)*, opossums *(Didelphis virginiana)*, racoons *(Procyon lotor)*, and other small mammals and small birds. While animal vectors most likely facilitate seed dispersal between colonies and populations of *C. p.* var. *pungens,* the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

For annual plants, maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important to year-to-year and long term survival (Baskin and Baskin 1978). A seed bank includes all of the seeds in a population, and the extent of the seed bank reserve is variable from population to population. Within any given population, the seed bank generally covers a larger area than the extent of observable plants seen in a given year

(Given 1994) because the number and location of standing plants (the observable plants) varies annually due to factors such as the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank.

Each *Chorizanthe pungens* var. *pungens* flower produces one seed. Depending on the vigor of the individual plant and the effectiveness of pollination, dozens, if not hundreds of seeds could be produced from a single plant. For instance, in one study of a closely related spineflower, *Chorizanthe robusta* var. *robusta*, individual plants had an average of 126 flowers, and an average seed set of 51 seeds per plant (S. Baron, pers. comm., 2001). However, seed production does not guarantee production of future reproductive individuals for several reasons: seed viability may be low, as has been found in other species of *Chorizanthe* (Bauder 2000); proper conditions for germination may not be present in most years; and seedling mortality may result from withering before maturity, herbivory, or uprooting by gopher activity (Baron 1998).

The locations where *Chorizanthe pungens* var. *pungens* occurs, with the exception of the Soledad area, are subject to a mild maritime climate where fog helps keep summer temperatures cool and winter temperatures relatively warm and provides moisture in addition to the normal winter rains. *Chorizanthe pungens* var. *pungens* is found in a variety of seemingly disparate plant communities, including active coastal dunes, grassland, scrub, chaparral, woodland types on interior upland sites, and interior floodplain dunes. However, all of these areas include microhabitat characteristics favored by *C. p.* var. *pungens*. First, all sites where it is found are on sandy soils; whether the origin of the soils is from active dunes, interior fossil dunes, or floodplain alluvium is apparently unimportant. The most prevalent soil series represented are Baywood, Oceano, Elder, Elkhorn, Arnold, Santa Ynez, and Metz (SCS 1978, 1980). Second, these sites are relatively open and free of other vegetation. In scrub and chaparral communities, *C. p.* var. *pungens* does not occur under dense stands of vegetation, but does occur between more widely spaced shrubs. In grassland and oak woodland communities, abundant annual grasses may outcompete *C. p.* var. *pungens*, but in places where grass species are affected or managed through grazing, mowing or fire, the result may be less competition, thus allowing the spineflower to persist.

Chorizanthe pungens var. *pungens* is generally distributed along the rim of Monterey Bay in southern Santa Cruz and northern Monterey Counties, and inland along the coastal plain of the Salinas Valley. At coastal sites ranging from the Monterey Peninsula north to Manresa State Beach in Santa Cruz County, *C. p.* var. *pungens* is found in active coastal dune systems and on coastal bluffs upon which windblown sand has been deposited.

On coastal dunes, the distribution of suitable habitat is subject to dynamic shifts caused by patterns of dune mobilization, stabilization, and successional trends in coastal dune scrub that result in increased vegetation cover over time. Accordingly, over time there are shifts in the distribution and size of individual colonies of *Chorizanthe pungens* var. *pungens* found in gaps between stands of scrub vegetation. Other native plants associated with *C. p.* var. *pungens* include: *Ambrosia chamissonis* (beach bur); *Artemisia pycnocephala* (coastal sagewort); *Ericameria ericoides* (mock heather); *Castilleja latifolia* (Monterey Indian paintbrush); and *Lathyrus littoralis* (beach pea). At some northern Monterey County locations, *C. p.* var. *pungens* occurs in close proximity to *Gilia tenuiflora* ssp. *arenaria* (sand gilia) and *Erysimum menziesii* ssp. *menziesii* (Menzies' wallflower), which are both endangered plants, as well as an endangered butterfly, *Euphilotes enoptes smithi* (Smith's blue butterfly), and a threatened bird, *Charadrius alexandrinus nivosus* (western snowy plover).

Chorizanthe pungens var. *pungens* formerly was more widespread in the Monterey Bay area, as well as farther south. The plant can no longer be found at some locations where historical collections were made. For instance, at a historical site on the coast near San Simeon in San Luis Obispo County, *C. p.* var. *pungens* has not been seen since it was first collected in 1842 (California Natural Diversity Data Base (CNDDB) 2000; D. Keil, California Polytechnic University, San Luis Obispo, pers. comm., 2000). It also is no longer found at Point Pinos on the Monterey Peninsula or Castroville (between Prunedale and Salinas River State Beach), both in Monterey County.

We can infer from the current distribution of the spineflower that development has fragmented habitat that formerly provided for a more continuous occurrence of the plant. For instance, portions of the coastal dune and coastal scrub communities that support *Chorizanthe pungens* var. *pungens* have been eliminated or altered by recreational use, industrial and urban development, and military activities. The composition of dune communities also has been altered by the introduction of non-native species, especially *Carpobrotus* species (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities and one aspect of such restoration is the elimination of these non-native species (CDPR 1995, Pratt *in litt.* 2000).

At more inland sites, *Chorizanthe pungens* var. *pungens* occurs on sandy, well-drained soils in a variety of habitat types, most frequently maritime chaparral, valley oak woodlands, and grasslands. The plant probably has been extirpated from a number of historical locations in the Salinas Valley, primarily due to conversion of the original grasslands and valley oak woodlands to agricultural crops (Reveal & Hardham 1989).

Within grassland communities, *Chorizanthe pungens* var. *pungens* occurs along roadsides, in firebreaks, and in other disturbed sites, while in oak woodland, chaparral, and scrub communities, it occurs in sandy openings between shrubs. In older stands with a high cover of shrubs, the plants are restricted to roadsides, firebreaks, and trails that bisect these communities.

Significant populations of *Chorizanthe pungens* var. *pungens* occur on lands that are referred to as former Fort Ord (U.S. Army Corps of Engineers (ACOE) 1992, 1997). At former Fort Ord, the highest densities of *C. p.* var. *pungens* are located in the central portion of the firing range, where disturbance is the most frequent. This pattern of distribution and densities of *C. p.* var. *pungens* on former Fort Ord indicates that some activities which have disturbed *C. p.* var. *pungens* habitat also have created open conditions that contribute to high densities of the plant. Prior to the onset of human use of this area, *C. p.* var. *pungens* may have been restricted to openings created by wildfires within these communities (Service 1998).

The southwestern edge of *Chorizanthe pungens* var. *pungens* habitat on former Fort Ord was once continuous with habitat found in the community of Del Rey Oaks and at the Monterey Airport (Deb Hillyard, ecologist, California Department of Fish and Game (CDFG), pers. comm., 2000). Other inland sites that support *C. p.* var. *pungens* are located in the area between Aptos and La Selva Beach in Santa Cruz

County, and near Prunedale in northern Monterey County. At some of these locations, *C. p.* var. *pungens* occurs in close proximity with the endangered *Piperia yadonii* (Yadon's piperia) and *C. robusta* var. *robusta*.

Chorizanthe pungens var. *pungens* was recently found on a dune within the Salinas River floodplain near Soledad, Monterey County (CNDDB 2000). Two historic sites for *C. p.* var. *pungens* occur nearby. One, near Mission Soledad, was collected once in 1881; the other, near San Lucas along the Salinas River, was collected once in 1935. Due to conversion to agriculture and channelization activities along the Salinas River over the last century, *C. p.* var. *pungens* most likely has been extirpated from these locations. The dune near Soledad is the only one of its size and extent between there and the river mouth (Brad Olsen, East Bay Regional Parks District, pers. comm., 2000).

During the public comment periods we became aware of additional locations that support *Chorizanthe pungens* var. *pungens*. Not surprisingly, the areas occur adjacent to habitat known to support *C. p.* var. *pungens*. These additional areas include the following: (1) Between the northern portion of the Fort Ord unit and the northern portion of the Marina unit, on private lands that are being used for cattle grazing but which may be proposed for development; (2) just south of the Freedom unit, on lands owned by the Pajaro Unified School District at Aptos High School; (3) northwest of the Prunedale unit on lands owned by The Nature Conservancy (TNC) and managed by the Elkhorn Slough Foundation for conservation of natural resources; and (4) several locations to the north and to the west of the Asilomar unit on the Monterey Peninsula, including Federal lands owned and managed by the Coast Guard at Point Pinos Light Station, and on private lands owned by the Pebble Beach Company along 17 Mile Drive.

Because we did not know of the four areas described above at the time we published the proposal rule, they were not included in the background information provided in the proposed rule and were not included in the proposed critical habitat. Under the Act and the Administrative Procedure Act (APA) (5 U.S.C. 702 and 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. We have not yet evaluated these areas and, if appropriate, re-propose critical habitat for public review and comment. Because these areas were not included in the proposed rule, we are not including them in this final rule. Depending on the results of an evaluation of these areas, we may revise this critical habitat designation in the future. Although these areas were not included in the critical habitat proposal, they may be important to the recovery of the species and could be included in recovery activities in the future, if appropriate. Also, Federal agencies will continue to be required to consult with us, as appropriate, on activities in these areas pursuant to section 7(a)(2) of the Act, to ensure that any action they authorize, fund, or carry out does not jeopardize the continued existence of *Chorizanthe pungens* var. *pungens*.

Previous Federal Action

Federal government actions for *Chorizanthe pungens* var. *pungens* began when we published an updated Notice of Review (NOR) of plants on December 15, 1980 (45 FR 82480). This notice included *C. p.* var. *punges* as a category 2 candidate (defined at that time as species for which data in our possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). In the September 27, 1985, revised NOR of plants (50 FR 39526) and in the February 21, 1990 (55 FR 6184) revised NOR of plants, *C. p.* var. *punges* was again included as a category 2 candidate.

On October 24, 1991 (56 FR 55107), we published a proposal to list *Chorizanthe pungens* var. *pungens* as threatened, along with three other varieties of *Chorizanthe* (*C. p.* var. *hartwegiana, C. robusta* var. *hartwegii, C. r.* var. *robusta*) and *Erysimum teretifolium* as endangered species. The final rule listing *C. p.* var. *pungens* as a threatened species was published on February 4, 1994 (59 FR 5499). The final rule indicated that the designation of critical habitat for *C. p.* var. *pungens* was prudent but not determinable, and that designation of critical habitat would occur once we had gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe pungens* var. *pungens* and three other species within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity* v. *Babbitt* (Case No. C99–3202 SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order and a final critical habitat designation no later than 120 days after the proposed designation was published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, we agreed to propose critical habitat for the *C. p.* var. *pungens* by January 15, 2001. Plaintiffs subsequently agreed to an extension, approved by the court, until May 17, 2002, to complete the final rule.

The proposed rule to designate critical habitat for the species was signed on January 16, 2001, and sent to the **Federal Register**. It was published on February 15, 2000 (66 FR 10440). In the proposal, we determined it was prudent to designate approximately 10,400 ha (25,800 ac) of land in Santa Cruz and Monterey Counties as critical habitat for *Chorizanthe pungens* var. *pungens*. Publication of the proposed rule opened a 60-day public comment period, which closed on April 16, 2001.

On September 19, 2001, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *Chorizanthe pungens* var. *pungens*, and a notice of availability of the draft economic analysis on the proposed determination (66 FR 48228). This second public comment period closed on October 19, 2001. By notice published February 1, 2002 (67 FR 4940), the Department provided interested parties an opportunity to resubmit written comments by February 15, 2002, the receipt of which may have been delayed due to the shutdown of postal facilities in Washington, DC, and of the Department's internet access.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a notice in the Santa Cruz Sentinel on February 24, 2001. We received individually written letters from 14 parties, which included 4 designated peer reviewers, 2 Federal agencies, 1 State agency, and 4 local jurisdictions. Approximately 800 additional letters were submitted as part of a mailing campaign. Of the 14 parties responding individually, 5 supported the proposed designation, 2 were neutral, and 7 were opposed. The 7 commenters opposing the proposal specifically opposed designation of critical habitat on lands they own or manage, and requested that these areas be excluded from critical habitat designation. Of the 800 additional

letters, 19 were opposed, 1 was neutral, and the remaining were in support of the critical habitat designation.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. All four of the peer reviewers supported the proposal and provided us with comments, which are included in the summary below and incorporated into the final rule.

We reviewed all comments received from the public and the peer reviewers for substantive issues and new information regarding critical habitat and *Chorizanthe pungens* var. *pungens*. Similar comments were grouped into four general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary:

Issue 1: Biological Justification and Methodology

1. *Comment:* The proposed rule was not based on the best scientific data available.

Our Response: As stated in the proposed rule, we are required under the Act and regulations (section 4(B)(2) and 50 CFR 424.12, respectively) to make decisions based on the best information available at the time of designation. Our policy on information standards, described in the section entitled Critical Habitat in the rule, states that we should use the listing package for the species as well as additional information obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature). In addition to using these sources, we have consulted with botanists and other experts who are familiar either with the species or the geographic area where it occurs. The final rule also incorporates relevant new information submitted during the two comment periods.

2. *Comment: Chorizanthe pungens* var. *pungens* would not even occur on Pebble Beach Company lands at Spanish Bay if it were not for their extensive restoration efforts that reclaimed a former sand mine site; therefore, this area should be excluded from the Asilomar unit.

Our Response: We recognize that the Company has undertaken the restoration and creation of several habitats, including coastal dunes, in the Spanish Bay area; much of this work was done to fulfill permit requirements by the Coastal Commission as part of the approval for construction of resort facilities at Spanish Bay. We know from historical records that *Chorizanthe pungens* var. *pungens* occurred at several locations along the coast of Monterey Peninsula, both upcoast and downcoast from the Spanish Bay area prior to sand mining activity. In addition, extant populations are known to occur both immediately upcoast and downcoast within a mile of Spanish Bay. Although surveys done in conjunction with the Company's restoration plan did not detect *C. p.* var. *pungens*, it is possible that *C. p.* var. *pungens* was missed during the surveys, or existed as a seedbank on the remnant dunes. Moreover, seeds for the reintroduction of *C. p.* var. *pungens* into the newly created dunes were collected from the remnant dunes at Spanish Bay (Joey Dorrell-Canepa, biologist, pers. comm., 2001). We therefore believe that there is sufficient information to consider dune habitat at Spanish Bay within the range of the species and essential to the conservation of the species.

3. *Comment:* One peer reviewer suggested expanding the list of primary constituent elements to include such factors as seed germination requirements, substrate salinity, microreliefs and mocroclimates within local habitats, seasonal and yearly groundwater levels, and bird populations that migrate within the range of *Chorizanthe pungens* var. *pungens*.

Our Response: While we recognize that these factors may be important components of the habitats within which *Chorizanthe pungens* var. *pungens* is found, we do not have sufficient information at this time that leads us to believe that they are the primary factors responsible for the distribution of *C. p.* var. *pungens* throughout its range and necessary for its conservation.

Issue 2: Economic Comments

4. *Comment:* Comments received by the Service from the Fort Ord Reuse Authority and City of Marina suggested that section 2.4.9 of the draft Economic Analysis (which estimated that 2 to 4 consultations, at a total cost of $10,000 to $60,000, will occur related to activities by private parties after the transfer of Fort Ord land) mischaracterized the likely impacts of critical habitat designation on lands within the boundaries of Fort Ord that will be transferred to private landowners. The comments indicated that development on this land could lead to a greater number of consultations, and that the consultations would be more costly than estimated in the draft Economic Analysis.

Our Response: We have revised the final critical habitat designation to remove all lands within the boundaries of former Fort Ord that the Multispecies Habitat Management Plan for the area explicitly designates for development (see our response to comment 8 for further information regarding former Fort Ord and the Habitat Management Plan) . The section 7 consultation requirements pertain only to actions of Federal agencies. Consequently, in relation to *Chorizanthe pungens* var. *pungens*, consultation involving these excluded lands would be necessary only when there is a Federal nexus and there is a determination that the Federal action may affect the species or its designated critical habitat.

Lands within former Fort Ord that have been designated for development with reserves, but for which development boundaries are not determined, are included in the final designation. These lands may be subject to additional consultations in the future. The original estimates of the draft Environmental Analysis, based on the consultation history and cost of the consultations in this area, apply to these lands, as two to four consultations may be necessary in the future to address any development as it occurs.

5. *Comment:* One party was concerned that the designation would eliminate their opportunity for Federal development grants, since Federal agencies must ensure that their activities do not result in destruction or adverse modification of critical habitat. The party was concerned that if a federally funded project "in any way destroyed or adversely modified any portion of the area proposed", the Federal agency would be unable to provide the grant.

Our Response: Under section 7(a)(2) of the Act all Federal agencies must ensure that any action they authorize, fund, or carry out does not jeopardize the continued existence of a listed species; this requirement applies regardless of whether the project area is designated as critical habitat. In the vast majority of situations in which a project funded by Federal development grant monies may affect a listed species or its critical habitat, we have been able to work with the landowner and the appropriate Federal agency to ensure that the landowner's project can be completed without jeopardizing the

continued existence of a species or adversely modifying critical habitat. Federal agencies already must consult pursuant to the jeopardy aspect of section 7(a)(2) of the Act on all activities that may affect *Chorizanthe pungens* var. *pungens*, regardless of whether critical habitat is present. All of the critical habitat units are occupied by *C. p.* var. *pungens*. Thus, the designation of critical habitat for *C. p.* var. *pungens* is expected to result in few or no additional restrictions through the consultation process beyond those that have existed since the species was listed.

Issue 3: Site-Specific Areas and Other Comments

6. *Comment:* The U.S. Department of the Navy (DON) requested that the lands of the Naval Postgraduate School be excluded from the Marina unit of the critical habitat designation because protections and management actions provided for *Chorizanthe pungens* var. *pungens* under their Integrated Natural Resource Management Plan (INRMP) are sufficient. Therefore, their lands do not require special management considerations or protection and do not meet the definition of critical habitat.

Our Response: We address the issue of INRMPs in the section entitled "Relationship of Critical Habitat to Military Lands." The DON completed a final INRMP for the Naval Postgraduate School in July of 2001. The INRMP provides for conservation, management and protection for *Chorizanthe pungens* var. *pungens* (DON 2001). The DON has been responsive to our comments regarding actions for the conservation and protection of *C. p.* var. *pungens* and other listed species that occur at the Naval Postgraduate School. We have reviewed the final INRMP and have determined that it addresses the conservation needs of *C. p.* var. *pungens*. The dune area of the Naval Postgraduate School has been restored, is maintained as habitat for sensitive species, and is designated solely for research and interpretive uses. In addition, we have undergone formal consultation with the DON for actions under their ongoing and proposed vegetation management and restoration program for the Naval Postgraduate School, which is designed to benefit listed and sensitive species. Therefore, the 22 ha (55 ac) of land of the Naval Postgraduate School have not been included in this final designation of critical habitat for *C. p.* var. *pungens*, as we have determined that they do not require additional special management considerations or protection, and so do not meet the definition of critical habitat.

7. *Comment:* Sand City requested that any property within the city be excluded from the Marina critical habitat unit because their Local Coastal Plan already requires them to work with the Service and they believe that designation of critical habitat will add another layer of coordination which is unnecessary.

Our Response: Upon further evaluation of the Marina unit, we revised the final designation to avoid areas that have been developed or otherwise significantly altered to such an extent that they do not provide one or more of the primary constituent elements essential for the conservation of *Chorizanthe pungens* var. *pungens*. We included lands in the Marina unit that we determined to be essential to the conservation of *C. p.* var. *pungens* and that may require special management considerations or protection. This includes lands within Sand City. Although the remaining natural lands of Sand City within the larger Marina critical habitat unit may not be currently occupied by *C. p.* var. *pungens*, they may play an important role in the conservation of *C. p.* var. *pungens* with additional protection and management. Management of *C. p.* var. *pungens* in Sand City and other areas of the Marina unit has been successful in the past, and we believe that *C. p.* var. *pungens* will respond well to additional protection and management in areas of the Marina unit not yet developed or significantly altered.

8. *Comment:* The Army, City of Marina, and Fort Ord Reuse Authority requested that areas designated for development in the 1997 Installation-wide Multispecies Habitat Management Plan for Former Fort Ord, California (HMP), be excluded from the Fort Ord critical habitat unit. They commented that those areas do not require special management consideration; that the Service, through the consultation process, already indicated in a biological opinion that the designated development parcels are not essential to the long-term preservation of sensitive species at the former Fort Ord; and that the benefits of excluding these areas outweigh the benefits of including them. The Army indicated that it intends to fully implement the HMP, consistent with other laws and regulations.

Our Response: We have reevaluated the configuration of lands included in the Fort Ord Unit, particularly with regard to the various land designations in the HMP, and have revised this critical habitat designation to avoid those lands designated in the HMP as solely for development. Based on information obtained through several section 7 consultations, we have determined that these areas are not essential to the conservation of *Chorizanthe pungens* var. *pungens*.

Although we not including as critical habitat those lands that are designated for development, with no resource conservation requirements, the public should recognize that the lands included in this designation are not the only lands that may be important to the conservation of *Chorizanthe pungens* var. *pungens*. If habitat for this species on the lands designated as habitat reserve, habitat corridor, and development with reserve or development with restrictions, does not receive the special management it requires because the HMP is not fully implemented, then additional lands may be needed for the conservation of *C. p.* var. *pungens* on former Fort Ord.

9. *Comment:* The Moss Landing Harbor District (District) has requested that their 3-ha (8-ac) parcel be excluded from the Moss Landing critical habitat unit because they believe the site is not essential to the continuation of the species due to its small size, marginal habitat, and isolation from the rest of the unit. Moreover, they believe the designation would place an unfair burden on the District because they already informally consulted with the Service on their habitat restoration plan for the site; this plan, if successful, would provide enhanced habitat conditions and more protection for *Chorizanthe pungens* var. *pungens* than were on the site previously.

Our Response: We acknowledge the work that the District is undertaking to restore, enhance, and protect habitat for *Chorizanthe pungens* var. *pungens* on this site. We also acknowledge that even though the District was not required to consult with us previously, they sought our technical assistance. We support the District's habitat restoration efforts for this site. Even if the restoration plan is fully implemented, however, the sites supporting *C. p.* var. *pungens* will not be under permanent protection, and could possibly be impacted by future projects, such as the widening of Highway 1. We are including this parcel in the Moss Landing critical habitat unit because we believe that, even though it is geographically separated, it is still biologically connected to the rest of the Moss Landing critical habitat unit. In particular, because other parts of the Moss Landing critical habitat unit are close to the coast, the inland position of this parcel is important for avoiding random extinction of *C. p.* var. *pungens* in this unit due, for instance, to severe

winter storms. We have made minor modifications to the boundaries of this final critical habitat designation in this area, based on our improved mapping ability.

10. *Comment:* The Pebble Beach Company requested that their property in the Spanish Bay area be excluded from the Asilomar unit and cited a number of legal and procedural issues as well as biological arguments for doing so.

Our Response: Our response to the legal and procedural issues is included under Issue 4 below, and our responses to the biological arguments are included under Issue 1 above. We did not exclude all of Pebble Beach Company's property from the final designation. However, based on additional reports, photos and a map supplied by the Company, as well as recent aerial photos acquired by the Service and a site visit made by Service staff, we have reduced the amount of acreage of their lands included in the Asilomar unit by avoiding areas that do not contain one or more of the primary constituent elements essential for the conservation of *Chorizanthe pungens* var. *pungens*.

Issue 4: Legal and Procedural Comments

11. *Comment:* The Pebble Beach Company believes that they would unfairly be subject to additional regulatory burden by the inclusion of their lands in the designation of the Asilomar unit, where *Chorizanthe pungens* var. *pungens* occurs only by virtue of their restoration efforts.

Our Response: Private land owners are not required to consult with us under section 7 of the Act except when their actions involve a Federal nexus. See our response under Issue 1, above, that addresses the relationship of the restoration efforts to the presence of *Chorizanthe pungens* var. *pungens* on Company lands.

12. *Comment:* The Service did not follow the narrow criteria set forth in the ESA in proposing critical habitat, specifically: (a) Critical habitat is to be limited to those areas essential to species conservation; (b) legislative history shows that congressional intent was to have critical habitat narrowly defined; and (c) the proposal goes beyond the limited grounds for designating critical habitat.

Our Response: We developed the proposed and this final critical habitat designation consistent with the Act and our implementing regulations. The definition of critical habitat in section 3(5)(A) of the Act includes "(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) 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." The term "conservation", as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary."

In accordance with section 3(5)(A) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. As specified in the regulations, these include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. This designation of critical habitat is consistent with these requirements of the Act and the regulations.

13. *Comment:* The proposed rule states that the Service is required to make decisions due to court-ordered deadlines even though the Service admits that little is known about the physical and biological requirement of the species. Therefore, the Service has violated the Administrative Procedure Act and is acting in an arbitrary and capricious manner by not going beyond the existing body of science where available methodologies may yield "as yet untapped sources of best scientific and commercial data" (*Roosevelt Campobello Intern. Park* v. *U.S.E.P.A.*, 684 F.2d 1041, 1055 (1st Cir. 1982) in Nossaman 2001).

Our Response: Under section 4(b)(2) of the Act, we are required to use the best scientific and commercial information available when designating critical habitat. During development of the proposed designation and following its publication during two open comment periods, we solicited biological data and public participation in the rule making process. The comments received have been taken into consideration in the development of this final designation. In this final designation, we used information from: the CNDDB (CNDDB 2000); soil survey maps (Soil Conservation Service (SCS) 1978, 1980); recent biological surveys and reports; additional information provided by interested parties; and discussions with botanical experts. We also conducted site visits at a number of locations (see the Methods section of this rule for more information). We believe we have used the best available information and therefore, are not in violation of the APA. We will continue to monitor the species and collect new information. We may revise the critical habitat designation in the future if new information supports a change.

14. *Comment:* The proposed rule did not provide adequate notice to impacted landowners because it fails to identify the specific locations that contain the primary constituent elements, which illegally shifts the burden of determining critical habitat to the landowner.

Our Response: We published the proposed rule to designate critical habitat for *Chorizanthe pungens* var. *pungens* on February 15, 2001 (66 FR 10440), and accepted comments from the public for 60 days, until April 16, 2001. We contacted appropriate Federal, State, and local agencies, scientific organizations, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a notice in the Santa Cruz Sentinel on February 24, 2001.

The proposed rule provided maps of the critical habitat units. The maps delineated the area covered with reference to street and natural landmark boundaries. More detailed mapping information was available to any interested individuals, organizations, local jurisdiction or State and Federal agencies upon their request during the 60-day comment period upon their request. No such requests for additional information were received.

We believe the information made available to the public was sufficiently detailed to allow for determination of critical habitat boundaries. In addition to the maps, specific information was provided in the proposed rule regarding the primary constituent elements are for *Chorizanthe pungens* var. *pungens*. The maps and the description of primary constituent elements together provide landowners with information necessary to determine whether any Federal action involving their property would trigger a section 7 consultation with the Service

with regard to critical habitat, or if the Federal action may affect the species and/or critical habitat adjacent to their property.

This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). If additional clarification is necessary, it can be provided by the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

15. *Comment:* The proposed rule does not include an Economic Impact Analysis as required under the Endangered Species Act and the Regulatory Flexibility Act.

Our Response: We published a notice in the **Federal Register** on September 19, 2001 (66 FR 48228), announcing the reopening of the public comment period for the critical habitat designation, and a notice of availability of the draft Economic Analysis. This announcement was to allow for comments on the draft Economic Analysis and additional comments on the proposed determination itself. This second comment period closed October 19, 2001. We also published the draft Economic Analysis and associated material on our Fish and Wildlife Office internet site following the draft's release on September 19, 2001.

16. *Comment:* The proposed rule does not comply with NEPA as required by the Tenth Circuit Court of Appeals in *Catron County Bd. Of Comm'r N.M.* v. *United States Fish and Wildlife Service,* 75 F.3d 1429 (10th cir. 1996).

Our Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). Also, the public involvement and notification requirements under both the ESA and the APA provide ample opportunity for public involvement in the process, similar to the opportunities for public involvement and economic analysis of effects that would be provided in the NEPA process.

17. *Comment:* One commenter opposed the exemption from critical habitat of those lands that are included in HCPs, because they are never developed specifically for plants, and vary in the amount of conservation benefit provided to them through this process.

Our Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding lands covered by HCPs from critical habitat designations will outweigh the benefits of including them. Although "take" of listed plants is not prohibited by the Act, listed plant species may be, and often are, covered in HCPs for wildlife species.

We expect that HCPs undertaken by local jurisdictions (*e.g.,* counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(2) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed wildlife species, to the maximum extent practicable. In addition, the action covered in the HCP must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future Section 7 analyses of HCPs and section 10(a)(1)(B) permits will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat.

In the one HCP issued that includes *Chorizanthe pungens* var. *pungens,* the habitat area is already managed for the benefit of this and other covered species under the terms of the associated section 10(a)(1)(B) permit. We believe the assurances provided through the HCP and permit are sufficient to provide for the conservation of *C. p.* var. *pungens,* and any additional benefit provided by designating these lands as critical habitat would be minimal, at best. In contrast, the benefits of excluding lands covered by this HCP will be significant in preserving positive relationships with our conservation partners, particularly by reinforcing the regulatory assurances provided for in the implementation agreement for the HCP. We believe these benefits outweigh the benefits of designating this area as critical habitat.

Summary of Changes From the Proposed Rule

In preparation for development of our final designation of critical habitat for *C. p.* var *pungens* we reviewed comments received on the proposed designation of critical habitat and the draft Economic Analysis. We made several changes to our proposed designation, as follows:

(1) The description of the primary constituent elements was modified and clarified. One peer reviewer suggested expanding the list of primary constituent elements (*see* comment 3 in *Summary of Comments* section). However, we believed it was more appropriate to shorten the list of primary constituent elements from six to four elements. The two primary constituent elements that were included in the proposed rule but deleted in the final rule are: pollinator activity between existing colonies of *Chorizanthe pungens* var. *pungens,* and seed dispersal mechanisms between existing colonies and other potentially suitable sites. We deleted the two elements because we believe that the critical habitat units are of sufficient size and number that the ecosystem processes of pollinator activity and seed dispersal mechanisms are functioning normally and are not a factor in limiting the distribution of *C. p.* var. *pungens* to the extent that the other primary constituent elements are.

(2) We added a section describing Special Management Needs or Protections that *Chorizanthe pungens* var. *pungens* may require. We believe this new section will be useful in identifying activities that address section 3(5)(A)(i)(II) of the Act, and also assist land managers in developing management strategies for *C. p.* var. *pungens* on their lands.

(3) We deleted one of the eleven units described in the proposed rule and made changes in the boundaries of the remaining ten units, resulting in an overall total reduction of approximately 2,823 ha (6,989 ac), approximately 27 percent of the area that had been proposed for critical habitat. These changes are described below.

The Manresa unit was removed entirely from the critical habitat designation. Based upon recently gathered information, we determined that *Chorizanthe pungens* var. *pungens* does not occur within the unit. Previous records of *C. p.* var. *pungens* from Manresa State Beach are likely to have been made in error. The exclusion of this unit resulted in a reduction of approximately 40 ha (100 ac) compared to the proposed rule.

We made changes to the boundary lines on the remaining ten units. The new boundary lines were drawn within the boundary lines shown in the proposed designation; in no case were the new boundary lines drawn outside of those described in the legal description for the units in the proposed designation. The purpose of these changes was to avoid areas that obviously did not contain the primary constituent elements, and for which we were unable to draw more precise boundaries at the time of the proposed designation. The use of recently acquired high resolution aerial photographs dating from April 2000 enabled us to undertake this more precise mapping. These changes resulted in a total reduction of 377 ha (928 ac) in this final critical habitat designation.

These minor changes reduced the total amount of critical habitat by 15 percent or less in the final designation for 5 of the units. These units, and the approximate percent reduction for each, are as follows: Asilomar (13 percent), Del Rey Oaks (9 percent), Freedom (7 percent), Bel Mar (14 percent), and Prunedale (15 percent).

Changes in the boundary lines of the other five units resulted in excluding more than 15 percent of the critical habitat that was included in the proposed designation in each of those units. Changes in these units were made based on information supplied by commenters, as well as the use of the high resolution aerial photos, which indicated either that the primary constituent elements were not present in certain portions of the proposed unit, or that certain changes in land use had occurred on lands within the proposed designation that would preclude those areas supporting the primary constituent elements. The units with reductions of more than 15 percent in the final designation are: Sunset (35 percent), Moss Landing (36 percent), Marina (19 percent), Fort Ord (29 percent), and Soledad (79 percent).

A brief summary of the modifications made on each of the 10 units is provided below, beginning with the four coastal units and followed by the six inland units:

Coastal units

Unit A: Sunset Unit

The beaches within the surf zone were eliminated along the western boundary of this unit because they do not contain the primary constituent elements for *Chorizanthe pungens* var. *pungens*. The unit was reduced from 50 ha (130 ac) in the proposed rule to 35 ha (85 ac) in the final designation. Habitat supporting *C. p.* var. *pungens* populations within the State Beach to the east of Shell Road was inadvertently omitted from the proposed critical habitat designation, and so is not included in this final critical habitat designation.

Unit B: Moss Landing Unit

Major modifications were made to this unit to avoid areas that do not contain the primary constituent elements, including intertidal areas, wetlands, and areas that have been developed or significantly disturbed. These modifications resulted in a reduction from 283 ha (703 ac) in the proposed rule to 182 ha (452 ac) in the final designation.

Unit C: Marina Unit

Major modifications were made to this unit to avoid areas that do not contain the primary constituent elements, including areas that have been developed or significantly disturbed. Federal lands at the Naval Postgraduate School were not included in the final designation because DON has recently completed a final INRMP that addresses the conservation of *Chorizanthe pungens* var. *pungens* (U.S. Department of the Navy 2001). A 5-acre (2-ha) parcel on former Fort Ord lands that has been designated solely for development in the HMP was also removed. These changes also are discussed in the *Summary of Comments and Recommendations* section above (*see* our responses to comments 4 and 6). These modifications resulted in a reduction from 885 ha (2,190 ac) in the proposed rule to 720 ha (1,780 ac) in the final designation.

Unit D: Asilomar Unit

During the comment period, the Pebble Beach Company, which owns Spanish Bay, provided us with maps, reports, and aerial photos that allowed us to more accurately map habitat supporting the primary constituent elements on their property. The modifications to this unit resulted in a reduction from 145 ha (355 ac) in the proposed rule to 125 ha (310 ac) in the final designation. Also, during 2001 several populations of *Chorizanthe pungens* var. *pungens* were located that are adjacent to, but not in, this unit. One population is on Federal lands managed by the Coast Guard at Point Pinos Light Station, and one population is on private lands owned by Pebble Beach Company along 17 Mile Drive on the Monterey Peninsula. Habitat supporting these populations has not been included in this critical habitat unit because we did not have information about them at the time the proposal was prepared and there was no opportunity to conduct an evaluation of whether they met the criteria for critical habitat, or to prepare and issue a revised proposal, including a revised draft Economic Analysis, for public comment within the schedule established by the court for completing the critical habitat designation.

Inland units

Unit E: Freedom Boulevard Unit

Minor modifications were made on this unit to remove areas that do not contain the primary constituent elements, including areas that have been developed or are heavily wooded. These modifications resulted in a reduction from 90 ha (220 ac) in the proposed rule to 85 ha (205 ac) in the final designation.

Unit F: Bel Mar Unit

Minor modifications were made on this unit to remove areas that do not contain the primary constituent elements, including areas that have been developed or paved. These modifications resulted in a reduction from 40 ha (95 ac) in the proposed rule to 33 ha (82 ac).

Unit G: Prunedale Unit

Modifications were made to this unit to remove areas that do not contain the primary constituent elements, including areas that have been developed, paved, or have been significantly disturbed by agriculture. These modifications resulted in a reduction from 2,135 ha (5,280 ac) in the proposed rule to 1,815 ha (4,485 ac). We also corrected the description of land ownership in this unit to reflect ownership of parcels by Caltrans. During the public comment period, we received information from the Elkhorn Slough Foundation that two populations of *Chorizanthe pungens* var. *pungens* occur on lands they manage for The Nature Conservancy (TNC) to the northwest of this unit. Habitat supporting these populations has not been included in this critical habitat unit because we did not have information about them at the time the proposal was prepared and there was no opportunity to conduct an evaluation of whether they met the criteria for critical habitat, or to prepare and issue a revised proposal, including a revised draft Economic Analysis, for public comment within the schedule established by the court for completing the critical habitat designation.

Unit H: Fort Ord Unit

Substantial modifications were made to this unit to remove areas designated

in the HMP for this area as "Development" that have no HMP resource conservation requirements. Areas designated in the HMP as "Habitat Reserve," "Habitat Corridor," and "Development with Reserve or Development with Restrictions" were retained in this unit, as were easements that cross lands with these designations. The reasons for removing areas designated for development in this unit are discussed under the paragraphs about former Fort Ord in the section titled "Criteria Used to Identify Critical Habitat," and in Comment 8 in the Summary of Comments and Recommendations section. In the north area of former Fort Ord, the Service has followed existing habitat reserve lines in designating final critical habitat. We recognize that the habitat corridor that connects the North and South Reserves of the University of California's Natural Reserve System on former Fort Ord is narrow and tenuously connects the adjacent reserves. We encourage those entities who own surrounding natural lands that are designated for development to consider and accommodate functioning of this area as a corridor for the movement of seeds, seed dispersers, and pollinators whenever possible. The modifications to this unit and some corrections in habitat acreages resulted in a reduction from 5,995 ha (14,810 ac) in the proposed rule to 4,265 ha (10,530 ac).

Unit I: Del Rey Oaks Unit

Minor modifications were made to this unit to remove areas that do not contain the primary constituent elements, including the runways at the Monterey Airport, and other areas that have been developed, paved, or have been significantly disturbed. These modifications resulted in a reduction from 280 ha (700 ac) in the proposed rule to 255 ha (640 ac).

Unit J: Soledad Unit

Major modifications were made to this unit to remove areas that do not contain the primary constituent elements. Most of the area surrounding the eastern subunit are in agricultural production. In addition, we have eliminated the western subunit because, based on a site visit we conducted following the proposed rule, we now believe the primary constituent elements that would support the species are not present there. These modifications resulted in a reduction from 500 ha (1,235 ac) in the proposed rule to 105 ha (260 ac).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3 of the Act as meaning the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Also, section 7(a)(4) of the Act requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In 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." 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 would not result in any regulatory requirements for these actions.

The designation of critical habitat does not, in itself, lead to recovery of a listed species. The designation of critical habitat does not create a management plan, establish a preserve, reserve, or wilderness area where no actions are allowed, it does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat.

In order 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, and 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 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. We are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we are designating only areas currently known to be essential. Essential areas contain the features and habitat characteristics that are necessary to sustain the species, as defined at 50 CFR 424.12(b). 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.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species can not be met within currently occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our 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 and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinions.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we

recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to 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 to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Chorizanthe pungens* var. *pungens*. This included information from the CNDDB (CNDDB 2000), soil survey maps (SCS1978,1980), recent biological surveys and reports, additional information provided by interested parties, and discussions with botanical experts.

We also reviewed the goals for the delisting of *Chorizanthe pungens* var. *pungens* included in our recovery plan that addresses seven coastal plant taxa and the Myrtle's silverspot butterfly (Service 1998). The criteria for delisting *C. p.* var. *pungens* include: (1) The funding and implementation of permanent protection of *C. p.* var. *pungens* through the Fort Ord disposal and reuse process, and (2) the permanent protection of private and public lands on the beaches and dunes along the coast that are occupied by *C. p.* var. *pungens* or contain its habitat. At the time the recovery plan was prepared, Fort Ord was considered the most important inland occurrence of *C. p.* var. *pungens* because of the extent of habitat it occupied there. The discovery of additional inland populations over the last few years has led us to conclude that these other sites are equally as important in contributing to the long-term conservation of the species.

The plan calls for the following recovery actions: (1) Protect habitat for *Chorizanthe pungens* var. *pungens* by working with landowners and local lead agencies; (2) obtain life history and response-to-management information, particularly concerning the role of substrate disturbance in the establishment and persistence of *C. p.* var. *pungens;* (3) develop and implement management practices for occurrences of *C. p.* var. *pungens,* particularly with respect to controlling invasive, non-native species; (4) monitor occurrences for population trends and for effectiveness of reducing and eliminating threats; and (5) increase public awareness of the species and its associated habitats through various outreach efforts. Although the recovery plan does not provide more detailed conservation recommendations for specific areas, we believe that the designation of critical habitat for *C. p.* var. *pungens* is consistent with these recommended recovery actions.

We also conducted site visits. Frequently we were accompanied by agency representatives at locations managed by local, State or Federal agencies, including Manresa, Sunset, Marina, Monterey, and Asilomar State Beaches; Service lands at Salinas River National Wildlife Refuge; Bureau of Land Management (BLM) lands at former Fort Ord; Moss Landing Marine Laboratory; Moss Landing North Harbor District; Monterey Airport; Caltrans lands in the vicinity of Prunedale; and Manzanita County Park. We have also made site visits to certain privately owned lands, such as those owned by Pebble Beach Company along 17-Mile Drive and at Spanish Bay, and those owned by TNC at Blohm Ranch.

Much of the coastline along Monterey Bay and the Monterey Peninsula includes resources of concern to the California Coastal Commission (Commission). The Coastal Act requires that projects within the coastal zone be reviewed and permitted by the Commission, or by local planning agencies that have a Local Coastal Plan (LCP) certified by the Commission. Section 30240 of the Coastal Act requires that areas recognized as environmentally sensitive habitat areas (ESHAs) be protected against any significant disruption of habitat values. Only uses dependent on those resources shall be allowed within those areas. In general, dunes are considered ESHAs becase they include plant or animal life or their habitats which are either rare or especially valuable because of their special nature or role in the ecosystem and which could be easily disturbed or degraded by human activities and developments (Coastal Commission 2001). The counties of Santa Cruz and Monterey both have LCPs that allow only resource-dependent uses in habitats known to support rare and endangered species. The County of Monterey also recognizes dune habitat, with or without rare and endangered species, as ESHAs, and requires the protection of environmentally sensitive habitats in new land divisions or developments through deed restrictions or dedications of permanent conservation easements. The County of Santa Cruz requires protection of environmentally sensitive habitats through dedication of an open space or conservation easement to protect the portion of a sensitive habitat that is undisturbed by the proposed development (Service 1998). Local jurisdictions may request amendments to their LCPs from the Commission to allow for changes in land use not consistent with the current plan.

These initiatives and planning efforts all recognize the sensitivity of the coastal habitats and resources along this portion of the central California coast. Due to the historic loss of the habitats that supported *Chorizanthe pungens* var. *pungens,* and in consideration of the primary constituent elements essential to the conservation of the species, we believe that future conservation and recovery of this species depends not only on protecting it in the areas that it currently occupies, but also on providing the opportunity for it to shift in distribution over time, and to increase its current distribution by designating currently unoccupied habitat within its range.

All of the critical habitat units are occupied by either above-ground plants or a seed bank. "Occupied" is defined here as an any area with above-ground *Chorizanthe pungens* var. *pungens* plants *or* a *C. p.* var. *pungens* seed bank of indefinite boundary. Current surveys need not have identified above-ground individuals for the area to be considered occupied because plants may still exist at the site as part of the seed bank (Given 1994). All occupied sites contain some or all of the primary constituent elements that are essential to the conservation of the species, as described below. In addition, each of the units probably contain areas currently unoccupied by the species. "Unoccupied" is defined here as an area that contains no above-ground *C. p.* var.

pungens plants and that is unlikely to contain a viable seed bank. For the reasons discussed above, both occupied and unoccupied areas that are designated as critical habitat are essential to the conservation of the species.

Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *Chorizanthe pungens* var. *pungens* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may or may not favor the growth of *C. p.* var. *pungens* above ground; (2) the way the current distribution of *C. p.* var. *pungens* is mapped can vary, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Because it is difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by *C.* p. var. *pungens*. Therefore, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied areas provide habitat into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Chorizanthe pungens* var. *pungens* is described in the Background section of this final rule.

Several coastal dune restoration efforts have included measures to propagate and reintroduce *Chorizanthe pungens* var. *pungens*, notably at Moss Landing North Harbor, Pajaro Dunes, and the University of California's Moss Landing Marine Laboratory (MLML). Such efforts have contributed to our understanding that *C. p.* var. *pungens* readily grows where suitable sandy substrates occur and competition with other plant species is minimal (Harding Lawson Associates 2000; J. Dorrell-Canepa, pers. comm., 2000; P. Slattery, dune ecologist, MLML, pers. comm., 2000). Where *C. p.* var. *pungens* occurs within native plant communities, along the coast as well as at more interior sites, it occupies microhabitat sites found between scrub and shrub stands where there is little cover from other herbaceous species. Where *C. p.* var. *pungens* occurs within grassland communities, the density of *C. p.* var. *pungens* may decrease with an increase in the density of other herbaceous species.

As has been observed at former Fort Ord, human caused disturbance, such as scraping along roadsides and firebreaks, can favor the abundance of *Chorizanthe pungens* var. *pungens* by reducing competition from other herbaceous species. However, because such disturbance also can promote the spread and establishment of non-native species, can bury the seedbank of *C. p.* var. *pungens*, and does not result in the cycling of nutrients and soil microbial changes that occur from fire, this type of management may not sustain populations over the long term and would likely result in a general degradation of habitat for *C. p.* var. *pungens* if conducted over large areas. At other locations where *C. p.* var. *pungens* occurs, its habitat may include a large complement of non-native species. Management activities such as mowing, scraping, or in some situations, tilling, would need to be repeated frequently and may not be practical in all areas where *C. p.* var. *pungens* habitat includes a complement of non-native species. Moreover, while the presence of *C. p.* var. *pungens* could be maintained in areas with a high abundance of non-native species, the habitat quality of these areas may be less than areas where the presence of non-native species is minimal.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chorizanthe pungens* var. *pungens* are:

(1) Sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(2) Plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure with openings between the dominant elements (e.g., scrub, shrub, oak trees, clumps of herbaceous vegetation);

(3) No or little cover by non-native species which compete for resources available for growth and reproduction of *Chorizanthe pungens* var. *pungens*; and

(4) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas.

Site selection

We selected critical habitat areas to provide for the conservation of *Chorizanthe pungens* var. *pungens* at four coastal sites and six inland sites where it is known to occur. Historic locations for which there are no recent records of occupancy (within the last 20 years) were not proposed for designation, including large areas of the Salinas Valley floodplain that have been converted to agriculture over the last 100 years and potentially suitable areas around San Simeon in San Luis Obispo County and along the Salinas River near San Lucas in Monterey County.

The long term probability of the conservation of *Chorizanthe pungens* var. *pungens* is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example, dune dynamics in the coastal sites, and fire disturbance at inland sites) that maintain the openness of vegetative cover on which the species depends. Threats to the habitat of *C. p.* var. *pungens* include: industrial and recreational development; road development; human and equestrian recreational use; and dune stabilization as a result of the introduction of non-native species (59 FR 5499; February 4, 1994). The areas we are designating as critical habitat provide some or all of

the habitat components essential for the conservation of *C. p.* var. *pungens*. Given the species' need for an open plant community structure and the risk from non-native species invasions, we believe that these areas may require special management considerations or protection.

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for *Chorizanthe pungens* var. *pungens* within the units designated as critical habitat. In some cases, protection of existing habitat and current ecological processes may be sufficient to ensure that populations of *C. p.* var. *pungens* are maintained at those sites, and have the ability to reproduce and disperse into surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for *C. p.* var. *pungens*. We have outlined below the most likely kinds of special management and protection that *C. p.* var. *pungens* may require.

(1) In near-coastal areas, the supply and movement of sand along the coast must be maintained to create the dynamic dune habitats that are needed for *Chorizanthe pungens* var. *pungens*.

(2) In more interior locations, the sandy soils on which *Chorizanthe pungens* var. *pungens* is found should be maintained to optimize conditions for it. Physical properties of the soil, such as its chemical composition, salinity, and drainage capabilities would best be maintained by limiting or restricting the use of herbicides, fertilizers, or other soil amendments that are applied.

(3) The associated plant communities must be maintained to ensure that the habitat needs of pollinators and dispersal agents are maintained. The use of pesticides should be limited or restricted so that viable populations of pollinators are present to facilitate reproduction of *Chorizanthe pungens* var. *pungens*. Fragmentation of habitat (*e.g.* through construction of roads or certain types of fencing) should be limited so that seed dispersal agents may move seed of *C. p.* var. *pungens* throughout the unit.

(4) In some plant communities, it may be important to maintain a mosaic of different-aged stands of coastal scrub or maritime chaparral patches so that openings that support *Chorizanthe pungens* var. *pungens* will be maintained. Depending on location, the use of prescribed fire, thinning, or other forms of vegetation management may be useful in creating and maintaining this type of mosaic, particularly if natural processes that generally result in maintaining such a mosaic are altered due to human activities.

(5) In all plant communities where *Chorizanthe pungens* var. *pungens* occurs, invasive, non-native species such as harding grass (*Phalaris aquatica*), veldt grass (*Ehrharta* sp.), European beachgrass, iceplant, and other species need to be actively managed to maintain the open habitat that *C. p.* var. *pungens* needs.

(6) Certain areas where *Chorizanthe pungens* var. *pungens* occurs may need to be fenced to protect them from accidental or intentional trampling by humans or livestock. While *C. p.* var. *pungens* appears to withstand light to moderate disturbance, heavy disturbance may be detrimental to its persistence. Seasonal exclusions may work in certain areas to protect *C. p.* var. *pungens* during its critical season of growth and reproduction.

Criteria Used to Identify Critical Habitat

We believe it is important to preserve all areas that currently support native populations of *Chorizanthe pungens* var. *pungens* because the species has undergone a reduction in range which places a great importance on the conservation of all the known remaining sites. When possible, areas that were in close geographic proximity were included in the same unit to emphasize the need to maintain connectivity between different populations. We also included habitat for *C. p.* var. *pungens* adjacent to and contiguous to areas of known occurrences to maintain landscape scale processes. Some units were mapped with a greater precision than others, based on the available information and the size of the unit. Each unit contains habitat that is occupied by *C. p.* var. *pungens*.

The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Chorizanthe pungens* var. *pungens*, using information from the CNDDB (CNDDB 2000), recent biological surveys and reports, our recovery plan for this species, and discussions with botanical experts. These data layers were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the proposed critical habitat units using roads and known landmarks and, if necessary, township, range, and section numbers from the public land survey. During preparation of the final rule, we found several discrepancies between the legal description of the boundaries of the critical habitat units and the boundaries of the units as depicted in the maps accompanying the proposed rule. The discrepancies resulted primarily through our use of data layers created at a small scale (*e.g.*, 1:100,000 scale USGS mapping) during preparation of the maps of proposed critical habitat. For the final rule, the mapped boundaries of critical habitat first were corrected to be consistent with the boundaries as described in the proposed rule. We then modified the boundaries of proposed critical habitat using information on the location of existing developed areas from recent aerial imagery (April, 2000), additional information from botanical experts, and comments on the proposed rule. The boundaries of the final critical habitat units are defined by Universal Transverse Mercator (UTM).

We also considered the status of habitat conservation plan (HCP) efforts in proposing areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although "take" of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP developed primarily for wildlife species.

The only HCP that is operative and has an executed Implementation Agreement within the critical habitat that was proposed for *Chorizanthe pungens* var. *pungens* is the HCP for the North of Playa project site (Zander Associates 1995), within Sand City (Marina Unit). Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

Habitat for *Chorizanthe pungens* var. *pungens* in the North of Playa HCP plan area is already managed for the benefit of this and other covered species under the terms of the associated section 10(a)(1)(B) permit. We believe the assurances provided through the HCP and permit are sufficient to provide for the conservation of *C. p.* var. *pungens* in that area. Any additional benefit provided by designating these lands as critical habitat would be minimal at best. In contrast, the benefits of

excluding lands covered by this HCP would be significant in preserving positive relationships with our conservation partners, particularly by reinforcing the regulatory assurances provided for in the implementation agreement for the HCP. We believe they outweigh the benefits of designating this area as critical habitat. Furthermore, we have determined that excluding this area from critical habitat designation will not result in the extinction of the species. The main regulatory benefit of critical habitat designation is the requirement that Federal agencies consult with us and ensure that their actions do not destroy or adversely modify designated critical habitat. As these areas are occupied by the species, Federal agencies are already required to consult with us and ensure their actions here do not jeopardize the continued existence of the species. This requirement will ensure that excluding this area does not result in the extinction of the species. Consequently, these lands have not been included in this critical habitat designation for the Marina Unit.

A large planning effort is currently underway to address the conservation needs for a number of threatened and endangered species, in addition to sensitive unlisted species, for the lands formerly known as Fort Ord. The Defense Base Realignment and Closure Commission selected the 11,340-ha (28,000-ac) Fort Ord for closure in 1991. As a requirement of a biological opinion issued by the Service in 1993, the *Installation-wide Multispecies Habitat Management Plan for Former Fort Ord, California* (HMP), was prepared in 1994 and revised in 1997 by the Army to address listed, proposed, candidate, and sensitive species and their habitat. The HMP provides a comprehensive plan for minimizing and mitigating impacts to sensitive species and their habitats while allowing disposal and redevelopment of the base. Under the HMP, over 6,880 ha (17,000 ac) is designated for eventual habitat conservation. The Bureau of Land Management (BLM) will receive approximately 6,070 ha (15,000 ac) of undeveloped land to be managed for habitat and sensitive species. California Department of Parks and Recreation (CDPR) will receive the coastal properties, a large portion of which will be restored and managed for sensitive species. Several other entities will also receive property which they will manage for conservation of habitat and sensitive species. The remaining areas of the base, including many areas that have already been developed as part of the base operations, will be available for land development. As of October 2001, a total of approximately 4,290 ha (10,600 ac) of former Fort Ord had been transferred. Approximately 3,160 ha (7,800 ac) identified as habitat reserve were transferred, of which about 2,910 ha (7,200 ac) were transferred to BLM, 215 ha (530 ac) were transferred to the University of California, Santa Cruz, and 16 ha (40 ac) were transferred to the City of Marina.

The Service has designated critical habitat on lands of the former Fort Ord specified as "Habitat Reserve," "Habitat Corridor," and "Development with Reserve Areas or Development with Restrictions" as shown on the map and post-transfer modifications of the HMP. In finalizing this critical habitat rule we have not included lands that the HMP designated solely for development, with no accompanying resource conservation requirements, that were included as critical habitat in the proposed rule. Lands within easements remain in this critical habitat designation where they cross the Reserve, Corridor, or Development with Reserve designations listed above.

The Service has consulted with the Army on the closure and reuse of Fort Ord. The Fort Ord critical habitat unit is entirely encompassed within the area covered by that consultation. The biological opinions resulting from consultation with the Army on the closure and reuse of former Fort Ord determined that development according to the HMP would not jeopardize the continued existence of *Chorizanthe pungens* var. *pungens*. This determination was based on full implementation of the HMP, including the appropriate management of habitat reserve areas. Recently, the Army's ability to fully implement the HMP has come into question. Specifically, the Army's ability to conduct prescribed burns to clear vegetation in habitat reserve areas was impeded by two lawsuits brought by the Monterey Bay Unified Air Pollution Control District against the Army during the past several years. The Army uses prescribed burns to clear vegetation prior to the cleanup of ammunition and explosives that remain on former ranges. Following a ruling on the most recent of these lawsuits, the Army is embarking on an evaluation of alternative methods of vegetation clearance, including prescribed burning, under CERCLA. If the Army is not able to fully implement those measures in the HMP that protect and conserve listed and sensitive species, then the design of reserve and development lands may need to be reevaluated along with this critical habitat designation.

On former Fort Ord lands, the HMP would be the basis of each subsequent HCP submitted by a non-Federal land recipient applying for a section 10(a)(1)(B) incidental take permit. A draft programmatic HCP submitted by the Fort Ord Reuse Authority is under review by the Service.

Throughout this designation, in selecting areas of critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Chorizanthe pungens* var. *pungens*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. p.* var. *pungens*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Therefore, Federal actions limited to these areas would not trigger a section 7 consultation unless it is determined that such actions may affect the species and/or its designated critical habitat (*e.g.* certain actions may affect the species or its critical habitat an adjacent area).

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation of *Chorizanthe pungens* var. *pungens*. Critical habitat for *C. p.* var. *pungens* includes 10 units that currently support the species. The areas being designated as critical habitat are either along the coast between Sunset State Beach in Santa Cruz County, south to Asilomar State Beach in Monterey County, or are at inland sites ranging from the Aptos area in Santa Cruz County, south to a stretch of the Salinas River near Soledad in Monterey County, California, and include the appropriate dune, maritime chaparral, or oak woodland habitats that support *C. p.* var. *pungens*. We have designated approximately 7,620 ha (18,830 acres) of land as critical habitat for *C. p.* var. *pungens*. Approximately 57 percent of this area consists of Federal lands, while State lands comprise approximately 9 percent, County and other local jurisdiction lands comprise approximately 4 percent, and private lands comprise approximately 31 percent of the critical habitat.

A brief description of each critical habitat unit is given below:

Coastal units

Unit A: Sunset Unit

Unit A includes approximately 35 ha (85 ac) of critical habitat, consisting of coastal beaches, dunes, and bluffs west of Watsonville in southern Santa Cruz County. This entire unit is within Sunset State Beach. The unit includes land from Sunset Beach Road south to the gate on Shell Road, just north of the mouth of the Pajaro River, and west of the main road that extends the length of the park. This unit supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the tens of thousands. This unit is important because it supports the northernmost population found along the coast, as well as being one of only four populations along the coast. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions (*i.e.*, more northerly coastal conditions) may be important for the long-term survival and conservation of *C. p.* var. *pungens*.

Unit B: Moss Landing Unit

Unit B includes approximately 182 ha (452 ac) of critical habitat. It consists of coastal beaches, dunes, and bluffs to the north and south of the community of Moss Landing in northern Monterey County. The northern portion of this unit includes lands owned and managed by the State, including portions of Zmudowski State Beach and Moss Landing State Beach as well as the private land between these two parks, between the mouths of the Pajaro River and Elkhorn Slough. The southern portion of this unit includes two portions of Salinas River State Beach and the private lands between these two portions. Two other small pieces of the unit include portions of the Moss Landing North Harbor District (MLNHD), and the MLML. Local agency lands (MLNHD) comprise 2 percent of the unit, while State lands comprise 86 percent, and private lands comprise 12 percent of the unit. This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the tens of thousands (P. Slattery, MLML, pers. comm., 2001). This unit is important because it supports one of only four populations found along the coast and because it provides connectivity between the Sunset unit to the north, and the Marina unit to the south.

Unit C: Marina Unit

Unit C contains approximately 720 ha (1,780 ac) of critical habitat. The unit consists of coastal beaches, dunes, and bluffs ranging from just south of the mouth of the Salinas River, south to the city of Monterey in northern Monterey County. These lands are almost entirely west of Highway 1, with the exception of a small portion of land between Del Monte Boulevard and Highway 1 in Sand City. Federal lands, which comprise 44 percent of the unit, include a portion of the Salinas River National Wildlife Refuge, and lands known as former Fort Ord. State lands, which comprise 3 percent of the unit, include Marina State Beach and Monterey State Beach. Private lands account for 53 percent of the unit. An area of 1.9 ha (4.6 ac) within Sand City known as North of Playa, has been excluded from the unit because a HCP for this restoration site included *Chorizanthe pungens* var. *pungens* as a covered species. In addition, Federal lands at the Naval Postgraduate School were not included, because DON has recently completed a final INRMP that addresses the conservation of *C. p.* var. *pungens*. This unit currently supports a population of *C. p.* var. *pungens* that numbers in the tens of thousands. This unit is important because it supports one of only four populations found along the coast and because it provides connectivity between the coastal populations and the more interior populations found at former Fort Ord.

Unit D: Asilomar Unit

Unit D includes approximately 125 ha (310 ac) of critical habitat. It consists of coastal dunes and bluffs near the communities of Pacific Grove and Pebble Beach on the Monterey Peninsula in northern Monterey County. The unit is generally bounded by the extrapolated western extension of Lighthouse Avenue to the north and the portion of 17 Mile Drive between Point Joe and Sloat Road to the south. It is bounded on the east by Sunset Drive south to Arena Avenue, Arena Avenue to Asilomar Boulevard, Asilomar Boulevard to Highway 68, from this corner generally south to the junction of 17 Mile Drive and Spanish Bay Road. The unit is comprised of State lands at Asilomar State Beach (about 80 percent) and private lands, including those near Spanish Bay (about 20 percent). This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the thousands. This unit is important because it supports one of only four populations found along the immediate coast, and is also the southernmost occurrence of *C. p.* var. *pungens* along the coast. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions (*i.e.*, more southerly coastal conditions) may be important for the long-term survival and conservation of *C. p.* var. *pungens*.

Inland Units

Unit E: Freedom Boulevard Unit

Unit E includes approximately 85 ha (205 ac) of critical habitat. The unit consists of grassland, maritime chaparral, and oak woodland habitat near the western terminus of Freedom Boulevard and northeast of Highway 1 in Santa Cruz County. The unit is bounded on the western boundary by Freedom Boulevard from Valencia Road to McDonald Road, then north on McDonald Road to Apple Road. The northern boundary runs approximately 0.4 km (0.25 mi) east from McDonald Road, then jogs south to Freedom Boulevard, and follows Freedom Boulevard for approximately 0.8 km (0.5 mi). The eastern boundary heads directly south from Freedom Boulevard at this point for approximately 0.6 km (0.4 mi). The southern boundary heads directly west from this point to Freedom Boulevard near the intersection with Valencia Road. This entire unit consists of privately owned lands. This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the thousands in favorable years, but many fewer in unfavorable years. This unit is important because it, along with the Bel Mar unit, is the northernmost occurrence away from the immediate coast. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions (*i.e.*, at the northern end of its range) may be important for the long-term survival and conservation of *C. p.* var. *pungens*.

Unit F: Bel Mar Unit

Unit F includes approximately 33 ha (82 acres) of critical habitat. The unit consists of maritime chaparral habitat near the terminus of East Bel Mar Dive, between Larkin Valley Road and Highway 1 near the community of La Selva Beach in southern Santa Cruz County. This unit consists of privately owned lands, with 3 acres of State lands, and currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the thousands in favorable years, but many fewer in unfavorable years. This unit is important because it, along with the Freedom unit, is the northernmost occurrence away from the immediate coast. Preserving the genetic characteristics that have allowed individuals at this site to survive under

these slightly different environmental conditions (*i.e.*, at the northern end of its range) may be important for the long-term survival and conservation of *C. p.* var. *pungens*.

Unit G: Prunedale Unit

Unit G includes approximately 1,815 ha (4,485 ac) of critical habitat. It consists of grassland, maritime chaparral, and oak woodland in the area around Prunedale in northern Monterey County. On the west side of Highway 101, the unit includes Manzanita County Park located between Castroville Boulevard and San Miguel Canyon Road. On the east side of Highway 101, the unit is generally bounded by Highway 101 to the west and north, Crazy Horse Canyon Road, and then Wild Horse Road and Herbert Road to the east, and Meadow Ridge Circle to the south. Approximately 9 percent of the unit consists of county park land, 8 percent is owned by Caltrans, and 83 percent is privately owned.

This unit currently supports multiple populations of *Chorizanthe pungens* var. *pungens*; in addition to the populations that have been known from Manzanita County Park for over a decade, it includes numerous populations that have been discovered in the past few years during surveys conducted for the Highway 101 Prunedale bypass project (R. Robison, *in litt.* 2001). This is one of only three units that are known to support populations away from the immediate coast and that support maritime chaparral and oak woodland habitats more representative of hotter, interior sites. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions may be important for the long-term survival and conservation of *C. p.* var. *pungens*. The Prunedale Unit also supports multiple populations in relatively close proximity to one another and supports suitable habitat that is important for the expansion of existing populations.

Unit H: Fort Ord Unit

Unit H includes approximately 4,265 ha (10,530 ac) of critical habitat. It consists of grassland, maritime chaparral, coastal scrub, and oak woodland on the former DOD base at Fort Ord, east of the city of Seaside in northern Monterey County. Portions of Fort Ord have been transferred to the BLM; University of California, Santa Cruz; California State University at Monterey Bay; and local city and county jurisdictions. As of October 2001, approximately 4,290 ha (10,600 ac) of former Fort Ord had been transferred, of which about 3,160 ha (7,800 ac) have been designated as habitat reserve in the HMP. As a result of these recent transfers, approximately 5 percent of this critical habitat unit is State land and 1 percent is under local jurisdiction. We considered all other land within this unit to be under Federal jurisdiction (about 94 percent). This unit is entirely within the area formerly known as Fort Ord, bounded by Highway 1 on the northwest, the Salinas River to the east and the Monterey-Salinas Road (Highway 68) to the south. This unit currently supports multiple populations of *Chorizanthe pungens* var. *pungens* that number in the tens of thousands. This is one of only three units that are known to support populations away from the immediate coast and that support maritime chaparral and oak woodland habitats more representative of hotter, interior sites. Preserving the genetic characteristics that have allowed individuals at this site to survive under these slightly different environmental conditions may be important for the long-term survival and conservation of *C. p.* var. *pungens*. It also supports multiple populations in relatively close proximity to one another and supports suitable habitat that is important for the expansion of existing populations.

Unit I: Del Rey Oaks Unit

Unit I contains approximately 255 ha (640 ac) of critical habitat. It consists of grassland, maritime chaparral, and oak woodland near the community of Del Rey Oaks, southeast of the city of Seaside in northern Monterey County. This unit is generally bounded to the north and northeast by Rosita Road and South Boundary Road, to the east by York Road, to the south by the Monterey-Salinas Road (Highway 68), and by Olmstead Road and its extrapolated extension northward to Rosita Road on the west. Approximately 30 percent of the unit is owned by Monterey County Airport and other local jurisdictions, and 70 percent is privately owned. This unit currently supports multiple populations of *Chorizanthe pungens* var. *pungens*; at one time, habitat supporting these populations was likely continuous with habitat on former Fort Ord. Although fragmentation has occurred, it is possible that connectivity still exists between these areas. This unit is important because it supports multiple populations in relatively close proximity to one another and because it represents the southernmost extension of the population complex that occurs on former Fort Ord.

Unit J: Soledad Unit

Unit J includes approximately 105 ha (260 ac) of critical habitat. It consists of an interior dune in the floodplain of the Salinas River channel just south of the town of Soledad in central Monterey County, on privately owned lands. This unit currently supports a population of *Chorizanthe pungens* var. *pungens*. This unit is the southernmost interior location that supports a population, and the only unit where *C. p.* var. *pungens* grows in interior floodplain dune habitat. Preserving the genetic characteristics that have allowed individuals at this site to survive in interior floodplain dune habitat may be important for the long-term survival and conservation of *C. p.* var. *pungens*.

The approximate areas of proposed critical habitat by land ownership are shown in Table 1. Lands proposed are under private, county, State, and Federal jurisdiction, with Federal lands including lands managed by us, the DOD, and BLM.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)[1] OF DESIGNATED CRITICAL HABITAT FOR *Chorizanthe pungens* VAR. *pungens* BY LAND OWNERSHIP.

Unit name	State lands	Private lands	County and other local jurisdictions	Federal lands	Total
A. Sunset	35 ha (85 ac)	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	35 ha (85 ac).
B. Moss Landing	160 ha (390 ac)	20 ha (55 ac)	2 ha (7 ac)	0 ha (0 ac)	182 ha (452 ac).
C. Marina[2]	25 ha (60 ac)	380 ha (945 ac)	0 ha (0 ac)	315 ha (775 ac)	720 ha (1,780 ac).
D. Asilomar	100 ha (250 ac)	25 ha (60 ac)	0 ha (0 ac)	0 ha (0 ac)	125 ha (310 ac).
E. Freedom Blvd.	0 ha (0 ac)	85 ha (205 ac)	0 ha (0 ac)	0 ha (0 ac)	85 ha (205 ac).
F. Bel Mar	3 ha (7 ac)	30 ha 75 ac)	0 ha (0 ac)	0 ha (0 ac)	33 ha (82 ac).
G. Prunedale	145 ha (360 ac)	1,515 ha (3,740 ac)	155 ha (385 ac)	0 ha (0 ac)	1,815 ha (4,485 ac).

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF DESIGNATED CRITICAL HABITAT FOR *Chorizanthe pungens* VAR. *pungens* BY LAND OWNERSHIP.—Continued

Unit name	State lands	Private lands	County and other local jurisdictions	Federal lands	Total
H. Fort Ord (Current)[3]	215 ha (530 ac)	0 ha (0 ac)	55 ha (130 ac)	3,995 ha (9,870 ac)	4,265 ha (10,530 ac).
I. Del Rey Oaks	0 ha (0 ac)	180 ha (450 ac)	75 ha (190 ac)	0 ha (0 ac)	255 ha (640 ac).
J. Soledad	0 ha (0 ac)	105 ha (260 ac)	0 ha (0 ac)	0 ha (0 ac)	105 ha (260 ac).
Total	683 ha (1,682 ac)	2,340 ha (5,790 ac)	287 ha (712 ac)	4,310 ha (10,645 ac).	7,620 ha (18,829 ac).

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

[2] Acreages assigned to various landowner categories for the Fort Ord portion of the Marina unit will change in the future once land transfers have been completed. We estimate the following after transfer: state, 835ac; local, 945 ac; federal, 0 ac.

[3] Acreages assigned to various landowner categories for the Fort Ord unit will change in the future once land transfers have been completed. We estimate the following after transfer: state, 610 ac; local jurisdictions, 970 ac; federal, 8,950 ac.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat designated for such species. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation previously has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Chorizanthe pungens* var. *pungens* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (i.e., funding, authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting *C. p.* var *pungens* or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation with respect to this species.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary

constituent elements to the extent that the value of critical habitat for the conservation of *Chorizanthe pungens* var. *pungens* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain the maritime chaparral and oak woodland communities. Such activities adverse to *Chorizanthe pungens* var. *pungens* could include, but are not limited to, maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as chaining or harvesting firewood in the watershed upslope from *C. p.* var. *pungens;* and

(2) Activities that appreciably degrade or destroy native maritime chaparral and oak woodland communities, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify the critical habitat designated for such species. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of its survival and recovery, and actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species. (50 CFR 402.02)

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. All of the units we are designating are occupied by either above-ground plants or a *Chorizanthe pungens* var. *pungens* seed bank, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Each unit also contains some areas which are considered unoccupied. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development, military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction;

(2) Activities of the BLM on their lands or lands under their jurisdiction;

(3) Activities of the Federal Aviation Authority on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; and

(6) Construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans.

Where federally listed wildlife species occur on private lands proposed for development and an HCP is submitted by an applicant to secure a permit to take according to section 10(a)(1)(B) of the Act, our issuance of such a permit would be subject to the section 7 consultation process. In those situations where *Chorizanthe pungens* var. *pungens* may occur or its critical habitat is present within the area covered by the HCP, the consultation process would include consideration of the potential effects of granting the permit authorizing take of threatened or endangered wildlife species addressed by the HCP. Wildlife species that are listed under the Act and occur in the same general areas as *C. p.* var. *pungens* include the Smith's blue butterfly *(Euphilotes enoptes smithi),* which occurs at dunes from Salinas River National Wildlife Refuge south to the Naval Postgraduate School, and western snowy plover *(Charadrius alexandrinus nivosus),* which ranges from Zmudowski State Beach south along the coast to Monterey State Beach. Consultations conducted under Section 7 in relation to HCPs prepared for these wildlife species would address any effects that granting a permit for take of the wildlife species would have on *C. p.* var *pungens,* including its critical habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship of Critical Habitat to Military Lands

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and that manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of *C. p.* var. *pungens* management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule.

We consider several factors to determine if a plan provides adequate

management or protection. These factors are: (1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective.

In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specified the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that encompasses land and water suitable for the conservation and management of natural resources to have completed, by November 17, 2001, an Integrated Natural Resources Management Plan (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 of the installation, including needs to provide for the conservation of species listed as threatened or endangered pursuant to the Endangered Species Act; 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.

As required by Section 7 of the Act, consultation is conducted on the development and implementation of INRMPs for installations with listed species. We believe that military installations that have completed and approved INRMPs which address the needs of species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

The mission of the Naval Postgraduate School is to foster and encourage a program of education and research in order to sustain academic excellence. The majority of the coastal dune portion of the Naval Postgraduate School is designated as open beach and protected habitat zone with controlled public access, as compatible with mission requirements for academic research and training and resource protection.

The DON has committed to continue implementing vegetation management and restoration activities that benefit *Chorizanthe pungens* var. *pungens,* including removal of invasive plant species that threaten the native vegetation community of the coastal dune portion of the Naval Postgraduate School. In the INRMP for the Naval Postgraduate School, the DON places a high priority on funding and implementing these efforts. In addition, the Naval Postgraduate School will continue its annual surveys to track the effectiveness of management actions taken to enhance and protect the local population of *C. p.* var. *pungens.* Since 1992, the DON and the Naval Postgraduate School have successfully implemented actions that benefit *C.* p. var. *pungens.*

The DON funded a revegetation and rehabilitation project of the dunes of the Naval Postgraduate School, which was implemented in 1992. Prior to 1992, grading, compaction, introduction of fill material, and previous landscaping activities resulted in the loss of 80 percent of the native back dunes at the Naval Postgraduate School. Due to the efforts of the DON and the Naval Postgraduate School, the 18-hectare (45-acre) area has since undergone extensive native revegetation and efforts to control invasive non-native plant species, primarily iceplant, *Bromus diandrus* (ripgut brome grass), and *Ammophila arenaria* (European dune grass). Following initial eradication of these invasive species, more than 90,000 plants of 50 native dune and coastal bluff species, including *Chorizanthe pungens* var. *pungens,* were planted over 5 years (Cowan 1998, Navy 2001). Elimination of iceplant and ripgut brome grass (along with increased rainfall) was noted as a factor in the substantial increase of *C. p.* var. *pungens* plants from 1,600 plants in 1992 to more than 100,000 plants in 1998 (Cowan 1998). In 1999, colonies of sensitive plant species in the dunes appeared to be thriving, and most of the invasive plant species had been eradicated or were noted to be controlled by ongoing weeding (Greening Associates 1999). In 2001, the DON formally consulted with the Service on potential adverse effects to *C. p.* var. *pungens* plants that may occur during ongoing and proposed invasive plant species control and vegetation management activities at the Naval Postgraduate School.

In 2001, the DON completed a final INRMP for the Naval Postgraduate School. In their comments on the proposed rule, the DON requested that the lands of the School be excluded from the Marina unit of critical habitat because of the protections and management actions provided for *Chorizanthe pungens* var. *pungens* as part of the INRMP. We evaluated the INRMP and found that it meets the three criteria described above. We excluded these lands from critical habitat under the section 3(5)(A) definition.

Lands at former Fort Ord are not discussed in this section because Fort Ord is no longer an active military installation. All but a few hundred acres at former Fort Ord are to be eventually transferred to non-military entities. The few hundred acres that the Army may retain are not within this critical habitat designation.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation,

we conducted a draft Economic Analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on September 19, 2001 (66 FR 48228). We accepted comments on the draft analysis until October 19, 2001.

Our draft Economic Analysis evaluated the potential future effects associated with the listing of *Chorizanthe pungens* var. *pungens* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to a perceived increase in the regulatory burden. We believe these impacts will be short-term, however.

Based on our draft analysis, we concluded that the designation of critical habitat would not result in a significant economic impact, and estimated the potential economic effects over a 10-year period would be $400,000. Costs to Federal agencies are expected to be approximately $150,000. Costs to State agencies are expected to be approximately $56,000, primarily resulting from consultations and project modifications in the Sunset, Marina, and Prunedale units. Local agencies are not expected to be impacted by the designation of critical habitat, principally because activities on local agency lands do not typically have Federal involvement. Costs to private landowners are expected to range from $170,000 to $200,000, primarily resulting from consultations and modifications within the Moss Landing, Marina, Fort Ord, and De Rey Oaks units. These estimates are based on the existing consultation history with agencies in this area and increased public awareness regarding the actual impacts of critical habitat designation on land values.

Following the close of the comment period on the draft Economic Analysis, a final addendum was completed which incorporated public comments on the draft analysis. The values presented above may be an overestimate of the potential economic effects of the designation because the final designation has been reduced to encompass 7,620 ha (18,829 ac) versus the 10,443 ha (25,818 ac) proposed as critical habitat, a difference of 2,823 ha (6,989 ac).

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) In the economic analysis, we determined 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. *Chorizanthe pungens* var. *pungens* was listed as threatened in February of 1994. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *C. p.* var. *pungens*.

Under the Act, Federal agencies shall consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (*see* Table 2 below). Based upon our understanding of this species and its ecological needs, we conclude that any Federal action or authorized action that could potentially result in the destruction or adverse modification of critical habitat would also be considered as "jeopardy" under the Act in areas occupied by the species.

Accordingly, the designation of currently occupied areas as critical habitat is not anticipated to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons that do not have a Federal "sponsorship" in their actions are not restricted by the designation of critical habitat. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. These impacts were evaluated in our Economic Analysis (under section 4 of the Act; *see Economic Analysis* section of this rule).

TABLE 2.—IMPACTS OF *Chorizanthe pungens* VAR. *pungens* LISTING AND CRITICAL HABITAT DESIGNATION.

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, Department of Defense, Bureau of Land Management, Federal Aviation Authority, U.S. Department of Agriculture, Environmental Protection Agency, Federal Communications Commission, and any other Federal Agencies.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chorizanthe pungens* var. *pungens* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe pungens* var. *pungens* since its listing in 1994. We evaluated the impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation in our economic analysis (*see Economic Analysis* section of this rule). The prohibition against adverse modification of critical habitat is not expected to impose any restrictions in addition to those that currently exist on currently occupied land and will not create inconsistencies with other agencies' actions on unoccupied lands.

(c) This final rule is not expected to materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification analysis (resulting from critical habitat designation) will have any incremental effects.

(d) OMB has determined that this rule raises novel and legal or policy issues. Therefore, this rule is significant under E.O. 12866, and, as a result, has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Chorizanthe pungens* var. *pungens* 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, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly 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). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. While the SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other federal agencies, has interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Chorizanthe pungens* var. *pungens*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing

Federal activities. Since *C. p.* var. *pungens* was proposed for listing we have conducted approximately four formal consultations.

In the Economic Analysis, we found that the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for *Chorizanthe pungens* var. *pungens* on privately owned land to be in a range from $170,000 to $200,000 over a 10 year period. The analysis estimated that private landowners will likely incur costs of $70,000 in Unit C (Moss Landing), $56,000 in Unit D (Marina), $30,000 to $60,000 in Unit I (Fort Ord), and $14,000 in Unit J (Del Ray Oaks).

For the final designation, the Service has elected to exclude from critical habitat all lands within the boundaries of former Fort Ord that have been explicitly designated for development without additional resource conservation measures. Therefore, any projects on these lands will not be subject to any consultations as a result of critical habitat designation for the *Chorizanthe pungens* var. *pungens,* unless a Federal action is involved that requires consultation because it may affect critical habitat (for example, if the action may affect critical habitat is nearby). Lands within former Fort Ord that have been designated for development with reserves, but are not explicitly slated for development in the immediate future, are included in the final designation. These lands may be subject to additional consultations in the future. The original estimates of the draft EA apply to these lands, as two to four consultations may be necessary in the future to address any development as it occurs (please *see* the draft EA for further discussion).

Our draft Economic Analysis found that residential and commercial development on private land constitutes the primary activity that is likely to take place within the area designated as critical habitat for the Monterey spineflower. To be conservative (*i.e.*, more likely overstate impacts than understate them), the Economic Analysis assumed that all potentially affected parties that may be engaged in development activities within critical habitat are small entities. There are approximately 65 small residential development and construction companies in Santa Cruz and Monterey counties. Because the draft EA estimates that at most 22 formal consultations could arise involving private entities, the analysis for impacts on small businesses assumes that at most 22 residential/small business entities may be affected the designation of critical habitat for *Chorizanthe pungens* var. *pungens* in Monterey and Santa Cruz counties over a ten year period.

On average, over the ten year period of analysis, in each year there could be 2 to 3 consultations for real estate development projects. Assuming each consultation involves a different small business, approximately 2 to 4 percent of the total number of small residential development and construction companies could be affected annually by the designation of critical habitat for *Chorizanthe pungens* var. *pungens.* Because the percentage of small businesses that could be affected by this designation is far less than the 20 percent threshold that would be considered "substantial," the economic analysis concludes that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for *C. p.* var. *pungens.*

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the two to three small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Chorizanthe pungens* var. *pungens* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Chorizanthe pungens* var. *pungens,* with no consultations that resulted in a jeopardy determination and so no identified reasonable and prudent alternatives, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer could modify a project or take measures to protect *Chorizanthe pungens* var. *pungens.* Based on the types of modifications and measures that have been implemented in the past for plant species, a developer may take such steps as installing fencing or re-aligning the project to avoid sensitive areas. The cost for implementing these measures for one project is expected to be of the same order of magnitude as the total cost of the consultation process, *i.e.*, approximately $10,000. It should be noted that developers likely would already be required to undertake such measures due to regulations in the California Environmental Quality Act (CEQA). These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation, and that analysis was made available for public review and comment before finalization of this designation. Based on estimates provided in the economic analysis, the potential economic impact of critical habitat designation for *Chorizanthe*

pungens var. *pungens* over the next 10 years is about $400,000. Out of this about one-half, $200,000, could potentially be borne by the private sector. On an annual basis, this amounts to about $20,000, which would not normally be considered a significant cost in the context of multi-acre real estate development projects that would most likely be affected by this designation as indicated in the economic analysis. Furthermore, due to the changes being made in the final rule regarding the designation of private lands, the actual impact of critical habitat designation on private landowners will be less than that estimated in the economic analysis.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Chorizanthe pungens* var. *pungens* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) 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 they must ensure that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued a 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. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. In our Economic Analysis, we did not identify energy production or distribution as being affected by this designation, and we received no comments indicating that the proposed designation could significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Chorizanthe pungens* var. *pungens* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chorizanthe pungens* var. *pungens* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. 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 *Chorizanthe pungens* var. *pungens*.

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 is required. 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

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Chorizanthe pungens* var. *pungens* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The authors of this final rule are Constance Rutherford and Diane Pratt, Ventura Fish and Wildlife Office (*See* **ADDRESSES** section).

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Chorizanthe pungens* var. *pungens* under "FLOWERING PLANTS" in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Chorizanthe pungens var. *pungens*.	Monterey Spineflower.	U.S.A. (CA)	Polygonaceae—Buckwheat	T	528	17.96(a)	NA
*	*	*	*	*	*		*

3. Amend In § 17.96(a) by adding critical habitat for the Monterey spineflower (*Chorizanthe pungens* var. *pungens*) in alphabetical order under Family Polygonaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)

(1) Critical habitat units are depicted for Santa Cruz and Monterey Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chorizanthe pungens* var. *pungens* are the habitat components that provide:

(i) Sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(ii) Plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g., scrub, shrub, oak trees, clumps of herbaceous vegetation);

(iii) No or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe pungens* var. *pungens*; and

(iv) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas.

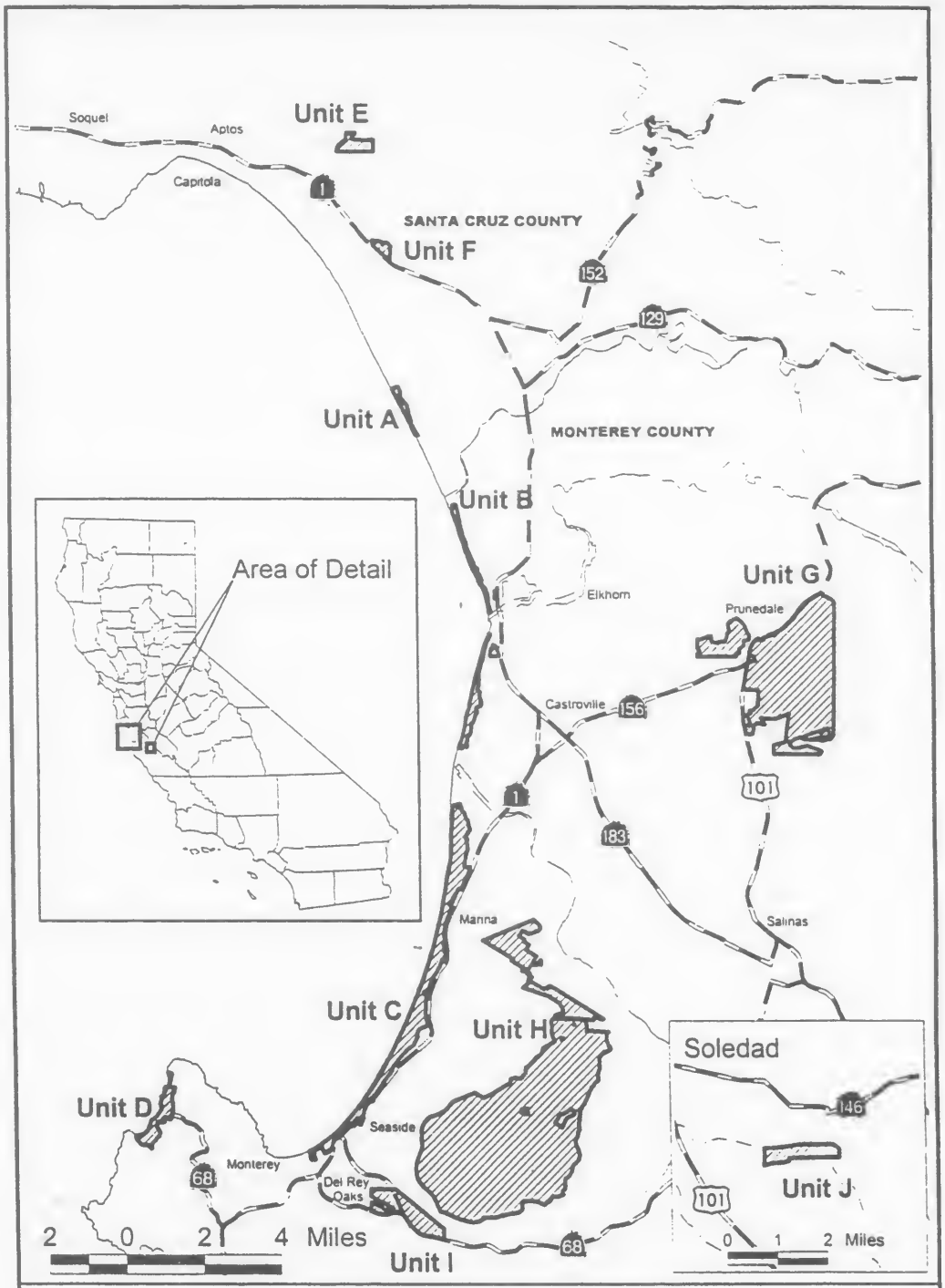
(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

Critical Habitat Map Units

Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(4) Index Map Follows

BILLING CODE 4310–55–P

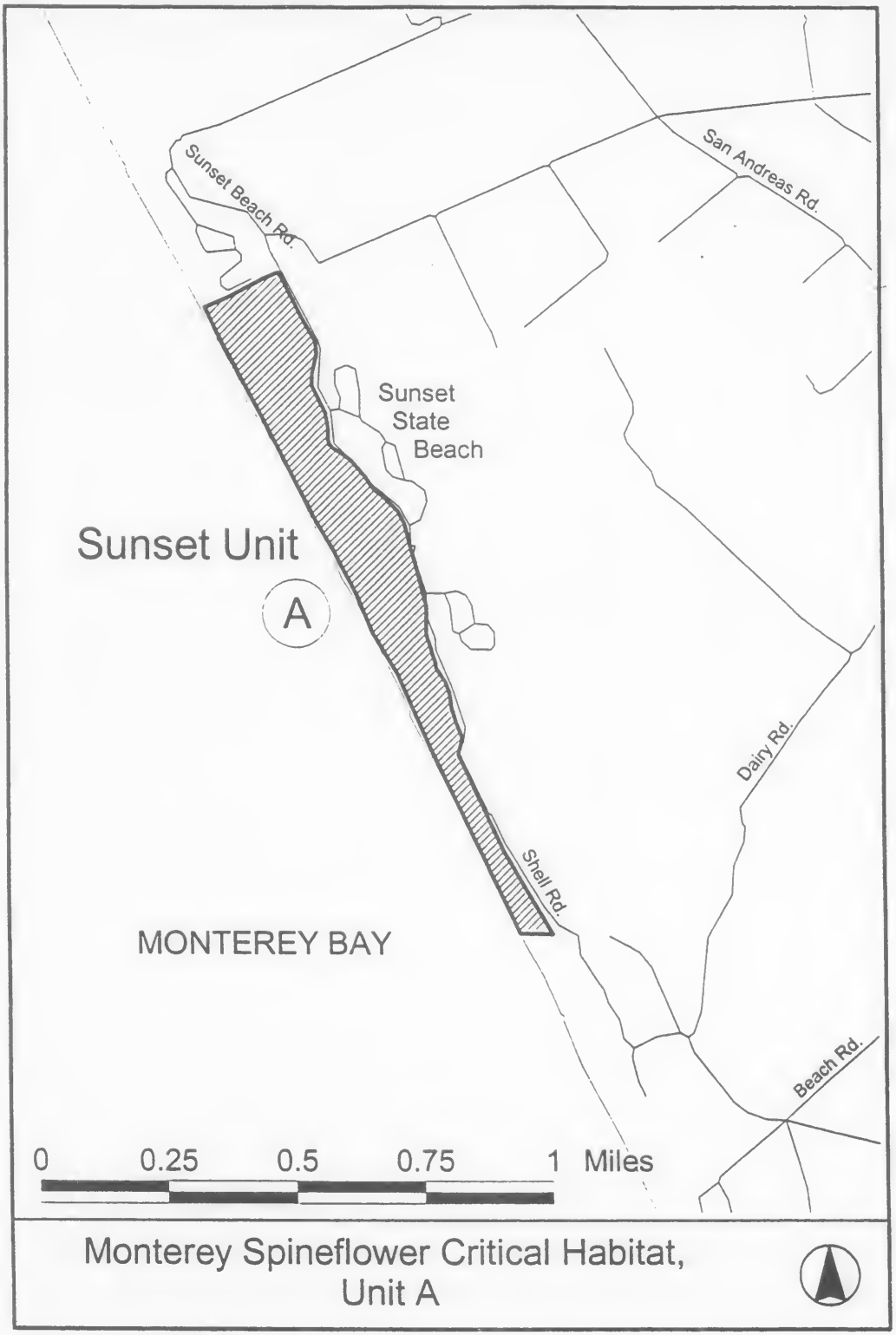


Monterey Spineflower Critical Habitat Units, Santa Cruz and Monterey Counties

(5) Unit A: *Sunset Unit.*

(i) Santa Cruz County, California. From USGS 1:24,000 quadrangle map Watsonville West, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 603772, 4083610; 603885, 4083680; 603931, 4083700; 604008, 4083560; 604053, 4083490; 604059, 4083450; 604054, 4083420; 604045, 4083380; 604045, 4083350; 604080, 4083290; 604092, 4083270; 604102, 4083220; 604103, 4083180; 604109, 4083160; 604122, 4083150; 604149, 4083140; 604176, 4083120; 604202, 4083090; 604224, 4083060; 604243, 4083040; 604256, 4083020; 604279, 4083000; 604303, 4082980; 604328, 4082960; 604349, 4082920; 604373, 4082840; 604386, 4082800; 604412, 4082710; 604424, 4082670; 604425, 4082640; 604425, 4082610; 604426, 4082580; 604443, 4082530; 604449, 4082510; 604457, 4082490; 604460, 4082470; 604480, 4082440; 604492, 4082430; 604504, 4082400; 604512, 4082350; 604530, 4082300; 604546, 4082260; 604547, 4082250; 604536, 4082200; 604688, 4081900; 604847, 4081650; 604743, 4081650; 604613, 4081900; 604539, 4082040; 604449, 4082220; 604338, 4082450; 604258, 4082580; 604205, 4082690; 604132, 4082830; 604076, 4082910; 603987, 4083070; 603871, 4083280; 603804, 4083400; 603755, 4083480; 603700, 4083580; 603772, 4083610.

(ii) Map Unit A follows:



(6) Unit B: *Moss Landing Unit.* Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Moss Landing, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 608197, 4072970;

608305, 4072940; 608361, 4072820; 608468, 4072510; 608077, 4072480; 608070, 4072540; 608067, 4072620; 608090, 4072700; 608121, 4072800; 608163, 4072870; 608184, 4072900; 608193, 4072950; 608195, 4072970; 608197, 4072970.

608089, 4073400; 608023, 4073250; 607963, 4073120; 607937, 4073090; 607914, 4073020; 607895, 4072920; 607866, 4072860; 607858, 4072820; 607818, 4072630; 607783, 4072470; 607787, 4072360; 607718, 4072180; 607663, 4071930; 607624, 4071730; 607616, 4071620; 607625, 4071340; 607619, 4071290; 607625, 4071220; 607605, 4071170; 607597, 4071140; 607592, 4071100; 607574, 4071040; 607576, 4071020; 607601, 4071010; 607646, 4071000; 607672, 4070970; 607692, 4070940; 607656, 4070840; 607654, 4070820; 607679, 4070780; 607679, 4070750; 607677, 4070720; 607684, 4070700; 607710, 4070670; 607733, 4070590; 607745, 4070550; 607696, 4070510; 607748, 4070450; 607742, 4070410; 607719, 4070370; 607607, 4070320; 607557, 4070300; 607535, 4070280; 607537, 4070230; 607574, 4070150; 607574, 4070130; 607561, 4070120; 607552, 4070110; 607554, 4070100; 607566, 4070080; 607572, 4070050; 607545, 4070020; 607521, 4070010; 607512, 4070000; 607504, 4069980; 607463, 4069770; 607435, 4069720; 607418, 4069670; 607402, 4069610; 607338, 4069610; 607338, 4069360; 607333, 4069350; 607322, 4069320; 607316, 4069290; 607313, 4069280; 607314, 4069270; 607317, 4069260; 607316, 4069240; 607314, 4069210; 607298, 4069170; 607287, 4069160; 607282, 4069140; 607283, 4069120; 607278, 4069110; 607268, 4069100; 607254, 4069090; 607219, 4069090; 607198, 4069020; 607178, 4068970; 607175, 4068850; 607161, 4068800; 607131, 4068770; 607135, 4068750; 607177, 4068720; 607191, 4068690; 607189, 4068650; 607175, 4068620; 607164, 4068610; 607130, 4068620; 607100, 4068630; 607045, 4068660; 607022, 4068650; 607002, 4068620; 606988, 4068540; 606945, 4068540; 606932, 4068590; 606920, 4068600; 606901, 4068600; 606893, 4068580; 606886, 4068540; 606828, 4068540; 606852, 4068630; 606870, 4068710; 606900, 4068790; 606931, 4068860; 606992, 4069040; 607031, 4069240; 607093, 4069730; 607101, 4069810; 607111, 4069870; 607152, 4070020; 607180, 4070130; 607212, 4070210; 607230, 4070260; 607233, 4070300; 607228, 4070370; 607262, 4070540; 607310, 4070740; 607328, 4070900; 607348, 4071020; 607384, 4071160; 607406, 4071270; 607464, 4071520; 607513, 4071710; 607592, 4072020; 607717, 4072510; 607772, 4072780; 607849, 4073030; 608016, 4073440; 608089, 4073400.

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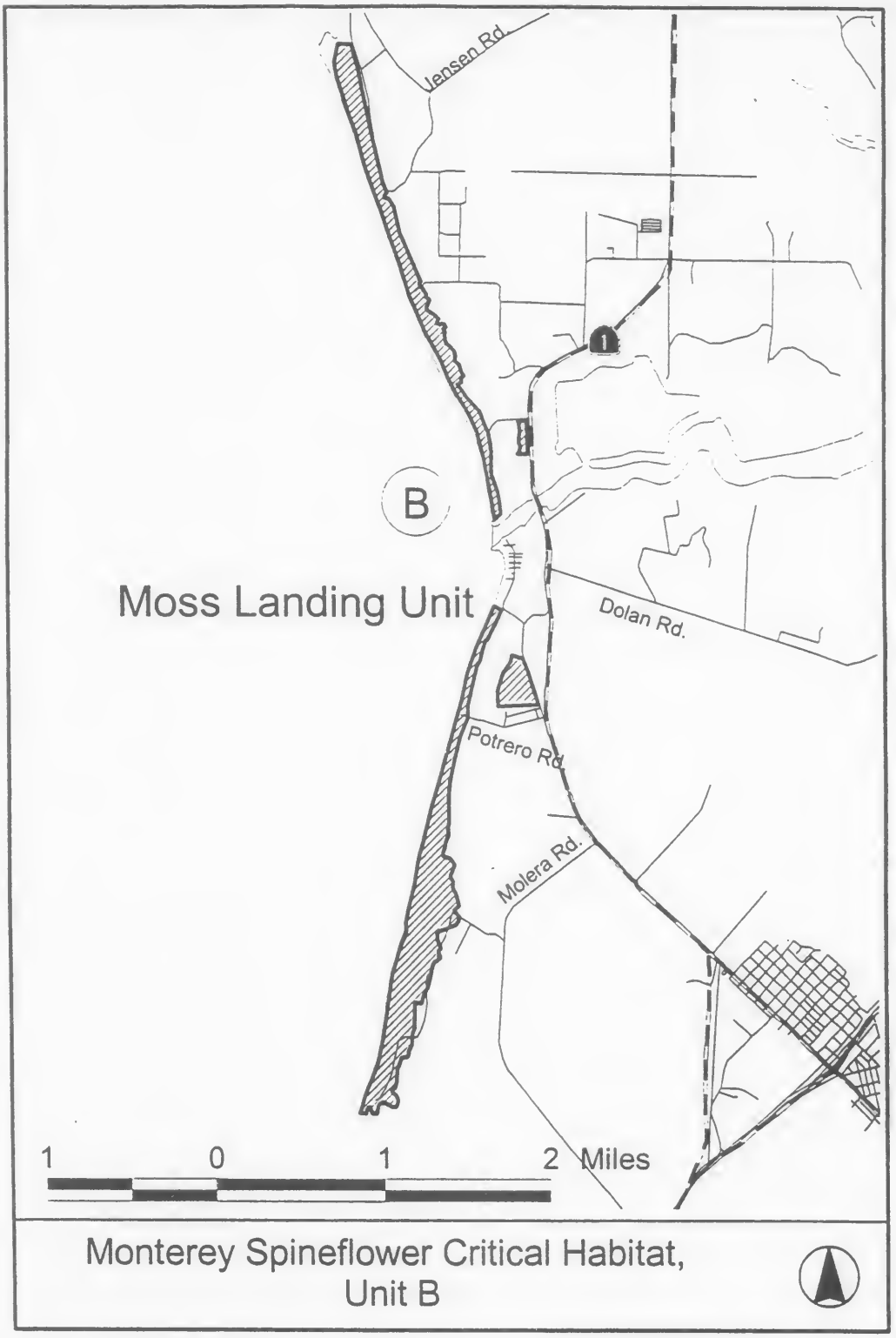
(ii) Map Unit B follows.



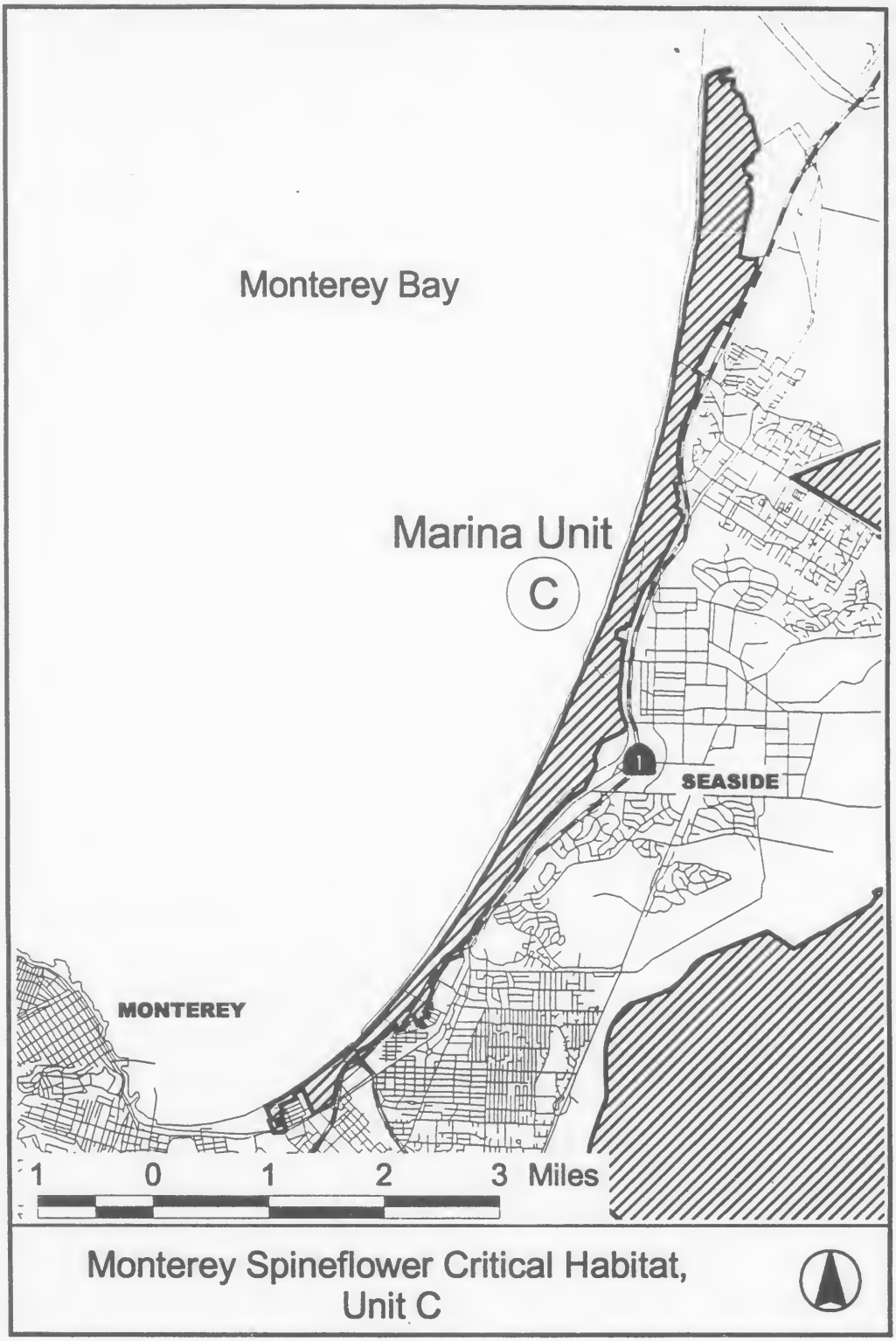
(7) Unit C: *Marina Unit.* Monterey County, California

(i) From USGS 1:24,000 quadrangle maps Marina and Seaside, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 606623,

4066060; 606685, 4066120; 606740, 4066150; 606840, 4066180; 606929, 4066210; 606953, 4066170; 606872, 4066140; 606843, 4066090; 606826, 4066070; 606821, 4066050; 606832, 4066030; 606860, 4066040; 606932, 4066060; 606996, 4066060; 607007, 4066010; 606975, 4065980; 607007, 4065920; 607031, 4065890; 607075, 4065860; 607120, 4065830; 607161, 4065710; 607174, 4065610; 607212, 4065570; 607269, 4065520; 607313, 4065340; 607326, 4065280; 607368, 4065180; 607374, 4065150; 607380, 4065110; 607368, 4065080; 607348, 4065070; 607318, 4065060; 607293, 4065030; 607304, 4064990; 607299, 4064960; 607287, 4064930; 607246, 4064920; 607225, 4064900; 607205, 4064880; 607184, 4064840; 607179, 4064820; 607181, 4064800; 607208, 4064770; 607227, 4064740; 607260, 4064740; 607286, 4064720; 607292, 4064700; 607286, 4064680; 607249, 4064660; 607232, 4064620; 607238, 4064590; 607274, 4064550; 607281, 4064540; 607294, 4064500; 607290, 4064460; 607289, 4064430; 607300, 4064410; 607301, 4064380; 607287, 4064360; 607279, 4064350; 607295, 4064280; 607293, 4064270; 607266, 4064200; 607240, 4064150; 607215, 4064010; 607213, 4063970; 607202, 4063910; 607164, 4063590; 607234, 4063570; 607298, 4063560; 607401, 4063570; 607397, 4063420; 607137, 4062840; 607089, 4062730; 607053, 4062640; 606957, 4062670; 606681, 4062190; 606671, 4062130; 606572, 4061990; 606653, 4061940; 606642, 4061780; 606595, 4061610; 606497, 4061370; 606456, 4061250; 606413, 4061090; 606388, 4060900; 606384, 4060750; 606390, 4060630; 606431, 4060410; 606349, 4060380; 606397, 4060190; 606398, 4060150; 606392, 4060110; 606370, 4060070; 606443, 4060020; 606446, 4059960; 606490, 4059930; 606225, 4059380; 606149, 4059230; 606099, 4059150; 606046, 4059050; 605974, 4058940; 605942, 4058880; 605907, 4058790; 605865, 4058670; 605824, 4058530; 605779, 4058390; 605739, 4058410; 605709, 4058350; 605679, 4058360; 605597, 4058300; 605587, 4058210; 605728, 4058160; 605683, 4058030; 605674, 4057900; 605679, 4057760; 605681, 4057670; 605667, 4057540; 605662, 4057410; 605671, 4057320; 605690, 4057220; 605712, 4057150; 605763, 4057020; 605768, 4056980; 605756, 4056940; 605731, 4056910; 605601, 4056830; 605457, 4056770; 605429, 4056740; 605335, 4056560; 605360, 4056450; 605361, 4056420; 605356, 4056390; 605232, 4056160; 605223, 4056120; 605212, 4056090; 605153, 4056050; 604951, 4055890; 604786, 4055710; 604498, 4055350; 604397, 4055200; 604345, 4055090; 604323, 4055020; 604293, 4054950; 604254, 4054900; 604077, 4054660; 604008, 4054570; 603934, 4054470; 603914, 4054400; 603758, 4054200; 603736, 4054150; 603698, 4054070; 603648, 4053990; 603594, 4053910; 603545, 4053860; 603543, 4053710; 603498, 4053700; 603401, 4053660; 603364, 4053640; 603320, 4053600; 603335, 4053580; 603290, 4053540; 603222, 4053420; 603152, 4053260; 603158, 4053210; 603102, 4053060; 603149, 4052990; 603150, 4052980; 603147, 4052960; 603096, 4052990; 603056, 4052910; 603119, 4052890; 603105, 4052840; 603074, 4052850; 603067, 4052850; 603003, 4052800; 603039, 4052740; 603049, 4052710; 603024, 4052700; 602999, 4052730; 602963, 4052720; 602914, 4052830; 602871, 4052850; 602845, 4052860; 602780, 4052760; 602806, 4052750; 602770, 4052660; 602671, 4052640; 602659, 4052690; 602611, 4052730; 602425, 4052530; 602326, 4052440; 602248, 4052390; 602163, 4052350; 602134, 4052330; 602131, 4052280; 602065, 4052230; 602006, 4052170; 601945, 4052080; 601903, 4052010; 601880, 4051960; 601861, 4051890; 601842, 4051810; 601833, 4051730; 601832, 4051700; 601826, 4051670; 601818, 4051630; 601800, 4051600; 601772, 4051570; 601736, 4051550; 601632, 4051500; 601544, 4051450; 601498, 4051530; 601380, 4051790; 601263, 4051720; 601295, 4051660; 601075, 4051550; 601119, 4051460; 601083, 4051440; 601110, 4051380; 601022, 4051340; 601052, 4051270; 601127, 4051300; 601153, 4051260; 601146, 4051250; 601164, 4051210; 601133, 4051180; 601087, 4051180; 601052, 4051180; 600882, 4051530; 601085, 4051640; 601525, 4051960; 602083, 4052410; 602477, 4052860; 602681, 4053110; 602837, 4053320; 603008, 4053530; 603222, 4053820; 603487, 4054230; 603693, 4054580; 603944, 4055020; 604173, 4055500; 604253, 4055650; 604429, 4056020; 604655, 4056510; 604819, 4056880; 605042, 4057450; 605354, 4058250; 605467, 4058540; 605565, 4058850; 605709, 4059360; 605837, 4059750; 605918, 4060030; 605986, 4060400; 606155, 4061060; 606243, 4061540; 606282, 4061740; 606323, 4062140; 606374, 4062470; 606411, 4062640; 606421, 4062850; 606470, 4063150; 606518, 4063360; 606541, 4063510; 606538, 4063630; 606570, 4063740; 606614, 4064230; 606601, 4064690; 606602, 4065090; 606621, 4065500; 606623, 4066060.

(ii) Excluding lands bounded by: 604634, 4056280; 604620, 4056260; 604616, 4056260; 604611, 4056230; 604611, 4056230; 604612, 4056220; 604618, 4056210; 604626, 4056200; 604632, 4056190; 604633, 4056180; 604631, 4056170; 604626, 4056160; 604616, 4056150; 604608, 4056140; 604603, 4056130; 604601, 4056120; 604602, 4056100; 604603, 4056090; 604599, 4056080; 604593, 4056080; 604579, 4056080; 604571, 4056080; 604559, 4056080; 604539, 4056090; 604530, 4056090; 604523, 4056090; 604516, 4056080; 604514, 4056070; 604514, 4056070; 604519, 4056050; 604526, 4056030; 604528, 4056010; 604526, 4056010; 604522, 4056000; 604517, 4055990; 604501, 4055980; 604491, 4055980; 604479, 4055970; 604467, 4055960; 604459, 4055940; 604456, 4055930; 604450, 4055920; 604443, 4055910; 604423, 4055890; 604420, 4055880; 604422, 4055870; 604427, 4055850; 604438, 4055850; 604451, 4055850; 604473, 4055860; 604484, 4055860; 604498, 4055870; 604510, 4055890; 604524, 4055910; 604537, 4055920; 604560, 4055940; 604578, 4055950; 604613, 4055970; 604651, 4056000; 604697, 4056070; 604723, 4056120; 604729, 4056140; 604733, 4056160; 604736, 4056180; 604730, 4056240; 604724, 4056270; 604710, 4056290; 604702, 4056300; 604676, 4056300; 604653, 4056300; 604634, 4056280.

(iii) Map Unit C follows.

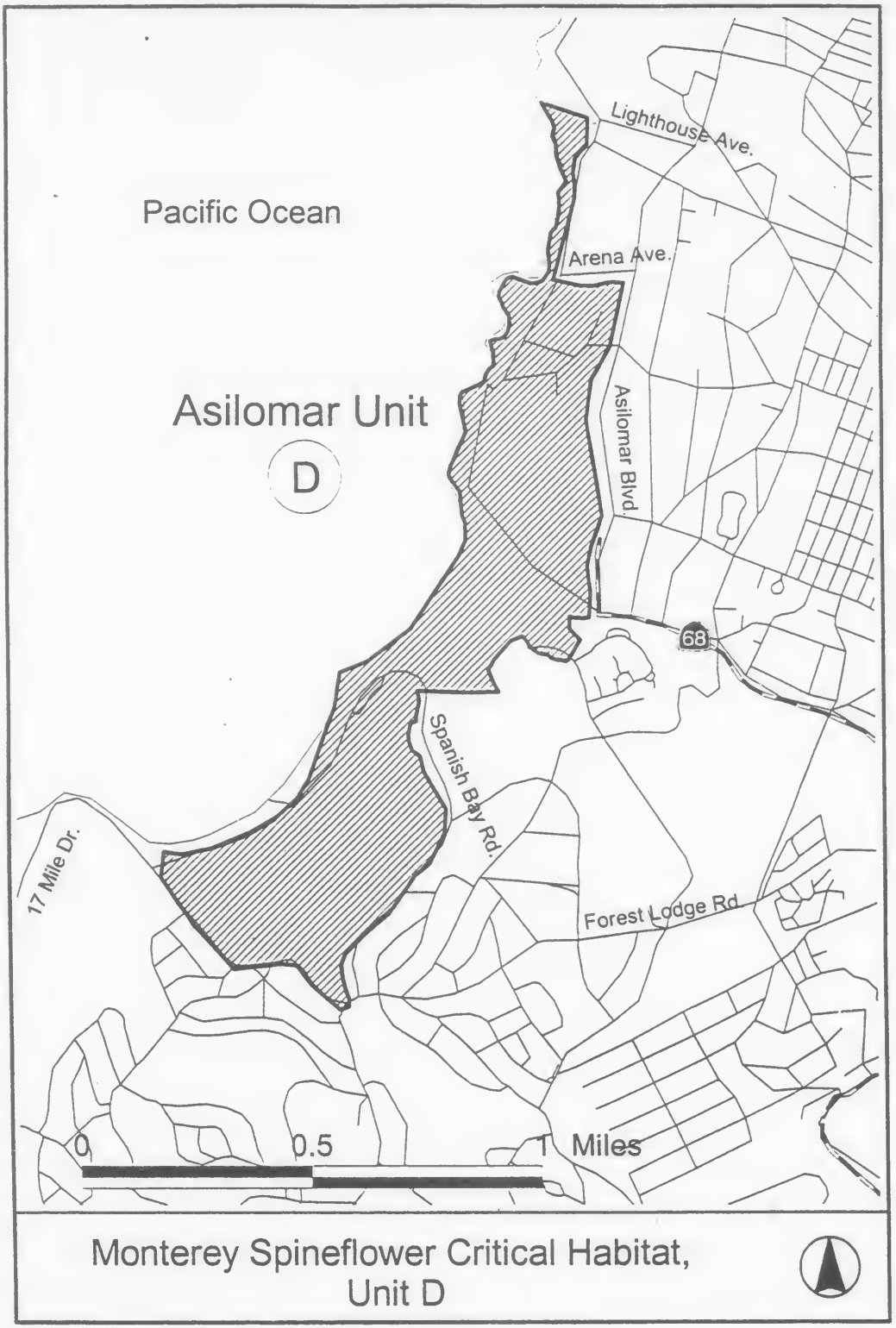


(8) Unit D: *Asilomar Unit.* Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Monterey, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 594965, 4054010;

595058, 4053990; 595108, 4054000; 595134, 4054000; 595161, 4054010; 595209, 4054010; 595169, 4053780; 595109, 4053660; 595094, 4053520; 595130, 4053330; 595156, 4053180; 595123, 4053070; 595110, 4053000; 595124, 4052910; 595121, 4052820; 595106, 4052820; 595073, 4052820; 595052, 4052830; 595053, 4052780; 595092, 4052740; 595058, 4052680; 595056, 4052670; 595044, 4052670; 595037, 4052670; 595025, 4052670; 595018, 4052670; 595009, 4052670; 594992, 4052680; 594980, 4052690; 594972, 4052690; 594959, 4052690; 594945, 4052690; 594937, 4052700; 594919, 4052710; 594910, 4052730; 594890, 4052750; 594850, 4052730; 594804, 4052680; 594791, 4052660; 594784, 4052650; 594773, 4052630; 594792, 4052590; 594811, 4052550; 594694, 4052540; 594526, 4052550; 594534, 4052510; 594523, 4052450; 594524, 4052440; 594509, 4052430; 594504, 4052420; 594498, 4052390; 594501, 4052370; 594514, 4052340; 594541, 4052320; 594555, 4052270; 594635, 4052140; 594632, 4052050; 594582, 4051940; 594530, 4051900; 594505, 4051850; 594455, 4051780; 594397, 4051730; 594293, 4051610; 594279, 4051580; 594283, 4051540; 594293, 4051500; 594310, 4051460; 594308, 4051430; 594279, 4051420; 594177, 4051500; 594123, 4051570; 594062, 4051570; 593904, 4051550; 593762, 4051690; 593643, 4051860; 593651, 4051950; 593714, 4051950; 593821, 4051970; 593939, 4052020; 594032, 4052080; 594113, 4052160; 594152, 4052220; 594236, 4052480; 594251, 4052600; 594348, 4052640; 594497, 4052770; 594662, 4053030; 594680, 4053080; 594680, 4053140; 594667, 4053170; 594658, 4053250; 594618, 4053310; 594619, 4053330; 594673, 4053460; 594648, 4053560; 594648, 4053580; 594655, 4053600; 594727, 4053640; 594734, 4053640; 594740, 4053670; 594751, 4053690; 594765, 4053700; 594763, 4053750; 594755, 4053770; 594750, 4053790; 594766, 4053800; 594788, 4053800; 594800, 4053810; 594811, 4053820; 594817, 4053850; 594813, 4053880; 594795, 4053910; 594788, 4053930; 594776, 4053950; 594778, 4053960; 594784, 4053980; 594798, 4054000; 594807, 4054010; 594822, 4054020; 594862, 4054000; 594883, 4054000; 594906, 4054000; 594928, 4054010; 594949, 4054040; 594950, 4054060; 594944, 4054110; 594952, 4054170; 594968, 4054190; 594979, 4054240; 594977, 4054290; 594972, 4054310; 595001, 4054350; 594980, 4054390; 594962, 4054440; 594960, 4054480; 594946, 4054510; 594953, 4054540; 594944, 4054560; 594905, 4054620; 595068, 4054580; 595069, 4054560; 595069, 4054480; 595048, 4054460; 595028, 4054430; 595022, 4054380; 595028, 4054350; 595032, 4054330; 595029, 4054290; 594965, 4054010.

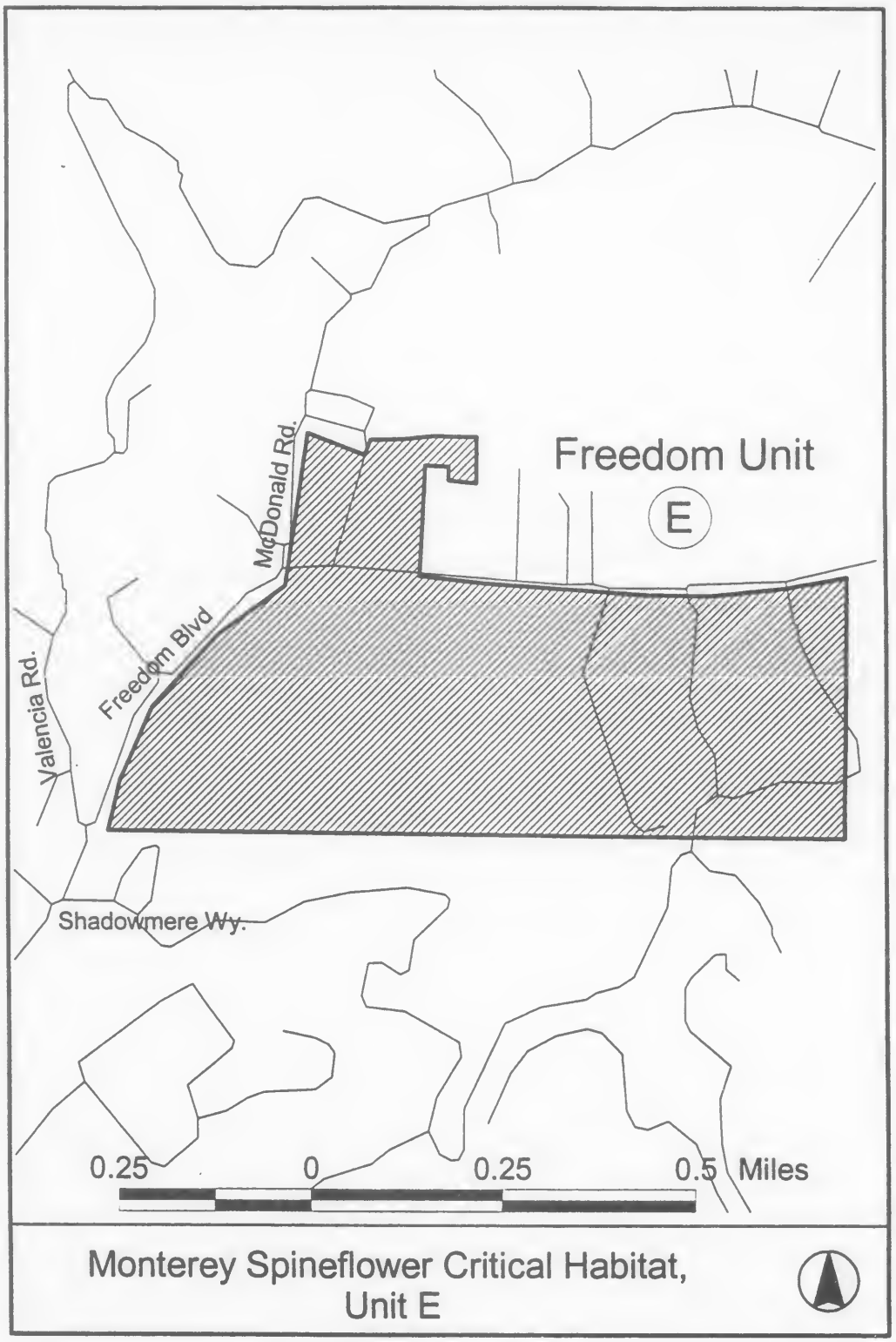
(ii) Map Unit D follows.


Lighthouse Ave.
Pacific Ocean
Arena Ave.
Asilomar Unit
D
Asilomar Blvd.
68
Spanish Bay Rd.
17 Mile Dr.
Forest Lodge Rd
0
0.5
1 Miles
Monterey Spineflower Critical Habitat,
Unit D

(9) Unit E: *Freedom Boulevard Unit.* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Watsonville West, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 601095, 4093430; 601117, 4093530; 601180, 4093690; 601315, 4093840; 601452, 4093950; 601490, 4094270; 601612, 4094230; 601623, 4094260; 601689, 4094260; 601755, 4094270; 601845, 4094270; 601848, 4094180; 601789, 4094180; 601789, 4094210; 601740, 4094210; 601735, 4093980; 601871, 4093970; 602214, 4093960; 602341, 4093960; 602500, 4093980; 602626, 4094000; 602637, 4093460; 601095, 4093430.

(ii) Map Unit E follows.

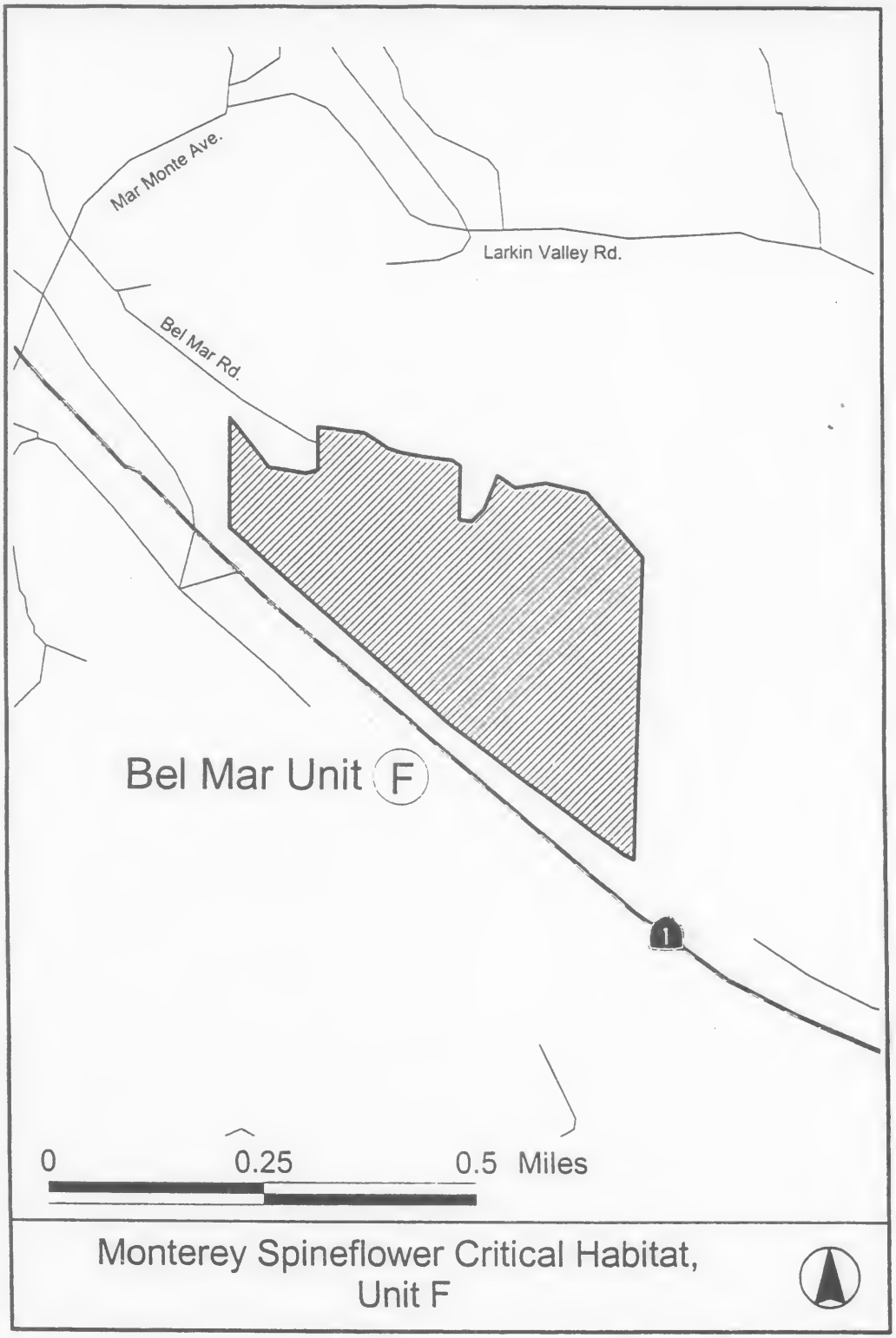


(10) Unit F: *Bel Mar unit.* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Watsonville West, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 602688, 4089780;

602766, 4089690; 602836, 4089680; 602858, 4089690; 602855, 4089770; 602944, 4089760; 602971, 4089740; 602991, 4089730; 603014, 4089730; 603059, 4089720; 603114, 4089710; 603129, 4089700; 603130, 4089600; 603154, 4089600; 603177, 4089630; 603201, 4089690; 603236, 4089670; 603292, 4089680; 603373, 4089660; 603481, 4089550; 603476, 4088970; 603457, 4088980; 603120, 4089220; 602693, 4089570; 602688, 4089780.

(ii) Map Unit F follows.



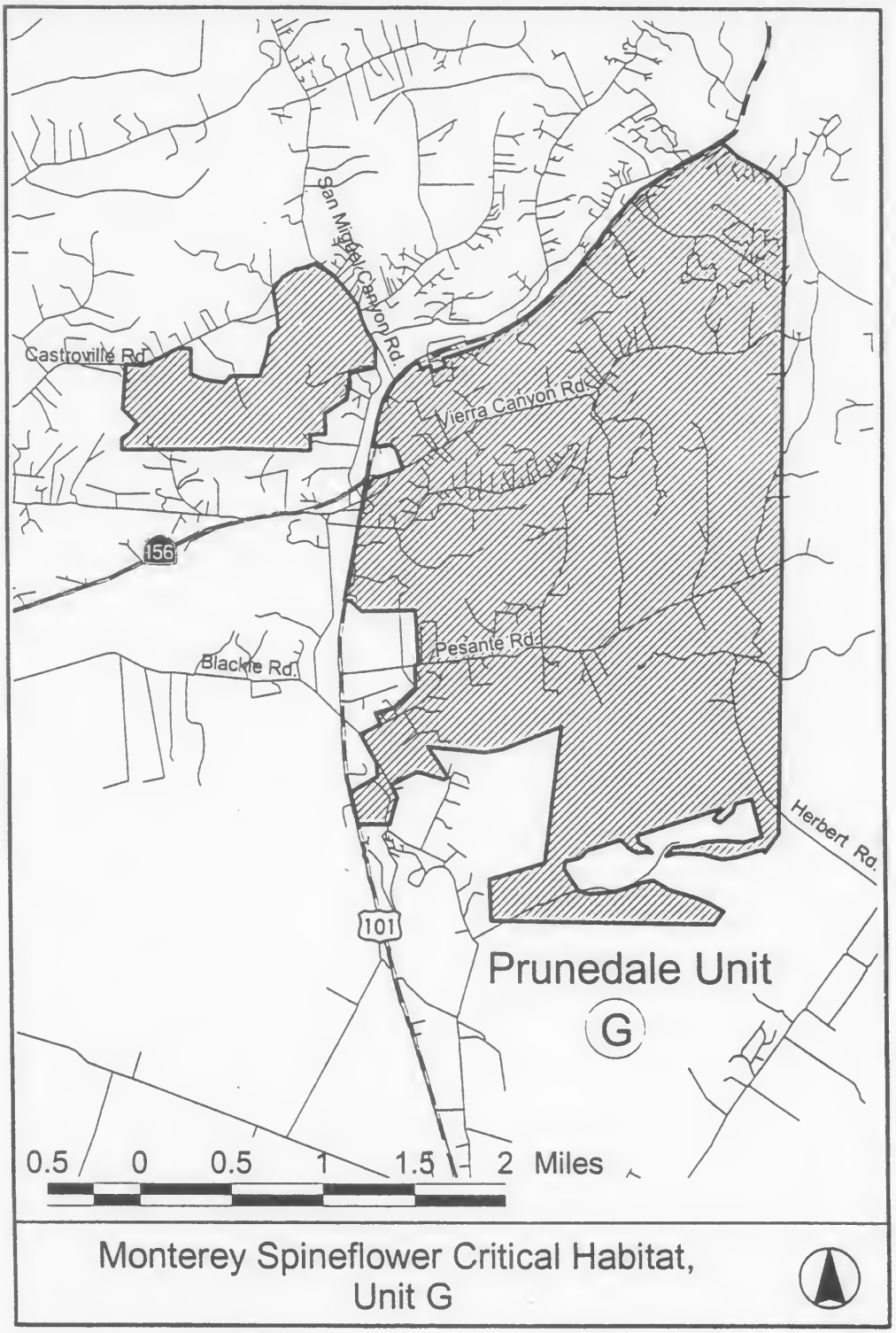
Monterey Spineflower Critical Habitat, Unit F

(11) Unit G: *Prunedale Unit*. Monterey County, California. From USGS 7.5′ quadrangle map Prunedale, California.

(i) From USGS 1:24,000 quadrangle map Prunedale, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N). Western portion: 618343, 4074370; 618464, 4074420; 618606, 4074310; 618731, 4074180; 618828, 4074060; 618863, 4073950; 618915, 4073840; 618988, 4073730; 618993, 4073540; 618770, 4073470; 618751, 4073250; 618562, 4073110; 618572, 4072940; 618441, 4072930; 618443, 4072790; 618391, 4072780; 618346, 4072790; 618096, 4072780; 617914, 4072790; 617680, 4072780; 617591, 4072770; 616784, 4072740; 616781, 4072840; 616855, 4072890; 616906, 4072970; 616780, 4073090; 616783, 4073170; 616796, 4073480; 616951, 4073470; 617265, 4073640; 617366, 4073630; 617373, 4073410; 617490, 4073370; 617670, 4073350; 617722, 4073410; 617785, 4073420; 617979, 4073420; 618035, 4073600; 618057, 4073760; 618132, 4073840; 618119, 4073960; 618076, 4074170; 618162, 4074290; 618279, 4074360; 618343, 4074370.

(ii) Eastern Portion: 619646, 4070100; 619725, 4069980; 619688, 4069950; 619448, 4070010; 619226, 4069890; 619285, 4069780; 619266, 4069740; 619221, 4069550; 618942, 4069540; 618864, 4069810; 619102, 4069960; 619089, 4070090; 618943, 4070330; 619120, 4070420; 619071, 4070520; 619240, 4070570; 619422, 4070750; 619410, 4070950; 619442, 4070960; 619414, 4071320; 619402, 4071420; 618929, 4071400; 618825, 4071490; 618773, 4071490; 618871, 4072100; 618932, 4072480; 618960, 4072480; 618970, 4072520; 618989, 4072550; 619018, 4072580; 619091, 4072600; 619147, 4072610; 619263, 4072660; 619257, 4072680; 619212, 4072790; 619196, 4072830; 619158, 4072860; 619117, 4072860; 619072, 4072850; 618989, 4072850; 619011, 4073000; 619072, 4073250; 619138, 4073380; 619266, 4073530; 619365, 4073610; 619404, 4073530; 619483, 4073570; 619496, 4073510; 619614, 4073560; 619593, 4073630; 619905, 4073740; 619988, 4073780; 620028, 4073800; 620030, 4073820; 620125, 4073880; 620280, 4073980; 620392, 4074080; 620700, 4074380; 620956, 4074720; 621042, 4074860; 621284, 4075150; 621644, 4075400; 621980, 4075590; 622139, 4075460; 622413, 4075320; 622539, 4075210; 622554, 4074580; 622555, 4074040; 622576, 4072770; 622598, 4072010; 622602, 4071520; 622604, 4071130; 622618, 4069970; 622622, 4069580; 622509, 4069410; 622491, 4069430; 622428, 4069420; 622272, 4069360; 622140, 4069340; 621971, 4069380; 621770, 4069380; 621656, 4069350; 621720, 4069430; 621910, 4069460; 621983, 4069490; 622131, 4069500; 622325, 4069500; 622479, 4069550; 622386, 4069880; 622252, 4069830; 622227, 4069760; 622117, 4069660; 622063, 4069690; 622126, 4069780; 621657, 4069620; 621403, 4069520; 621423, 4069460; 621496, 4069420; 621536, 4069380; 621474, 4069380; 621404, 4069370; 621329, 4069410; 621258, 4069480; 620978, 4069380; 620900, 4069310; 620782, 4069280; 620768, 4069210; 620901, 4069030; 620986, 4069000; 621230, 4069030; 621485, 4069120; 621551, 4069140; 621693, 4069060; 621916, 4069000; 622049, 4068950; 622163, 4068890; 622089, 4068770; 620954, 4068750; 620129, 4068740; 620111, 4069100; 620598, 4069260; 620719, 4070460; 620207, 4070240; 620044, 4070200; 619538, 4070240; 619646, 4070100.

(iii) Map Unit G follows.



(12) Unit H: *Fort Ord Unit:* Monterey County, California.

(i) From USGS 1:24,000 quadrangle maps Marina, Salinas, Seaside, and Spreckels, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 609722, 4059410; 610035, 4059230; 610010, 4059190;

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Excluding lands bounded by: 611939, 4057140; 611960, 4057140; 611959, 4057160; 611938, 4057160; 611939, 4057140.

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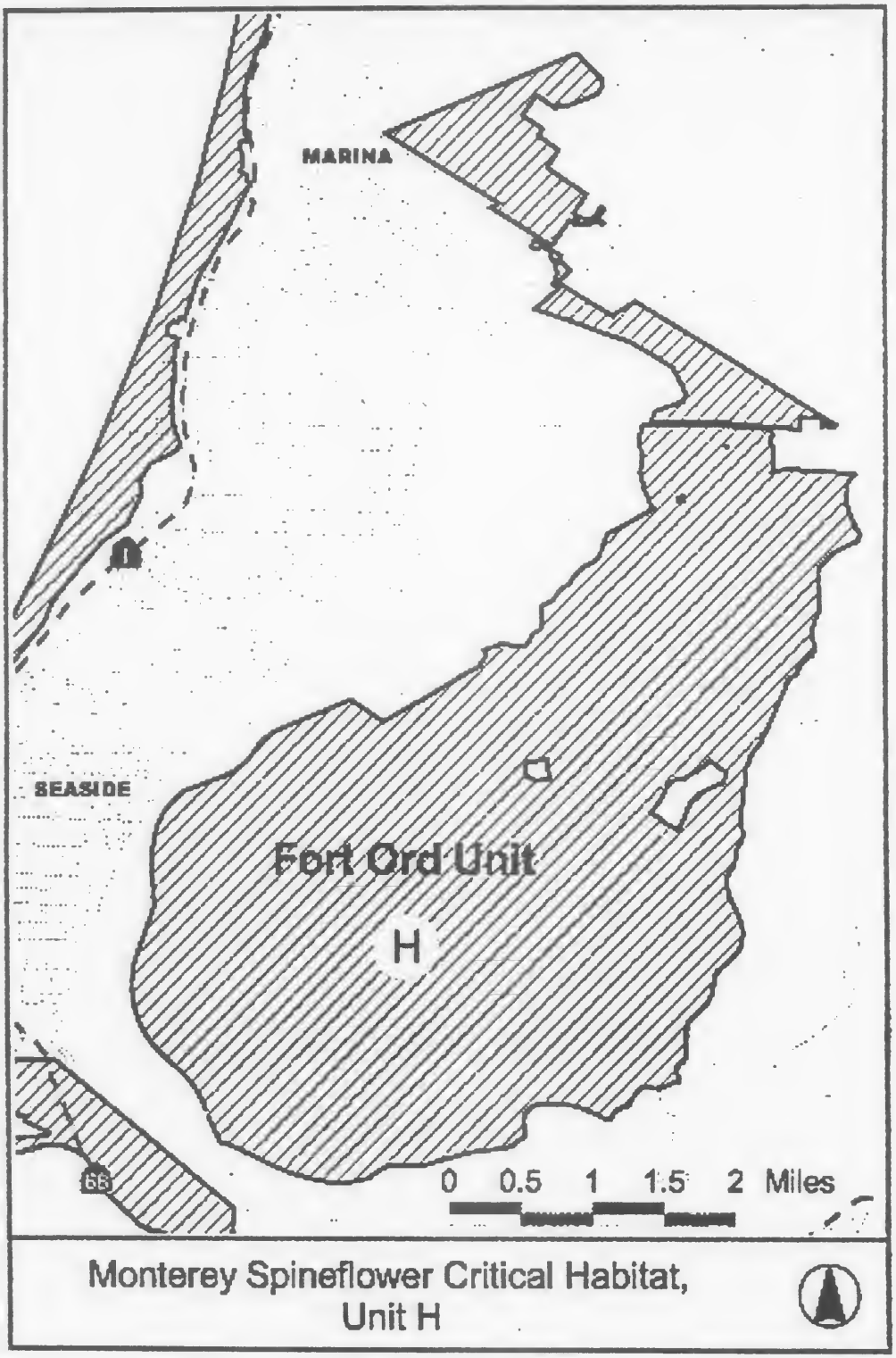
(iii) Map Unit H follows.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SEASIDE
Fort Ord Unit
H
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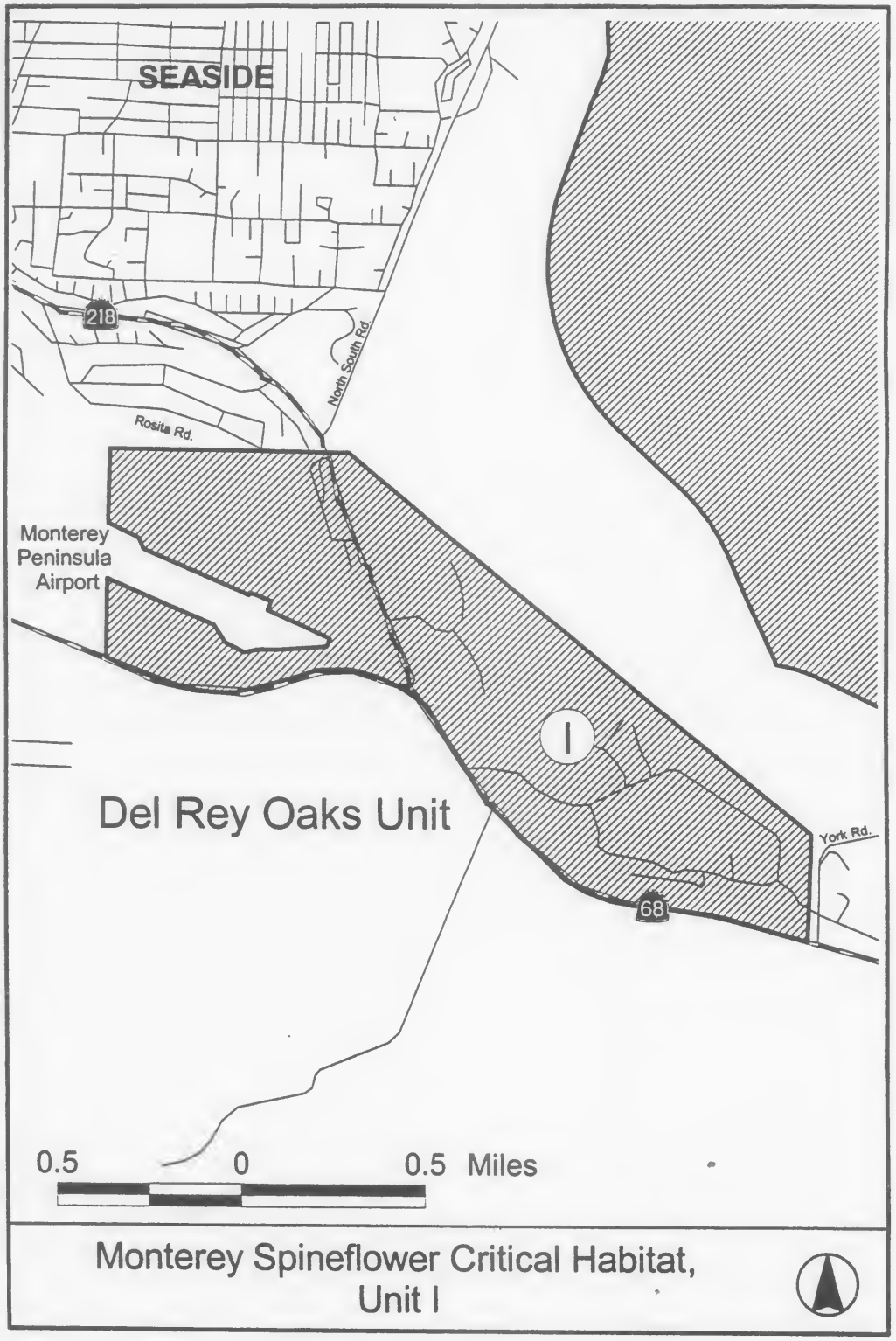
Monterey Spineflower Critical Habitat,
Unit H

(13) Unit I: *Del Rey Oaks Unit.* Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Seaside lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 603516, 4050050; 604562, 4050070; 606616, 4048490; 606612, 4048020; 606317, 4048090; 606197, 4048120; 606101, 4048130; 605982, 4048140; 605862, 4048150; 605758, 4048170; 605649, 4048200; 605557, 4048250; 605206, 4048580; 604937, 4048980; 604820, 4049060; 604710, 4049100; 604599, 4049130; 604457, 4049120; 604340, 4049080; 604209, 4049040; 604094, 4049010; 604000, 4049010; 603918, 4049020; 603802, 4049040; 603692, 4049080; 603525, 4049140; 603521, 4049490; 603993, 4049300; 604045, 4049220; 604128, 4049190; 604195, 4049200; 604280, 4049200; 604377, 4049210; 604452, 4049220; 604491, 4049220; 604502, 4049260; 604228, 4049370; 604242, 4049410; 604148, 4049450; 604143, 4049440; 603678, 4049620; 603655, 4049670; 603519, 4049730; 603516, 4050050.

(ii) Map Unit I follows.


SEASIDE
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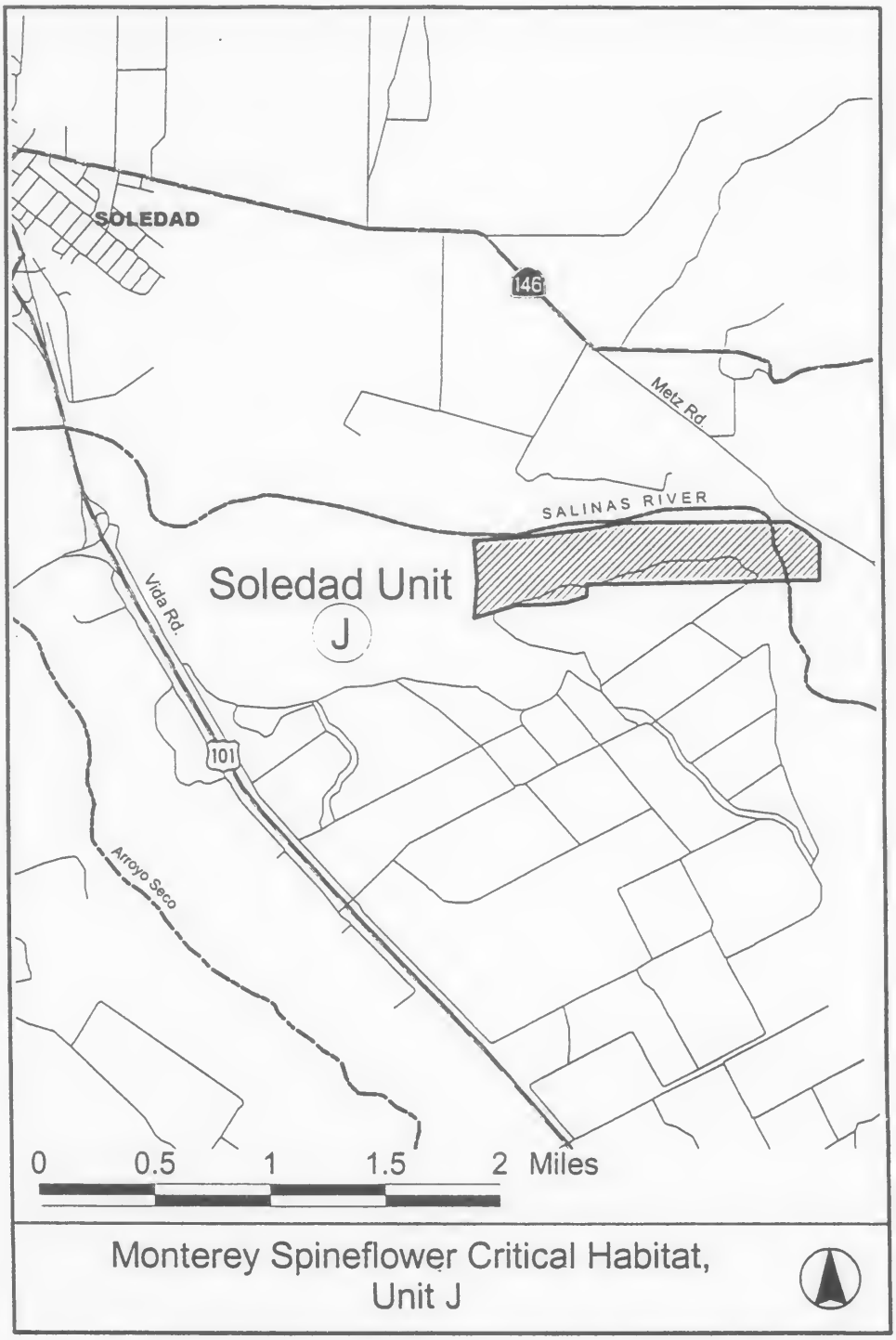
North South Rd
Rosita Rd.
Monterey
Peninsula
Airport
I
Del Rey Oaks Unit
York Rd.
68
0.5 0 0.5 Miles
Monterey Spineflower Critical Habitat,
Unit I

(14) Unit J: *Soledad Unit.* Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Soledad, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 653580, 4030090; 653997, 4030130; 654337, 4030190; 654644, 4030250; 655780, 4030290; 655904, 4030220; 655999, 4030140; 655999, 4029880; 654381, 4029810; 654381, 4029730; 654236, 4029680; 654093, 4029660; 653886, 4029650; 653594, 4029550; 653609, 4029810; 653580, 4030090.

(ii) Map Unit J follows.



* * * * *

Dated: May 17, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–13065 Filed 5–28–02; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
May 29, 2002

Part IV

Environmental Protection Agency

40 CFR Part 94

Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 30 Liters/Cylinder; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 94

[AMS–FRL–7207–3]

RIN 2060–AJ98

Control of Emissions of Air Pollution from New Marine Compression-Ignition Engines At or Above 30 Liters/Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, we are proposing emission standards for new marine diesel engines at or above 30 liters per cylinder and 2.5 to 30 liters per cylinder on U.S. vessels. Marine diesel engines at or above 30 liters per cylinder are very large marine engines used primarily for propulsion power on ocean-going vessels such as container ships, tankers, bulk carriers, and cruise ships. The vessels that use these engines are flagged in the United States and in other countries. Nationwide, these engines contribute to ozone and carbon monoxide nonattainment and to ambient particulate matter levels, particularly in commercial ports and along coastal areas.

We are proposing emission controls for these engines at or above 30 liters per cylinder on U.S. vessels. We are proposing a first tier that is equivalent to the internationally negotiated oxides of nitrogen standards and would be enforceable under U.S. law for new engines built in 2004 and later. We are also considering adoption of a subsequent second tier of standards, which would reflect additional reductions that can be achieved through engine-based controls, and would apply to new engines built after 2006 or later. In addition, we are proposing voluntary low-emission engine standards that reflect advanced oxides of nitrogen emission-control technologies. Meeting these standards would likely require the use of technologies such as selective catalyst reduction or fuel cells. If the second tier is promulgated, we would review the second tier standards prior to their effective date to take into consideration continued development of new technologies, such as selective catalyst reduction and water-based emission reduction techniques, and international activity such as action at the International Maritime Organization to set more stringent international standards. Consistent with these factors, EPA is also considering not adopting Tier 2 standards in this rulemaking, and instead establishing a schedule for a future rulemaking and addressing Tier 2 standards in that future rulemaking.

Emissions from all marine diesel engines at or above 30 liters per cylinder, regardless of flag of registry, currently account for about 1.5 percent of national mobile source oxides of nitrogen emissions. This contribution can be significantly higher on a port-specific basis (5 to 25 percent of mobile source emissions in certain key ports by the year 2020). The standards discussed in this notice, which would apply only to new engines on U.S. flag vessels, are expected to reduce these national emissions by about 11 percent by 2030.

The contribution of these engines to national mobile source hydrocarbon and carbon monoxide inventories is small, less than 0.1 percent, and we are considering standards to ensure that these emissions do not increase on a engine-specific basis. The contribution of these engines to the national mobile source particulate matter inventory is about 2.6 percent. Reductions in particulate emissions could be obtained from setting a sulfur content standard for the fuels that are used by these engines, and we request comment on whether we should adopt such standards and, if so, the level of sulfur that should be allowed.

We are also proposing new requirements for engines at or above 2.5 liters per cylinder but less than 30 liters per cylinder. The Tier 2 standards finalized for these engines in our 1999 commercial marine diesel engine rule apply beginning in 2007. Until then, engine manufacturers are encouraged to voluntarily comply with the Tier 1 standards, which are equivalent to the internationally negotiated NO_x standards. The international NO_x standards are not yet enforceable. Given that they have not yet entered into force, we believe it is appropriate to begin to require engine manufacturers to certify these engines to the Tier 1 standards, starting in 2004. We are also proposing to eliminate the foreign trade exemption for all marine diesel engines, which was available for engines installed on vessels that spend less than 25 percent of total operating time with 320 kilometers of U.S. territory.

The proposed standards would apply to engines installed on vessels flagged in the United States. Recognizing that foreign-flag vessels constitute a significant portion of emissions from these engines, we are seeking comment on whether the proposed standards and existing Category 1 and Category 2 standards should also apply to marine engines on foreign vessels entering U.S. ports and to no longer exclude such foreign vessels from the emission standards. If we were to determine that the standards should apply to engines on foreign vessels that enter U.S. ports, then all emission standards for marine diesel engines would apply, including those we finalized for marine diesel engines less than 30 liters per cylinder in our 1999 rule.

DATES: *Comments:* Send written comments on this proposed rule by July 16, 2002. See Section IX.A of **SUPPLEMENTARY INFORMATION** for more information about written comments.

Hearing: We will hold a public hearing on June 13, 2002 in Long Beach, California. See Section IX.B of **SUPPLEMENTARY INFORMATION** for more information about the public hearing.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by the date indicated under **DATES** above. Send paper copies of written comments (in duplicate, if possible) to the contact person listed below. You may also submit comments via e-mail to "*c3marine@epa.gov.*" In your correspondence, refer to Docket A–2001–11. See Section IX.A for more information on comment procedures.

Docket: EPA's Air Docket makes materials related to this rulemaking available for review in Public Docket A–2001–11 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500 (on the ground floor in Waterside Mall), 401 M Street, S.W., Washington, DC 20460 between 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202)260–7548, and by facsimile at (202)260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearing: We will hold a public hearing at the Hyatt Regency, 200 South Pine Avenue, Long Beach, California, 90802 (562) 491-1234. If you want to testify at the hearing, notify the contact person listed below at least ten days before the date of the hearing. See Section IX.B for more information on the public hearing procedures.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734)214–4334; Fax: (734)214–4816, E-mail: *borushko.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected Entities

This proposed action would affect companies and persons that manufacture, sell, or import into the

United States new marine compression-ignition engines for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners/operators of such U.S.-flag vessels. We are inviting comment on including foreign flagged vessels. Further requirements apply to companies and persons that rebuild or maintain these engines. Affected categories and entities include:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	333618	Manufacturers of new marine diesel engines.
Industry	336611	Manufacturers of marine vessels.
Industry	811310	Engine repair and maintenance.
Industry	483	Water transportation, freight and passenger.
Industry	324110	Petroleum refineries.
Industry	422710 422720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.

[a] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the proposed regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

Additional Information About This Rulemaking

Emission standards for new marine diesel engines at or above 30 liters per cylinder were considered by EPA in two previous rulemakings, in 1996 and in 1999. The notice of proposed rulemaking for the first rule (for the control of air pollution from new gasoline spark-ignition and diesel compression-ignition marine engines) can be found at 59 FR 55930 (November 1994); a supplemental notice of proposed rulemaking can be found at 61 FR 4600 (February 7, 1996); and the final rule can be found at 61 FR 52088 (October 4, 1996). The notice of proposed rulemaking for the second rule (for the control of air pollution from new compression-ignition marine engines at or above 37 kW) can be found at 63 FR 68508 (December 11, 1998); the final rule can be found at 64 FR 73300 (December 29, 1999). These documents are available on our websites, *http://www.epa.gov/otaq/marine.htm* and http://www.epa.gov/otaq.marinesi.htm This proposal relies in part on information that was obtained for those rulemakings, which can be found in Public Dockets A–92–28 and A–97–50. Those dockets are incorporated by reference into the docket for this proposal, A–2001–11.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Draft Regulatory Support Document, and other rule documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this proposed rule is made available on the date of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR* (either select desired date or use Search features).

2. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

Table of Contents

I. Introduction

A. Overview

Marine diesel engines can be significant contributors to local ozone, CO, and PM levels, particularly in commercial ports and along coastal areas. In recognition of their inventory impact, we recently set emission standards for new marine diesel engines above 37 kW but less than 30 liters per cylinder (64 FR 73300, December 29, 1999). The standards contained in that rule cover emissions of oxides of nitrogen (NO_X), particulate matter (PM), hydrocarbons (HC), and carbon monoxide (CO), and go into effect in 2004–2007, depending on engine size. Those standards are more stringent than the international standards contained in Annex VI to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (this convention is also known as MARPOL; the standards are referred to as the Annex VI NO_X limits).[1] They also cover more pollutants, as the MARPOL limits are for NO_X emissions only. As described in Section D, below, the Annex has not yet gone into force because the requisite number of countries have not ratified it. Prior to the effective date of the national standards, engine manufacturers are encouraged to voluntarily comply with the Annex VI NO_X limits pending entry into force of Annex VI. We developed a voluntary certification program to enable engine manufacturers to certify to the Annex VI NO_X limits prior to the Annex VI requirements entering into force. The national emission requirements apply only to engines on vessels flagged in the United States. Marine engines on foreign vessels were not covered by the rule.

We did not set standards for new marine diesel engines at or above 30 liters per cylinder in our 1999 rule. Our analysis at the time indicated that the Annex VI NO_X limits were appropriate given the operating characteristics and fuel used by these engines. Rather than duplicate the Annex VI emission control program in our federal regulations, we encouraged engine manufacturers to comply with the Annex VI limits using our voluntary certification program.

We also indicated that we would revisit the need to adopt emission limits for these engines under the Clean Air Act if the Annex does not go into effect internationally.

Although more than four years have gone by since Annex VI was adopted by the Parties to the Convention, it has not yet entered into force. There is growing concern in the United States that there are no enforceable standards for these large marine engines. Also, recently developed inventories suggest that the inventory contribution of these engines can be very high in individual port areas. We estimate that these engines account for about 1.5 percent of national mobile source NO_X emissions. This contribution can be significantly higher on a port-specific basis. For example, we estimate that these engines contribute about 7 percent of mobile source NO_X in the Metropolitan Statistical Areas (MSA) of Baton Rouge/ New Orleans and Wilmington NC, about 5 percent of mobile source NO_X in the Miami/ Fort Lauderdale and Corpus Christi MSAs, and about 4 percent in the Seattle/Tacoma/Bremerton/ Bellingham MSA. In addition, these ships can have a significant impact on inventories in areas without large commercial ports. For example, Santa Barbara estimates that engine on ocean-going marine vessels contribute about 37 percent of total NO_X in their area. These emissions are from ships that transit the area, and "are comparable to (even slightly larger than) the amount of NO_X produced onshore by cars and truck.[2] These emissions are expected to increase to 62 percent by 2015.

We estimate the contribution of these engines to national PM levels is about 2.6 percent, but can also be higher on a port-specific area (see Table 2.6–1 in the draft Regulatory Support Document (RSD) for this rule and associated text). The estimated contribution of these engines to national HC and CO emissions is negligible. The inventory contribution of these engines to national NO_X, PM, HC, and CO levels is expected to increase as emissions from other mobile sources decrease due to our recently finalized emission control programs for highway vehicles and heavy-duty trucks. Reductions in the inventories of these pollutants will lead to health benefits, as described in Section II.

In addition, manufacturers of diesel engines, including marine diesel engines, have gained greater experience with the emission control technologies that can be applied to these engines. Our analysis indicates that greater emission reductions can be achieved by optimizing currently available control technologies that are being used to achieve the Annex VI NO_X limits.

This Notice discusses two tiers of NO_X emission controls for these engines. The first tier is equivalent to the internationally negotiated NO_X standards and would be enforceable under U.S. law for new engines built in 2004 and later. The second tier of NO_X standards, if implemented, would reflect additional reductions that can be achieved through engine-based emission controls, and would apply to new engines built after 2006 or later. We are also considering standards for HC and CO emissions to ensure that these emissions do not increase on an engine-specific basis. Particulate matter emissions from these engines are primarily due to the characteristics of the fuel they use (residual fuel), and we are requesting comment on whether we should consider a sulfur content limit for that fuel. We would review the Tier 2 standards prior to their effective date to take into consideration continued development of new technologies, such as selective catalyst reduction and water-based emission reduction techniques, and international activity such as action at International Maritime Organization (IMO) to set more stringent international standards.

Consistent with our 1999 commercial marine diesel engine standards, this proposal also contains voluntary low emission standards for marine diesel engines at or above 30 liters per cylinder. As emissions from most mobile source categories continue to decline, emissions from marine vessels and associated port equipment are becoming an increasingly significant source for local, regional, and global emissions. Because of the slow turnover of vessels and associated equipment, there is an opportunity and need for the ports, shipping companies, engine manufacturers, and fuel suppliers to work on a collaborative effort to expedite and further reduce emissions beyond the Annex VI NO_X limits and U.S. national standards. Two components of this proposal can help encourage these actions. The first is voluntary low emission standards set at

[1] Annex VI was adopted by a Conference of the Parties to MARPOL on September 26, 1997, but has not yet entered into force. Copies of the conference versions of the Annex and the NOx Technical Code can be found in Docket A–95–50, Document II.B.01. Copies of updated versions can be obtained from the International Maritime Organization (*www.iino.org.*)

[2] Memorandum to Docket A–2001–11 from Jean Marie Revelt, "*Santa Barbara County Air Quality News*, Issue 62, July–August 2001 and other materials provided to EPA by Santa Barbara County," March 14, 2002. Air Docket A–2001–11, Document No. II–A–47.

80 percent below the Annex VI NO_X limits. These standards can be used in state-based initiatives and are expected to require the use of advanced technologies such as fuel cells or selective catalyst reduction. The second is the voluntary Blue Cruise program, in which participant vessel owners can receive special recognition from EPA for installing and using technologies that reduce waste and air emissions.

We are also proposing new requirements for engines at or above 2.5 liters per cylinder but less than 30 liters per cylinder. The Tier 2 standards we finalized for these engines in our 1999 commercial marine diesel rule are effective in 2007. Until then, and pending entry into force of Annex VI, we encouraged engine manufacturers to voluntarily comply with Tier 1 standards, which are equivalent to the internationally negotiated NO_X standards. Because Annex VI has not gone into force, they remain unenforceable. Due to the continued uncertainty regarding entry into force of Annex VI, we believe it is appropriate to begin to require engine manufacturers to certify these engines to the Tier 1 standards, starting in 2004. We are also proposing to eliminate the foreign trade exemption for all marine diesel engines, which was available for engines installed on vessels that spend less than 25 percent of total operating time with 320 kilometers of U.S. territory. To date, this exemption has not been requested by engine manufacturers.

The standards discussed in this Notice, which would apply to engines installed on vessels flagged in the United States, are intended to help reduce ozone inventories and avoid a range of associated adverse health effects. The costs of the proposed Tier 1 standards are negligible and reflect certification and compliance costs only. We do not anticipate that there will be any engineering or design costs associated with the Tier 1 standards as manufacturers are already certifying engines to Annex VI requirements through our voluntary certification program. The estimated cost to industry of complying with the Tier 2 standards being considered is about $115,000 per engine, with an additional estimated cost of about $5,000 annually to maintain equipment. This represents a 7 percent increase in the total engine cost and about 0.1 percent increase in the total vessel cost. We estimate the aggregate costs (annualized over 20 years) of the Tier 2 standards under consideration to be about $1.6 million annually. The economic impacts and environmental benefits of the proposal and Tier 2 standards under consideration are described in Section VI, below.

The impact of the standards on air quality in specific areas will depend in part on the characteristics of the fleet of vessels that operate in that area, particularly on the proportion of foreign-flag ships to U.S.-flag ships. Recognizing that foreign-flag vessels constitute a significant portion of emissions from these engines and that the internationally negotiated NO_X standards for these engines are not yet enforceable, we are seeking comment on whether the standards should also apply to marine engines on foreign vessels entering U.S. ports and to no longer exclude such foreign vessels from the emission standards under 40 CFR 94.1(b)(3). While EPA's current standards for marine vessels do not apply to foreign flag vessels, EPA is inviting comments on whether it should change this approach. If we were to apply our emission standards to foreign vessels that enter U.S. ports as part of this rulemaking effort, then the standards would apply to any marine engine that is manufactured after the standards become effective and that is installed on such a foreign vessel and would be a condition of port entry. The standards would also apply to any marine engine installed on such a foreign vessel that is manufactured (or that otherwise become new) after the standards become effective. While we are seeking comment on applying the standards to foreign vessels that use U.S. ports, we may require such standards for foreign vessels in 2003.

B. How Is This Document Organized?

This document contains ten parts. After this introductory section, Section II describes the air quality need for this rulemaking and projected benefits. That section contains a description of the human health and welfare effects of exposure to ozone, PM, and CO and reports our inventory estimates for this source for current and future years. In Section III, we describe the set of engines that would be required to comply with the proposed standards and our reasoning behind this scope of application. Sections IV and VII contain the proposed emission standards and alternatives under consideration, effective dates, and testing requirements. We also discuss the technological feasibility of the standards discussed in this Notice, and alternative approaches. Section V describes various compliance provisions. Section VI summarizes the projected impacts of the standards and discusses their benefits. Section VIII describes a voluntary incentive program in which participant vessel owners can receive special recognition from EPA for installing and using technologies that reduce waste and air emissions. Finally, Sections IX and X contain information about public participation, how we satisfied our administrative requirements, and the statutory provisions and legal authority for this proposal. Additional information on many of these topics can be found in the Draft Regulatory Support Document for this proposal.

C. What Requirements Are We Proposing or Considering?

The NO_X emission standards for marine diesel engines at or above 30 liters per cylinder (Category 3 marine diesel engines) would consist of two tiers. Tier 1 would apply to new engines built in 2004 and later and would be equivalent to the Annex VI NO_X limits adopted by the Parties to MARPOL in 1997. We are also considering Tier 2 NO_X standards that would apply to new engines built after 2006 or later and consist of a NO_X limit 30 percent below the Tier 1/Annex VI limit. The year that EPA considers most appropriate at this time is 2007. For both tiers of standards, we would define NO_X standards as a function of maximum engine speed, consistent with Annex VI, but are requesting comment on the merits of defining Tier 2 NO_X standards instead as a function of engine displacement. Both tiers of standards can be met through engine-based emission-control technologies. The Annex VI NO_X limits are based on certification on distillate fuel, which has a lower nitrogen content than the residual fuel that these engines are most likely to use in operation. We are proposing numerical emission limits based on residual fuel, but allow for certification testing using distillate or residual fuel. In either case, we are proposing that the test results be adjusted to account for the nitrogen content of the fuel, and then be compared to the proposed emission limits. The fuel quality adjustment is described in Section IV.A.2, below.

In addition to the Tier 2 NO_X limits, we are considering hydrocarbon and carbon monoxide emission limits at 0.4 g/kW-hr and 3.0 g/kW-hr, respectively. These standards would ensure that these emissions do not increase on an engine-specific basis. We are also considering adoption of a schedule to review any Tier 2 standards prior to their effective date to take into consideration continued development of new technologies, such as selective catalyst reduction and water-based emission reduction techniques, and international activity such as action at IMO to adopt more stringent standards

internationally. We request comment on the hydrocarbon and carbon monoxide standards.

We are not planning to adopt a Tier 2 standard for particulate emissions from these engines. Most of the particulate emissions are a result of the high sulfur and ash content of the fuel used by these engines, and there is no acceptable measurement procedure for fuels with these characteristics. We are requesting comment, however, on whether we should consider a fuel sulfur content limit for the fuels used by these engines. One option, for example, would be to set a sulfur content cap equivalent to the limit for fuel used in SO_X Emission Control Areas provided in Regulation 14 of MARPOL Annex VI. Pursuant to that regulation, the sulfur content of fuel used by vessels operating in those areas cannot exceed 15,000 ppm. The United States could also pursue this option through procedures contained in Regulation 14 of MARPOL Annex VI. That regulation provides for the designation of SO_X emission control areas. We estimate that reducing the sulfur content of residual fuel to 15,000 ppm may decrease the PM inventory of these engines 18 percent and the SO_X inventory by 44 percent (See Section VI.F, below). In connection with this option, we are seeking comment as to which areas of the United States should be considered for designation as SO_X emission control areas under MARPOL Annex VI, and whether and how we should seek the cooperation of Canada, Mexico, and the Carribean in designating these areas. Both of these options are discussed in Section VI.E, below.

We are also proposing voluntary low emission NO_X standards for Category 3 marine diesel engines. These standards, which represent an 80 percent reduction from the Annex VI NO_X limits, are intended to encourage the introduction and more widespread use of low-emission technologies. Manufacturers could be motivated to exceed emission requirements either to gain early experience with certain technologies or as a response to market demand or local government programs. Ship owners could take advantage of these and other emission reduction technologies to receive special recognition from EPA for installing and using technologies that reduce waste and air emissions under our proposed voluntary Blue Cruise program.

To implement these standards for marine diesel engines at or above 30 liters per cylinder in an effective way, we are proposing several compliance requirements. In general, the proposed compliance program reflects our traditional manufacturer-based approach. This is in contrast to the international approach reflected in Annex VI, which holds the vessel owner responsible for compliance once the engine is delivered onboard. Many of the proposed compliance provisions, including certification application, engine labeling, and warranty requirements, are similar or identical to the compliance provisions that we finalized in our 1999 rulemaking. In addition, we are including a post-installation verification provision which would require an emission test after an engine is installed on a vessel. We are also proposing a field measurement provision that would apply to engines with adjustable parameters or add-on emission control devices. Manufacturers of these engines would be required to equip the engine with a field measurement device. The owner of a vessel with such an engine would have to perform a field measurement when the vessel approaches within 175 nautical miles (200 statutory miles) of the U.S. coastline from the open sea or when it adjusts an engine parameter within that distance. The results of this field measurement will demonstrate that the engine is in compliance with the relevant standards when it is operated in an area that affects U.S. air quality. EPA will work with the U.S. Coast Guard to develop procedures to verify onboard performance of these field measurement provisions, as Coast Guard has the general authority to carry out such procedures on vessels.

We are also proposing new requirements for engines at or above 2.5 liters per cylinder but less than 30 liters per cylinder. The Tier 2 standards we finalized for these engines in our 1999 commercial marine diesel rule are effective in 2007. Until then, and pending entry into force of Annex VI, we encouraged engine manufacturers to voluntarily comply with Tier 1 standards, which are equivalent to the internationally negotiated NO_X standards. Because Annex VI has not gone into force, they remain unenforceable. While the U.S. is beginning the ratification process for Annex VI, due to the continued uncertainty regarding its entry into force of Annex VI, we believe it is appropriate to begin to require engine manufacturers to certify these engines to the Tier 1 standards, starting in 2004. We are also proposing to eliminate the foreign trade exemption for all marine diesel engines, which was available for engines installed on vessels that spend less than 25 percent of total operating time with 320 kilometers of U.S. territory. To date, this exemption has not been requested by engine manufacturers.

The standards discussed above would apply to engines installed on vessels flagged in the United States. Recognizing that foreign-flag vessels constitute a significant portion of emissions from these engines and that the internationally negotiated NO_X standards for these engines are not yet enforceable, we are seeking comment on whether the standards should also apply to marine engines on foreign vessels entering U.S. ports and to no longer exclude such foreign vessels from the emission standards under 40 CFR 94.1(b)(3). If we were to apply our emission standards to foreign vessels that enter U.S. ports, then the standards would apply to any marine engine that is manufactured after the standards become effective and that is installed on such a foreign vessel. The standards would also apply to any marine engine installed on such a foreign vessel that is manufactured (or that otherwise become new) after the standards become effective. As discussed below, if the standards were to apply to foreign flag vessels, EPA would consider any significant differences between this proposed rule and Annex VI.

D. Why Is EPA Taking This Action?

We developed this emission control program to fulfill our obligations under Section 213 of the Clean Air Act. That section, described in more detail in Section E, below, requires us to set standards for new nonroad engines. In addition, there are important public health and welfare reasons supporting the standards proposed in this document. As described in Section II.B, Category 3 marine diesel engines contribute to air pollution which causes public health and welfare problems. Emissions from these engines contribute to ground level ozone and ambient PM and CO levels, especially in and near commercial ports and waterways.[3] Exposure to ground level ozone, PM, and CO can cause serious respiratory problems. These emissions also contribute to other environmental problems, including acid deposition, eutrophication, and nitrification.

This action is a departure from the emission control strategy we finalized in 1999 (64 FR 73300, December 29, 1999) in that we are considering no longer

[3] Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOCs) and NO_X in the presence of heat and sunlight. Hydrocarbons (HC) are a large subset of VOC, and to reduce mobile-source VOC levels we set maximum emissions limits for hydrocarbon and particulate matter emissions.

relying solely on MARPOL Annex VI for controlling emissions from Category 3 marine diesel engines. While the Annex VI NO_X limits apply to engines installed on vessels constructed on or after January 1, 2000, those standards are not enforceable until the Annex enters into force. As specified in Article 6 of the Annex, it will enter into force twelve months after the date on which not less than fifteen member states, the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant shipping, have ratified the agreement. To date, more than four years after it was adopted, the Annex has been ratified by only 6 countries representing 15.8 percent of the world's merchant shipping.[4] In addition, the Annex VI NO_X limits no longer reflect the greatest degree of emission control that can be achieved using newer technology, given appropriate lead time. Since we finalized our commercial marine diesel engine standards in 1999 (64 FR 73300, December 29, 1999), engine manufacturers continue to make progress in applying land-based emission control technologies to marine diesel engines. Improvements in fuel systems and engine cooling can reduce Category 3 engine emissions even more than the Annex VI NO_X limits would require. Some engine manufacturers are also experimenting with water emulsification and injection and aftertreatment, including selective catalyst reduction, for even greater reductions. These emission control technologies are described in greater detail in Section IV.

E. Putting This Proposal Into Perspective

This proposal should be considered in the broader context of EPA's nonroad emission-control programs, international activities, including MARPOL Annex VI, our previous marine emission control program, European Union (EU) initiatives, and activities at the state level. These programs and actions are discussed below.

1. EPA's Nonroad Emission-Control Programs

Clean Air Act section 213(a)(1) directs us to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions "cause, or significantly contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare." Section 213(a)(2) further requires us to determine whether emissions of CO, VOC_s, and NO_X from all nonroad engines significantly contribute to ozone or CO emissions in more than one nonattainment area. If we determine that emissions from all nonroad engines are significant contributors, section 213(a)(3) then requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that in our judgment cause or contribute to such pollution. We may also set emission standards under section 213(a)(4) regulating any other emissions from nonroad engines that we find contribute significantly to air pollution.

We completed the Nonroad Engine and Vehicle Emission Study, required by Clean Air Act section 213(a)(1), in November 1991.[5] On June 17, 1994, we made an affirmative determination under section 213(a)(2) that nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area. We also determined that these engines make a significant contribution to PM and smoke emissions that may reasonably be anticipated to endanger public health or welfare. In the same document, we set a first phase of emission standards (now referred to as Tier 1 standards) for land-based nonroad diesel engines rated at or above 37 kW. In 1998, we set more stringent Tier 2 and Tier 3 emission levels for new land-based nonroad diesel engines at or above 37 kW and adopted Tier 1 standards for nonroad diesel engines, including marine diesel engines, less than 37 kW. Our other emission-control programs for nonroad engines are listed in Table I.E–1. This proposal takes another step toward the comprehensive nonroad engine emission-control strategy envisioned in the Act by proposing enforceable emission limits for marine diesel engines at or above 30 liters per cylinder.

TABLE I.E–1.—EPA'S NONROAD EMISSION-CONTROL PROGRAMS

Engine category	Final rulemaking	Date
Land-based diesel engines ≥ 37 kW—Tier 1	56 FR 31306	June 17, 1994
Spark-ignition engines ≤19 kW—Phase 1	60 FR 34581	July 3, 1995.
Spark-ignition marine	61 FR 52088	October 4, 1996.
Locomotives	63 FR 18978	April 16, 1998.
Land-based diesel engines	63 FR 56968	October 23, 1998.
—Tier 1 and Tier 2 for engines < 37 kW (these standards also apply to marine diesel engines < 37 kW)		
—Tier 2 and Tier 3 for engines ≥ 37 kW		
Commercial marine diesel engines above 37 kW (Standards apply to engines less than 30 liters per cylinder only).	64 FR 73300	December 29, 1999.
Spark-ignition engines ≤19 kW (Non-handheld)—Phase 2	64 FR 15208	March 30, 1999.
Spark-ignition engines ≤19 kW (Handheld)—Phase 2	65 FR 24268	April 25, 2000.
Nonroad large spark-ignition engines, recreational vehicles, and recreational marine diesel engines.	66 FR 51098 (proposal)	October 5, 2001.
Marine evap. (includes highway motorcycles)	Expected 2002	

2. MARPOL Annex VI

In response to growing international concern about air pollution and in recognition of the highly international nature of maritime transportation, the IMO developed a program to reduce NO_X and SO_X emissions from marine vessels.[6] [7] The development of Annex

[4] The countries that have ratified Annex VI are Sweden, Norway, Bahamas, Singapore, Marshall Islands, and Malawi. Information about Annex VI ratification can be found at *www.imo.org* (look under Conventions, Status of Conventions—Complete List).

[5] This study, the Nonroad Engine and Vehicle Emission Study (NEVES) is available in docket A–92-28.

[6] The Annex covers a several air emissions from marine vessels: ozone depleting substances, NO_X, SO_X, VOCs from tanker operations, incineration, fuel oil quality. There are also requirements for reception facilities and platforms and drilling rigs.

Continued

VI took place between 1992 and 1997. The Annex VI engine emission limits cover only NO_X emissions; there are no restrictions on PM, HC, or CO emissions. They are based on engine speed and apply to engines above 130 kW. These standards are set out in Table I.E–2. Originally, these standards were expected to reduce NO_X emissions by 30 percent when fully phased in. EPA inventory analysis, based on newly estimated emission factors for these engines, indicates that the expected reduction is on the order of about 20 percent. The EPA inventory analysis is described in more detail in the Draft Regulatory Support Document for this proposal.

With regard to implementation, the Annex VI NO_X limits apply to each diesel engine with a power output of more than 130 kW installed on a ship constructed on or after January 1, 2000, or that undergoes a major conversion on or after January 1, 2000. The Annex does not distinguish between marine diesel engines installed on recreational or commercial vessels; all marine diesel engines above 130 kW would be subject to the standards regardless of their use. The test procedures to be used to demonstrate compliance are set out in the Annex VI NO_X Technical Code.[8] They are based on ISO 8178 and are performed using distillate fuel. Engines can be pre-certified or certified after they are installed onboard. After demonstrating compliance, pre-certified engines would receive an Engine International Air Pollution Prevention (EIAPP) certificate. This document, to be issued by the Administration of the flag country, is needed by the ship owner as part of the process of demonstrating compliance with all of the provisions of Annex VI and obtaining an International Air Pollution Prevention (IAPP) certificate for the vessel once the Annex goes into force. The Annex also contains engine compliance provisions based on a survey approach. These survey requirements would apply after the Annex goes into force. An engine is surveyed after it is installed, every five years after installation, and at least once between 5-year surveys. Engines are not required to be tested as part of a survey, however. The surveys can be done by a parameter check, which can be as simple as reviewing the Record Book of Engine Parameters that must be maintained for each engine and verifying that current engine settings are within allowable limits.

After several years of negotiation, the Parties to MARPOL adopted a final version of Annex VI at a Diplomatic Conference on September 26, 1997. However, as noted in Section I.C, above, the Annex has not yet gone into force. Pending entry into force, ship owners and vessel manufacturers have begun installing compliant engines on relevant ships beginning with the date specified in Regulation 13: January 1, 2000. In addition, ship owners must bring existing engines into compliance if the engines undergo a major conversion on or after that date.[9] As defined in Regulation 13 of Annex VI, a major conversion is when the engine is replaced by a new engine, it is substantially modified, or its maximum continuous rating is increased by more than 10 percent. To facilitate implementation while the Annex is not yet in force and to allow engine manufacturers to certify their engines before the Annex goes into force, we set up a process for manufacturers to obtain a Statement of Voluntary Compliance.[10] An EPA-issued Statement of Voluntary Compliance should be exchangeable for an EIAPP certificate once the Annex goes into effect in the United States.

The U.S. government is preparing the appropriate documents for the President to submit Annex VI to the Senate for its advice and consent to ratification. Besides setting standards for NO_X emissions, Annex VI regulates ozone-depleting emissions, sulfur oxides emissions and shipboard incineration, and contains other environmentally protective measures. In transmitting Annex VI to the Senate, the Administration will work with Congress on new legislation to implement the Annex. At the same time, the United States government supports a revision of the Annex VI standards for NO_X emissions, taking into account the emission reduction potential of new control technologies. By ratifying the Annex, the United States will continue its leadership in promoting environmentally responsible international emission standards at the IMO and recognize the role the IMO plays in protecting the world's marine environment from pollution. As described in Section I.E.4, below, we have already requested MEPC to begin consideration of more stringent NO_X emission limits for marine diesel engines. In addition, once the Annex goes into force, amendment of NO_X standards will be made easier through the tacit amendment process that would then apply.

3. EPA's Commercial Marine Diesel Engine Rules

Although we included marine diesel engines in the development of our 1996 marine rule, we did not finalize standards for these engines at that time. At the time, we were considering standards based on Tier 1 land-based nonroad diesel emission controls. Emerging emission control technologies for diesel engines, particularly the Tier 2 land-based nonroad emission control technologies, led us to reconsider our approach and to defer standards for these engines to a later rulemaking.

In our 1999 commercial marine diesel engine rule, we distinguished between different types of marine diesel engines. The three categories of marine diesel engines, contained in Table I.E–3, were intended to reflect differences in the land-based counterparts of these engines.

TABLE I.E–3.—MARINE ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder	Land-based equivalent
1	disp. < 5 liters (and power > 37 kW)	Agricultural equipment; construction equipment.
2	5 liters < disp. < 30 liters	Locomotives.
3	disp > 30 liters	No mobile source equivalent Power plant generators.

[7] To obtain copies of this document, see Footnote 1, above.

[8] To obtain copies of this document, see Footnote 1, above.

[9] As defined in Regulation 13 of Annex VI, a major conversion means the engine is replaced by a new engine, it is substantially modified, or its maximum continuous rating is increased by more than 10 percent.

[10] For more information about our voluntary certification program, see "guidance for Certifying to MARPOL Annex VI," VPCD–99–02. This letter is available on our website: *http://www.epa.gov/otaq/regs/nonroad/marine/ci/imolettr.pdf* and in Docket A–2001–11, Document No. II–B–01.

The final standards for Category 1 and Category 2 marine diesel standards were more stringent than the Annex VI NO_X limits, reflecting the greater degree of emission control that would be achievable through the application of technologies that would be used on the land-based equivalents of these engines to meet the nonroad Tier 2 and locomotive Tier 1 standards. The standards also cover more pollutants than Annex VI, including standards for HC, CO, and PM as well as NO_X. The emission standards we finalized for Category 1 and Category 2 marine diesel engines are similar to the nonroad Tier 2 and locomotive Tier 1 standards, respectively.

We did not finalize standards for Category 3 marine diesel engines in 1999. Instead, we deferred to the Annex VI NO_X emission control program. This decision was based on our technological analysis of control strategies for these engines which indicated that the appropriate standards should reflect reductions that can be obtained from injection rate shaping and some timing retard. These control technologies were consistent with the Annex VI NO_X limits. While some Category 3 engines were already using Tier 2 engine technologies including turbocharging, injection improvements, electronics, and more efficient cooling, these technologies were being used to increase fuel efficiency and obtain optimal operation. Next-generation technologies such as exhaust gas recirculation (EGR), selective catalyst reduction (SCR), and water injection were still under development for marine diesel engines of that size. Because the Annex VI NO_X limits would likely be implemented independently of any Clean Air Act requirement, EPA believed that it would be unnecessary and redundant to adopt the same program under the Clean Air Act. Vessel owners were anticipated to begin complying with the Annex VI NO_X limits beginning in 2000, as indicated in the Annex.

Since 1999, Category 3 marine diesel engine manufacturers have continued to research emission control technologies and explore ways to transfer land-based diesel engine technologies to marine diesel engines. These technologies and emission control strategies are described in Sections IV and VII below, and in the draft Regulatory Support Document for this rule. Due to these advances, and due to the contribution of these engines to ozone and PM levels, we believe it is now appropriate to consider a second tier of emission limits for Category 3 marine diesel engines that will achieve greater reductions than those expected from the Annex VI NO_X limits.

4. Continuing Action at the IMO

At the time the Annex VI NO_X limits were adopted, several Member States expressed concern that the NO_X limits would not result in the emissions reductions they were intended to achieve. Due to the efforts of these Member States, the Conference of the Parties adopted a resolution that provides for review of the emission limits with the aim of adopting more stringent limits taking into account the adverse effects of such emissions on the environment and any technological developments in marine engines. This review is to occur at a minimum of five-year intervals after entry into force of the Annex and, if appropriate, amend the NO_X limits to reflect more stringent controls.

In March of 2000, the United States requested MEPC to begin consideration of more stringent emission limits for marine diesel engines.[11] EPA's analysis of emission control technology for our 1999 rulemaking indicated that more stringent standards are feasible for all Category 1 and Category 2 marine diesel engines. Engine manufacturers were also beginning to apply these emission control strategies to Category 3 marine diesel engines, as well as more advanced strategies such as water emulsification and selective catalyst reduction. Reflecting the potential emission reductions that could be obtained from applying these strategies to all marine diesel engines, the U.S. recommended Annex VI Tier 2 NO_X limits be set at 25 to 30 percent below the existing Annex VI NO_X limits for all engines subject to the regulation (engines above 130 kW), to go into effect in 2007. This would allow a 7-year period of stability for the Annex VI NO_X limits, permit engine manufacturers to adjust their engine designs to include new emission control technologies, and allow manufacturers of marine diesel engines at or above 30 liters per cylinder to develop emission control strategies for those large engines. This recommendation was briefly discussed at the 44th session of the MEPC (London, March 3–16, 2000), but was not acted on. The United States will continue to promote more stringent standards at IMO and encourage MEPC to adopt a second tier of emission limits that will reflect available technology and reduce the impact of marine diesel engines on the world's air quality.

5. European Union Actions

In February, 1999, the European Commission D–GXI commissioned a report to "consider, analyse and recommend policy options to further the objective of reducing the harmful environmental impact of SO_X and NO_X from ships operating in European waters.[12] The final report was completed in August 2000. The report explores two types of regulatory options, regulatory standards and incentive plans, for both fuel and engine emission controls. The report is currently under consideration by the Commission.

In January 2001, the Directorate-General for the Environment issued a discussion paper entitled "A Community Strategy on Air Pollution from Seagoing Ships."[13] This paper contains a description of issues and solicits comments that will be used to develop a European emission control strategy for marine vessels. The discussion paper envisions two products: a Commission Communication and a proposal to amend EU Directive 1999/32 on the Sulphur Content of Liquid Fuels.

The discussion paper notes that current inventory analysis indicates that ships will account for 75% and 60% of EU land SO_X and NO_X emissions, respectively. A new inventory study currently being commissioned will shed more light on these contributions, particularly in-port contributions. The discussion paper also describes current EU and international regulatory regimes and the potential for further reductions. Regarding SO_X emissions, EU Directive 1999/32 currently prohibits the use of marine distillate fuels having more than 2,000 ppm sulfur in Community territorial waters. While there is an exemption for ships coming from third countries, those ships must use low sulfur distillate after they make their first stop at a Community port. There is some concern that this approach encourages ships to burn heavy fuel

[11] MEPC 44/11/7, Prevention of Pollution from Ships, Revision of the NO_X Technical Code, Tier 2 emission limits for marine diesel engines at or above 130 kW, submitted by the United States. This document is available at Docket A–2001–11, Document No. II–A–16.

[12] Davies, M. E., et al., Study on the Economic, Legal, Environmental and Practical Implications of a European Union System to Reduce Ship Emissions of SO_X and NO_X, Final Report for European Commission Contract B4–3040/98/000839/MAR/B1, August 2000. This report is available at *http://www.europa.eu.int/comm/environment/air/transport.htm#3*. A copy can also be found in Docket A–2001–11, Document No. II–A–17.

[13] This discussion paper can be found at *http://www.europa.eu.int/comm/environment/air/future_transport.htm* (Under "pollutant emissions from ships" then "new developments"). A copy of this paper can also be found in Docket A–2001–11, Document No. II–A–28.

while in Community waters. Regarding NO_X emissions, the paper describes the MARPOL Annex VI requirements, the EPA standards established in 1999, and the U.S. action to encourage IMO to consider more stringent NO_X limits. The paper does not suggest potential emission control programs for the EU, but it requests comment support for more stringent standards.

6. Action By Individual European Countries

In 1996 the Swedish Maritime Administration, the Swedish Shipowners' Association and the Swedish Ports' and Stevedores' Association arrived at a Tripartite Agreement to decrease ship nitrogen oxides and sulphur emissions by 75% within five years. The parties agreed to establish an environmental program on differentiated fairway and port dues for NO_X levels and fuel sulphur content. The program was constructed by first raising the ship related dues (from Swedish Kroner (SEK) 3.90 per gross tonne (GT) for oil tankers and SEK 3.60 per GT for ferries and other ships to SEK 5.30 and SEK 5.00 respectively) from which the discounts would be subtracted[14]. For use of low sulphur fuels a credit of SEK 0.90 per GT was given for ships operating on bunker oils of a sulphur content of less than 0.5 per cent by weight for ferries and less than 1.0 per cent for other ships. For low NO_X emissions, if the emission at 75 per cent engine load is above 12 g/kWh, no NO_X discount is given. Below this level the discount increases continuously down to a level of 2 g/kWh where the discount is SEK 1.60 per GT. A maximum discount of SEK 2.50 per GT is possible. The program entered into force January 1, 1998 and as of 1999, twenty of Sweden's fifty two ports have introduced environmentally differentiated harbour dues for reduced sulphur fuels, reduced NO_X emissions or both. Ferries are using new technologies, including water emulsion systems (20–50% Nox reduction) and SCR systems (up to 95% NO_X reduction), to achieve the low emission levels. To overcome initial problems and encourage the installation of catalytic converters, the Swedish Maritime Administration agreed to reimburse shipowners for the fairway dues paid during the first five years of the program (thru 2002). "Based on known planned installations, the National Maritime Administration expects that by 1 January 2001 the scheme will have reduced NO_X emissions from ships calling at Swedish ports by 40–45 per cent compared to the situation in 1995."[15]

Over the past three years several other localities worldwide have also incorporated adjustments in port dues based on compliance with emission levels. The Port of Mariehamn, on the Finnish Island of Aland differentiates its harbor dues with regard to ships' emissions of NO_X and sulphur. The proposal in 1999 was to "give ships emitting less than 10 g/kWh NO_X a rebate on a linear scale where the reduction of the port due is 8 per cent for ships emitting less than 1 gramme, and 1 per cent for ships emitting 9 g/kWh. Ships using bunker oils with less than 0.5 per cent sulphur (by weight) will receive an additional reduction of 4 per cent. For vessels meeting the latter criteria and having NO_X emissions of less than 1 g/kWh the proposal is to offer an extra rebate of 8 per cent. Such ships will, if the scheme is adopted, get a total reduction of 20 per cent."[16] The Norwegian government has a program for environmental differentiation of the tonnage tax (Proposition No. 1 1999/2000). The differentiation is based on a Ship Environment Index System (SEIS). The SEIS is based on up to seven different environmental parameters, including sulphur and NO_X emissions with a maximum of 10 points of which 6 points are from the abatement of NO_X and sulphur emissions. The program will raise the tonnage tax by 50 per cent and ships registered according to the environmental index system will receive rebates in proportion to their environmental score. Ships that earn 10 points will not pay more than they did before the new scheme began operating and ships that do not register or do not earn any points will have to pay the full tax."[17] The Green Award Foundation, with the Port of Rotterdam and some ports in Portugal and South Africa offers reduced harbor dues for tankers of more than 20,000 DWT. To earn the award, the shipowner and the vessel must comply with national and international laws and regulations as well as demonstrate environmental and safety awareness in a number of areas affecting management and crew competence as well as technical provisions which includes exhaust emissions.

7. State Actions: SCAQMD, Alaska and Texas Smoke Requirements

Several states have programs that address smoke emissions from marine engines. This section summarizes the programs in SCAQMD, Alaska and Texas.

SCAQMD: California's South Coast Air Quality Management District's Rule 401 states "(b)(1) A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant for a period or periods aggregating more than three minutes in any one hour which is: (A) As dark or darker in shade as that designated No. 1 on the Ringelmann Chart as published by the United States Bureau of Mines; or (B) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subparagraph (b)(1)(A) of this rule."[18] The Port of Long Beach has issued literature requiring compliance with the SCAQMD rules through their Smoke Stack Emissions Program.[19]

The Port of Long Beach and the Port of Los Angeles also require, as of May 1, 2001, a Voluntary Commercial Cargo Ship Speed Reduction Program. The "Air Quality Compliance Zone" is with a 12 knot speed restriction beginning 20-nautical miles from Point Fermin to the boundaries of the existing mandatory Precautionary Area. The purpose is to reduce air pollution from ships in the South Coast Air Basin.[20]

Alaska: Under Alaska's present state law, with some exceptions, "ships must keep emissions from reducing visibility through the exhaust plume by more than 20% while in Alaska waters. Diesel exhausts and other smoky discharges from ships can create a haze that hangs over coastal communities. DEC receives regular complaints from coastal community residents about these emissions. The state has certified readers who observe the emissions coming from a cruise ship's smokestack to determine if the standards are being exceeded."[21]

Texas: The Texas Natural Resource Conservation Commission Chapter 111 of the document on Control of Air Pollution From Visible Emissions and Particulate Matter contains requirements of visible emissions from

[14] One Swedish Kroner (SEK) is about $0.09

[15] A further detailed discussion of this topic can be found at *http://www.sjafartsverket.se/navigering/htm/frameset.htm.*

[16] A further detailed discussion of this topic can be found at *http://www.sjafartsverket.se/navigering/htm/frameset.htm.*

[17] A further detailed discussion of this topic can be found at *http://www.sjafartsverket.se/navigering/htm/frameset.htm.*

[18] A further detailed discussion of this topic can be found at *http://www.aqmd.gav/rules/html/r401.html.*

[19] A further detailed discussion of this topic can be found at *www.palb.cam.*

[20] A further detailed discussion of this topic can be found at *http://www.palb.cam/NavAlert.htm.*

[21] A further detailed discussion of this topic can be found at *http://www.state.ak.us/local/akpages/ENV.CONSERV/press/2001/rel_1115.htm.*

ships. The document, section 111.111(a)(6)(A) and (B), state that "(A) Visible emissions shall not be permitted from any railroad locomotive, ship or any other vessel to exceed an opacity of 30% for any five-minute period, except during reasonable periods of engine start-up. (B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate: (i) Test Method 9, (40 CFR part 60, Appendix A), or (ii) equivalent test method approved by the executive director and EPA." This document was effective June 11, 2000.[22]

II. The Air Quality Need

A. Overview

This proposal contains a regulatory strategy for Category 3 marine diesel engines on U.S. vessels. Marine diesel engines at or above 30 liters per cylinder are very large marine engines used primarily for propulsion power on ocean-going vessels such as container ships, tankers, bulk carriers, and cruise ships. The vessels that use these engines are flagged in the United States and in other countries. Category 3 engines have not been regulated under our nonroad engine programs. Nationwide, these engines are a significant source of mobile source air pollution. As described in Section II.C, below, emissions from all Category 3 marine diesel engines, regardless of flag of registry, currently account for about 1.5 percent of national mobile source NO_X, and 2.6 percent of national mobile source PM inventories.

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by the Clean Air Act, section 213(a) (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of NO_X, VOCs (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one noattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that commercial marine diesel engines cause or contribute to such air pollution (see also the proposed commercial marine diesel engine preamble at 63 FR 68508, December 11, 1998 and the final rule at 64 FR 73300, December 29, 1999).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. We have determined that commercial marine diesel engines cause or contribute to such air pollution (see also the proposed commercial marine diesel engine preamble at 63 FR 68508, December 11, 1998 and the final rule at 64 FR 73300, December 29, 1999).

B. What Are the Public Health and Welfare Concerns Associated With Emissions From Category 3 Diesel Marine Engines Subject to the Proposed Standards?

The engines that would be subject to the proposed standards generate emissions of NO_X, HC, PM and CO that contribute to ozone and CO nonattainment as well as adverse health effects associated with ambient concentrations of PM. This section contains a summary of the general health effects of these substances. Further information can be found in Chapter 2 of the Draft Regulatory Support Document. National and selected port city inventories are set out in Section II.C, and estimates of the expected impact of the proposed control program are described in Section VI.

1. Ozone and its Precursors

Volatile organic compounds (VOC) and NO_X are precursors in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_X in the presence of heat and sunlight. Hydrocarbons (HC) are a large subset of VOC, and to reduce mobile-source VOC levels we set maximum emissions limits for hydrocarbon and particulate matter emissions.

A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at a greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.

There is strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms. Increases in ozone concentrations in the air have been associated with increases in hospitalization for respiratory causes for individuals with asthma, worsening of symptoms, decrements in lung function, and increased medication use, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems.

Ground level ozone today remains a pervasive pollution problem in the United States. In 1999, 90.8 million people (1990 census) lived in 31 areas designated nonattainment under the 1-hour ozone NAAQS.[23] This sharp decline from the 101 nonattainment areas originally identified under the Clean Air Act Amendments of 1990 demonstrates the effectiveness of the last decade's worth of emission-control programs. However, elevated ozone concentrations remain a serious public health concern throughout the nation.

Over the last decade, declines in ozone levels were found mostly in urban areas, where emissions are heavily influenced by controls on mobile sources and their fuels. Twenty-three metropolitan areas have realized a decline in ozone levels since 1989, but at the same time ozone levels in 11 metropolitan areas with 7 million people have increased.[24] Regionally,

[22] A further detailed discussion of this topic can be found at http://www.tnrcc.state.tx.us/oprd/rules/pdflib/111a.pdf.

[23] National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A–19. This document is available at *http://www.epa.gov/oar/aqtrnd99/*. The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A–2001–11, Document No. II–A–XX.

[24] National Air Quality and Emissions Trends Report, 1998, March, 2000, at 28. This document is available at *http://www.epa.gov/oar/aqtrnd98/*. Relevant pages of this report can be found in Memorandum to Air Docket A–2000–01 from Jean Marie Revelt, September 5, 2001. This

Continued

California and the Northeast have recorded significant reductions in peak ozone levels, while four other regions (the Mid-Atlantic, the Southeast, the Central and Pacific Northwest) have seen ozone levels increase. The highest ambient concentrations are currently found in suburban areas, consistent with downwind transport of emissions from urban centers. Concentrations in rural areas have risen to the levels previously found only in cities.

To estimate future ozone levels, we refer to the modeling performed in conjunction with the final rule for our most recent heavy-duty highway engine and fuel standards.[25] We performed ozone air quality modeling for the entire Eastern U.S. covering metropolitan areas from Texas to the Northeast.[26] This ozone air quality model was based upon the same modeling system as was used in the Tier 2 air quality analysis, with the addition of updated inventory estimates for 2007 and 2030. The results of this modeling were examined for those 37 areas in the East for which EPA's modeling predicted exceedences in 2007, 2020, and/or 2030 and the current 1-hour design values are above the standard or within 10 percent of the standard. This photochemical ozone modeling for 2020 predicts exceedences of the 1-hour ozone standard in 32 areas with a total of 89 million people (1999 census) after accounting for light- and heavy-duty on-highway control programs.[27] We expect the NO_X control strategy contained in this Notice for Category 3 marine engines will further assist state efforts already underway to attain and maintain the 1-hour ozone standard.

In addition to the health effects described above, there exists a large body of scientific literature that shows that harmful effects can occur from sustained levels of ozone exposure much lower than 0.125 ppm.[28] Studies of prolonged exposures, those lasting about 7 hours, show health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. The health effects at these levels of exposure include transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation.

Prolonged and repeated ozone concentrations at these levels are common in areas throughout the country, and are found both in areas that are exceeding, and areas that are not exceeding, the 1-hour ozone standard. Areas with these high concentrations are more widespread than those in nonattainment for that 1-hour ozone standard. Monitoring data indicate that 333 counties in 33 states exceed these levels in 1997–99.[29] The Agency's recent photochemical ozone modeling forecast that 111 million people are predicted to live in areas that are at risk of exceeding these moderate ozone levels for prolonged periods of time in 2020 after accounting for expected inventory reductions due to controls on light- and heavy-duty on-highway vehicles.[30]

2. Particulate Matter

Category 3 marine engines that would be subject to the proposed standards contribute to ambient particulate matter (PM) levels in two ways. First, they contribute through direct emissions of particulate matter. Second, they contribute to indirect formation of PM through their emissions of organic carbon, especially HC. Organic carbon accounts for between 27 and 36 percent of fine particle mass depending on the area of the country.

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10}. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to several sources including mobile sources) in contributing to a series of health effects.[31] The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human noncancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen. Exposure to fine particles is closely associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States. Other environmental impacts occur when particles deposit

memorandum is available in Air Docket A–2001–11, Document No. II–A–XX.

[25] Additional information about this modeling can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420–R–00–026, December 2000. Docket No. A–2001–11, Document No. II–A–XX. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*.

[26] We also performed ozone air quality modeling for the western United States but, as described further in the air quality technical support document, model predictions were well below corresponding ambient concentrations for our heavy-duty engine standards and fuel sulfur control rulemaking. Because of poor model performance for this region of the country, the results of the Western ozone modeling were not relied on for that rule.

[27] Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, US EPA, EPA420–R–00–026, December 2000, at II–14, Table II.A–2. Docket No. A–2001–11, Document Number II–A–XX. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*.

[28] Additional information about these studies can be found in Chapter 2 of "Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements," December 2000, EPA420–R–00–026. Docket No. A–2001–11, Document Number II–A–XX. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*.

[29] A copy of these data can be found in Air Docket A–2001–11, Document No. II–A–XX.

[30] Memorandum to Docket A–99–06 from Eric Ginsburg, EPA, "Summary of Model-Adjusted Ambient Concentrations for Certain Levels of Ground-Level Ozone over Prolonged Periods," November 22, 2000, at Table C, Control Scenario—2020 Populations in Eastern Metropolitan Counties with Predicted Daily 8–Hour Ozone greater than or equal to 0.080 ppm. Docket A–2001–11, Document Number II–B–XX.

[31] EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm*.

onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues. It promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone.

The NAAQS for PM_{10} were established in 1987. According to these standards, the short term (24-hour) standard of 150 $\mu g/m^3$ is not to be exceeded more than once per year on average over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 50 $\mu g/m^3$ over three years. Recent PM_{10} monitoring data indicate that 14 designated PM_{10} nonattainment areas with a projected population of 23 million violated the PM_{10} NAAQS in the period 1997–99. In addition, there are 25 unclassifiable areas that have recently recorded ambient concentrations of PM_{10} above the PM_{10} NAAQS.[32]

Current 1999 $PM_{2.5}$ monitored values, which cover about a third of the nation's counties, indicate that at least 40 million people live in areas where long-term ambient fine particulate matter levels are at or above 16 $\mu g/m^3$ (37 percent of the population in the areas with monitors).[33] This 16 $\mu g/m^3$ threshold is the low end of the range of long term average $PM_{2.5}$ concentrations in cities where statistically significant associations were found with serious health effects, including premature mortality.[34] To estimate the number of people who live in areas where long-term ambient fine particulate matter levels are at or above 16 $\mu g/m^3$ but for which there are no monitors, we can use modeling. According to our national modeled predictions, there were a total of 76 million people (1996 population) living in areas with modeled annual average $PM_{2.5}$ concentrations at or above 16 $\mu g/m^3$ (29 percent of the population).[35]

To estimate future $PM_{2.5}$ levels, we refer to the modeling performed in conjunction with the final rule for our most recent heavy-duty highway engine and fuel standards, using EPA's Regulatory Model System for Aerosols and Deposition (REMSAD).[36] The most appropriate method of making these projections relies on the model to predict changes between current and future states. Thus, we have estimated future conditions only for the areas with current $PM_{2.5}$ monitored data (which cover about a third of the nation's counties). For these counties, REMSAD predicts the current level of 37 percent of the population living in areas where fine PM levels are at or above 16 $\mu g/m^3$ to increase to 49 percent in 2030.[37]

3. Carbon Monoxide

Carbon monoxide (CO) is a colorless, odorless gas produced through the incomplete combustion of carbon-based fuels. Carbon monoxide enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

High concentrations of CO generally occur in areas with elevated mobile-source emissions. Peak concentrations typically occur during the colder months of the year when mobile-source CO emissions are greater and nighttime inversion conditions are more frequent. This is due to the enhanced stability in the atmospheric boundary layer, which inhibits vertical mixing of emissions from the surface.

The current primary NAAQS for CO are 35 parts per million for the one-hour average and 9 parts per million for the eight-hour average. These values are not to be exceeded more than once per year. Air quality carbon monoxide value is estimated using EPA guidance for calculating design values. In 1999, 30.5 million people (1990 census) lived in 17 areas designated nonattainment under the CO NAAQS.[38]

Nationally, significant progress has been made over the last decade to reduce CO emissions and ambient CO concentrations. Total CO emissions from all sources have decreased 16 percent from 1989 to 1998, and ambient CO concentrations decreased by 39 percent. During that time, while the mobile source CO contribution of the inventory remained steady at about 77 percent, the highway portion decreased from 62 percent of total CO emissions to 56 percent while the nonroad portion increased from 17 percent to 22 percent.[39] Over the next decade, we would expect there to be a minor decreasing trend from the highway segment due primarily to the more stringent standards for certain light-duty trucks (LDT2s).[40] CO standards for passenger cars and other light-duty trucks and heavy-duty vehicles did not change as a result of other recent rulemakings.

4. Other Welfare and Environmental Effects

In addition to the health and welfare concerns just described, Category 3 marine diesel engines can contribute to regional haze, acid deposition, and eutrophication and nitrophication. Further information on these effects can

[32] EPA adopted a policy in 1996 that allows areas with PM_{10} exceedances that are attributable to natural events to retain their designation as unclassifiable if the State is taking all reasonable measures to safeguard public health regardless of the sources of PM_{10} emissions.

[33] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of 1999 Ambient Concentrations of Fine Particulate Matter," November 15, 2000. Air Docket A–2001–11, Document No. II–B–XX.

[34] EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm.*

[35] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years," December 6, 2000. Air Docket A–2001–11, Document No. II–B–XX.

[36] Additional information about the Regulatory Model System for Aerosols and Deposition (REMSAD) and our modeling protocols can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420–R–00–026, December 2000. Docket No. A–2001–11, Document No. A–II–XX. This document is also available at *http://www.epa.gov/otaq/disel.htm#documents.*

[37] Technical Memorandum, EPA Air Docket A–99–06, Eric O. Ginsburg, Senior Program Advisor, Emissions Monitoring and Analysis Division, OAQPS, Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years, December 6, 2000, Table P–2. Docket Number 2001–11, Document Number II–B–XX.

[38] National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A–19. This document is available at *http://www.epa.gov/oar/aqtrnd99/.* The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A–200111, Document No. II–A–XX.

[39] National Air Quality and Emissions Trends Report, 1998, March, 2000; this document is available at *http://www.epa.gov/oar/aqtrnd98/.* National Air Pollutant Emission Trends, 1900–1998 (EPA–454/R–00–002), March, 2000. These documents are available at Docket No. A–2000–01, Document No. II–A–72. See also Air Quality Criteria for Carbon Monoxide, US EPA, EPA 600/P–99/001F, June 2000, at 3–10. Air Docket A–2001–11, Document Number II–A–XX. This document is also available at *http://www.epa.gov/ncea/coabstract.htm.*

[40] LDT2s are light light-duty trucks greater than 3750 lbs. loaded vehicle weight, up through 6000 gross vehicle weight rating.

be found in Chapter 2 of the Draft Regulatory Support Document.

C. Contribution From Category 3 Marine Diesel Engines

1. National Inventories

We developed baseline Category 3 vessel emissions inventories under contract with E. H. Pechan & Associates, Inc.[41] Inventory estimates were developed separately for vessel traffic within 25 nautical miles of port areas and vessel traffic outside of port areas but within 175 nautical miles of the coastline. The inventories include all Category 3 traffic, including that on the Great Lakes. Different techniques were used to develop the port and non-port inventories. For port areas we developed detailed emissions estimates for nine specific ports using port activity data including port calls, vessel types and typical times in different operating modes. Emissions estimates for all other ports were developed by matching each of those ports to one of the nine specific ports already analyzed based on characteristics of port activity, such as predominant vessel types, harbor draft and region of the country. The detailed port emissions were then scaled to the other ports based on relative port activity. We developed non-port emissions inventories using cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors. More detailed information regarding the development of the baseline emissions inventories can be found in Chapter 6 of the Draft Regulatory Support Document.

There has been little study of the transport of marine vessel NO_X emissions and the distance they may travel to impact air quality on land. Pollutant transport is a very complicated subject, and the transport distance can vary dramatically depending on a variety of factors, including the pollutant under consideration, as prevailing wind speed and direction, and other atmospheric conditions. When we consider how far off the coast to include emissions in our baseline the correct answer may well vary depending on geographic area and prevailing atmospheric conditions. Thus, in developing baseline emissions inventories we looked at two scenarios that we believe reasonably bracket the distances from shore that vessel emissions my be emitted and expected in impact air quality on land. First, we looked only at the pollutants emitted within 25 nautical miles of a port area as a reasonable lower bound to estimate the national inventory of Category 3 marine diesel engines. As an upper bound we considered all Category 3 emissions within 175 nautical miles of shore.

Not surprisingly, these two different distances yield different inventory results. The 1996 NO_X and PM emissions inventories are shown in Table II.C–1. We used 1996 as the starting point for this analysis because that is the most recent year that we have detailed information available for the nine specific port areas. As will be discussed later in this section, this initial analysis shows that the contribution from U.S. and foreign flagged vessels differs between these two areas.

TABLE II.C–1.—CATEGORY 3 MARINE DIESEL ENGINE 1996 BASELINE EMISSIONS INVENTORIES

[thousand short tons]

Scenario	NO_X	PM
Within 25 nautical miles of ports	101	9.3
Within 175 nautical miles of coast	190	17

For the remainder of the analysis associated with the proposed emissions standards we will consider all emissions that occur within 175 nautical miles from the coast as our primary scenario. We request comment on all aspects of our emissions inventories. In particular, we request comment on whether we should consider a range different than 175 nautical miles from the coast as our primary scenario, and why. We also request comment on whether we should consider different distances from the coast for different areas of the country. For example, should we consider a smaller distance on the East coast than the West coast to account for prevailing wind patterns?

We will continue to investigate this issue throughout this rulemaking, and will incorporate any new information into the final rule. For example, the U.S. Department of Defense (DoD) has presented information to us recommending that a different, shorter (offshore distance) limit be established rather than the proposed 175 nautical miles as the appropriate location where emissions from marine vessels would affect on-shore air quality. DoD's extensive work on the marine vessels issue in Southern California resulted in a conclusion that emissions within 60 nautical miles of shore could make it back to the coast due to eddies and the nature of the sea breeze effects. Satellite data however showed a distinct tendency for a curved line of demarcation separating the offshore (unobstructed) or parallel ocean wind flow from a region of more turbulent, recirculated air which would impact on-shore areas. That curved line of demarcation was close to San Nicolas Island which is about 60 nautical miles offshore. Studies and published information on other coastal areas in California indicates that they experience somewhat narrower (perhaps 30 nautical miles) region of "coastal influence." The Gulf Coast and the U.S. East coast would similarly have their own unique meteorological conditions that might call for different lines of demarcation between on-shore and off-shore effects.

To estimate inventories for years after 1996, we developed inventory projections based on expected increases in vessel freight movement and expected changes in vessel characteristics, as well as fleet turnover based on 25 years as the average age of the world fleet at time of scrappage. We also take the MARPOL Annex VI NO_X limits into account because, although these international NO_X standards are not yet in force, we expect that most, if not all shipbuilders and shipping companies around the world are currently complying with them, and we expect this trend to continue. Our estimated emissions inventories are based on the assumption that all vessels built after 1999, both U.S. and foreign flagged, will comply with the MARPOL NO_X limits. Table II.C–2 shows the future year NO_X and PM inventories for selected years out to 2030. More detailed information regarding the development of the future year emissions inventories can be found in Chapter 6 of the Draft Regulatory Support Document. We request comment on these inventory projections. In particular, we request comment on whether freight growth will continue at the exponential rate that is has seen in the past, and for how long such exponential growth can be expected to continue.

One very important consideration in projecting future year inventories is the make up and size of the future vessel fleet. The size and make up of the future U.S. flagged fleet is dependent on vessel construction at U.S. shipyards, the nature of vessel replacement practices, and any growth in the number of ships in the fleet. Projecting future vessel production at U.S. shipyards is difficult for two reasons. First, vessel construction totals for U.S. shipyards

[41] "Commercial Marine Emission Inventory Development," E.H. Pechan and Associates, Inc. and ENVIRON International Corporation, April, 2002.

have varied quite a bit from year to year, with no clear trends. Second, the U.S. government discontinued subsidies to U.S. shipyards in 1983, creating a dramatic downward shift in production at U.S. shipyards. We request comment on likely future production at U.S. shipyards, including production estimates and the rationale behind the estimates. Vessel replacement practices also play a role in future year emissions inventory projections. For example, the current U.S. flagged fleet contains a large number of older steamships. We request comment on whether these steamships are likely to be replaced with diesels when they are scrapped. We also request comment on whether there are any other vessel replacement practices or trends that we should consider when projecting future year emissions inventories. As shown in Chapter 6 of the Draft Regulatory Support Document, a substantial portion of the U.S. flagged fleet is over 30 years old. We request comment on the size and nature of any increase in U.S. shipbuilding activity that may occur in the near future in an effort to replace the aging fleet. Finally, we request comment on whether the total number of U.S. flagged vessels is expected to grow substantially in the future and why.

TABLE II.C–2.—FUTURE YEAR NO_X AND PM INVENTORIES FOR CATEGORY 3 MARINE DIESEL ENGINES

[thousand short tons]

Year	NO_X			PM		
	Ports	Non-ports	All areas	Ports	Non-ports	All areas
1996	101	89	190	9	8	17
2010	146	128	274	14	12	26
2020	196	172	367	20	16	37
2030	288	243	531	30	24	54

Baseline emission inventory estimates for the year 2000 for Category 3 marine diesel engines are summarized in Table II.C–3 in the context of other emissions sources. This table shows the relative contributions of the different mobile-source categories to the overall national mobile-source inventory. Of the total emissions from mobile sources, all Category 3 marine diesel engines contributed about 1.5 percent of NO_X and 2.6 percent of PM emissions in the year 2000.

Our draft emission projections for 2020 for Category 3 marine diesel engines show how emissions from these engines are expected to increase over time if left uncontrolled beyond the MARPOL Annex VI NO_X limits. The projections for 2020 are summarized in Table II.C–4 and indicate that Category 3 marine diesel engines are expected to contribute 5.7 percent NO_X and 5.8 percent of PM emissions in the year 2020. Population growth and the effects of other regulatory control programs are factored into these projections. The relative importance of uncontrolled nonroad engines is higher than the projections for 2000 because there are already emission control programs in place for the other categories of mobile sources which are expected to reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations.

TABLE II.C–3.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2000

[thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to proposed standards (U.S. flagged commercial marine—Category 3)	79	0.6	2	0.0	4	0.0	7.0	1.0
Commercial Marine CI—Category 3	195	1.5	8	0.1	16	0.0	18.0	2.6
Commercial Marine CI—Categories 1 and 2	700	5.2	22	0.3	103	0.1	20	2.9
Highway Motorcycles	8	0.1	84	1.1	329	0.4	0.4	0.1
Nonroad Industrial SI > 19 kW	306	2.3	247	3.2	2,294	2.9	1.6	0.2
Recreational SI	13	0.1	737	9.6	2,572	3.3	5.7	0.8
Recreation Marine CI	24	0.2	1	0.0	4	0.0	1	0.1
Marine SI Evap	0	0.0	89	1.2	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.2	2,144	2.7	38	5.4
Nonroad SI < 19 kW	106	0.8	1,460	18.9	18,359	23.5	50	7.2
Nonroad CI	2,625	19.6	316	4.1	1,217	1.6	253	36.3
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,201	39	3,719	48	27,157	35	418	60
Total Highway	7,981	60	3,811	50	49,811	64	240	34
Aircraft	178	1	183	2	1,017	1	39	6
Total Mobile Sources	13,360	100	7,713	100	77,985	100	697	100
Total Man-Made Sources	24,444		18,659		100,064		3,093	
Mobile Source percent of Total Man-Made Sources	55		41		78		23	

TABLE II.C–4.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2020

[thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to proposed standards (U.S. flagged commercial marine—Category 3)	150	2.3	5	0.1	9	0.0	14.0	2.2
Commercial Marine CI—Category 3	367	5.7	17	0.3	37	0.0	37.0	5.8
Commercial Marine CI—Categories 1 and 2	617	9.6	24	0.4	125	0.1	19.0	3.0
Highway Motorcycles	14	0.2	144	2.3	569	0.6	0.8	0.1
Nonroad Industrial SI > 19 kW	486	7.6	348	5.5	2,991	3.3	2.4	0.4
Recreational SI	27	0.4	1,706	27.1	5,407	6.0	7.5	1.2
Recreation Marine CI	39	0.6	1	0.0	6	0.0	1.5	0.2
Marine SI Evap	0	0.0	102	1.6	0	0.0	0	0.0
Marine SI Exhaust	58	0.9	284	4.5	1,985	2.2	28	4.4
Nonroad SI < 19 kW	106	1.7	986	15.6	27,352	30.3	77	12.0
Nonroad CI	1,791	28.0	142	2.3	1,462	1.6	261	40.6
Locomotive	611	9.5	35	0.6	119	0.1	21	3.3
Total Nonroad	4,116	63	3,789	60	40,053	44	455	70
Total Highway	2,050	33	2,278	36	48,903	54	145	23
Aircraft	232	4	238	4	1,387	2	43	7
Total Mobile Sources	6,398	100	6,305	100	90,343	100	643	100
Total Man-Made Sources	16,374	.....	16,405	.....	114,011	.....	3,027	.....
Mobile Source percent of Total Man-Made Sources	39	.....	38	.....	79	.....	21	.....

2. Inventories for Specific Ports

In the previous section we presented estimates of Category 3 marine diesel engine emissions as percentages of the national mobile source inventory. Total national man-made source inventories were also included in Tables II.C–3 and II.C–4 for comparison. However, marine vessel activity tends to be concentrated in port areas, and thus we would expect that Category 3 marine diesel engines would have a proportionately bigger impact on the mobile source pollution inventories of port areas. Using the port-specific Category 3 inventories developed for use in our national inventory in conjunction with total port area inventories developed in support of the heavy-duty on-highway 2007 rule, we developed estimates of the contribution of Category 3 marine diesel engines to the mobile source NO_X and PM inventories of several selected port areas, including several ozone nonattainment areas. The NO_X results are shown in Table II.C–5, and the PM results are shown in Table II.C–6. As can be seen from these tables, the relative contribution of Category 3 marine diesel engine pollution to mobile source pollution is expected to increase in the future. This is due both to the expected growth of shipping traffic in the future and the effect of emissions control programs already in place for other mobile sources.

TABLE II.C–5.—MODELED NO_X INVENTORIES AS A PERCENTAGE OF MOBILE SOURCE NO_X IN SELECTED PORT AREAS

Ozone non-attainment area?	Port area	Percent of mobile source NO_X from C3	
		1966	2020
Y	Baton Rouge and New Orleans, LA	7.4	15.8
Y	Los Angeles/Long Beach, CA	2.0	8.6
Y	Beaumont/Port Arthur, TX	1.4	3.1
Y	Houston/Galveston/Brazoria, TX	1.5	4.9
Y	Baltimore/Washington, DC	2.1	11.4
Y	Philadelphia/Wilmington/Atlantic City	1.8	6.9
Y	New York/New Jersey	1.0	6.2
N	Seattle/Tacoma/Bremerton/Bellingham, WA	4.3	26.3
N	Miami/Ft. Lauderdale, FL	5.4	28.1
N	Portland/Salem, OR	1.9	11.9
N	Wilmington, NC	6.9	26.8
N	Corpus Christi, TX	4.8	12.2
N	Brownsville/Harlington/San Benito, TX	1.8	6.6

TABLE II.C–6—MODELED PM INVENTORIES AS A PERCENTAGE OF MOBILE SOURCE PM IN SELECTED PORT AREAS

Port area	Percent of mobile source PM from C3	
	1996	2020
Baton Rouge and New Orleans, LA	12.1	22.6
Los Angeles/Long Beach, CA [1]	3.9	10.8
Beaumont/Port Arthur, TX	7.4	18.3
Houston/Galveston/Brazoria, TX	3.3	8.5
Baltimore/Washington DC	3.2	9.6
Philadelphia/Wilmington/Atlantic City	2.8	6.3
New York/New Jersey	1.6	5.7
Seattle/Tacoma/Bremerton/Bellingham, WA	8.5	25.5
Miami/Ft. Lauderdale, FL	10.6	28.7
Portland/Salem, OR	3.9	12.1
Wilmington, NC	8.1	22.4
Corpus Christi, TX	6.0	9.6
Brownsville/Harlington/San Benito, TX	3.1	14.9

[1] PM nonattainment area.

3. Emissions in Nonport Areas

These ships can also have a significant impact on inventories in areas without large commercial ports. For example, Santa Barbara estimates that engines on ocean-going marine vessels contribute about 37 percent of total NO_X in their area. These emissions are from ships that transit the area, and "are comparable to (even slightly larger than) the amount of NO_X produced onshore by cars and truck.[42] These emissions are expected to increase to 62 percent by 2015. While Santa Barbara's exact conditions may be unique due to the relative close proximity of heavily used shipping channels to shore and the meteorological conditions in their area, other coastal areas may also have relatively high inventory impacts from ocean-going vessels.

4. Contribution by Flag

It is important to determine how much of the Category 3 marine diesel engine pollution inventory is contributed by U.S. flagged vessels given that we are considering whether to restrict application of the proposed standards and standards under consideration to U.S. flag vessels only or to apply the standards to all vessels (U.S. and foreign-flag entering U.S. ports). We estimated the relative contribution of U.S. and foreign flagged vessels separately for the port areas and the non-port areas due to the fact that we had different data sets available to us for the two areas.

We estimated the contribution of U.S. flagged vessels for the ports areas using port call data obtained from the U.S. Maritime Administration (MARAD). These data contained all port calls in 1999 to U.S. ports by vessels of greater than 1000 gross registered tons, including the country in which they are flagged and the number of port calls each vessel made. An analysis of the port call data shows that U.S. flagged vessels only account for 6.4 percent of port calls to U.S. ports. For the lack of more detailed information regarding the breakout of U.S. and foreign flagged vessel emissions we applied the percentage of port calls from U.S. and foreign flagged vessels to the national ports inventories to determine the relative contributions of each to the national ports inventories.

We used freight tonnage data from the U.S. Army Corp of Engineers (USACE) to develop relative U.S. and foreign flagged emissions contributions in non-ports areas within 175 nautical miles of the coast. In contrast to the data for the ports areas, the USACE data suggests that more than 80 percent of the non-ports emissions come from U.S. flagged vessels.

The relative contributions from U.S. and foreign flagged vessels are quite different between the ports areas and the non-ports areas. Some of this difference can be explained through U.S. cabotage law, which requires that any vessel operating between two U.S. ports be U.S. flagged. Thus, while most port traffic is foreign flagged, the foreign flagged vessels would tend to come into a single U.S. port and then leave U.S. waters. In contrast, U.S. flagged vessels would typically travel from one U.S. port to another, thus accounting for a higher percentage of the non-ports emissions. We request comment on this assessment of U.S. and foreign flagged vessel contributions, as well as additional data that would help us further understand the relative contributions of U.S. and foreign flagged vessels to the national pollution inventories.

For the purposes of the future inventory projections we assumed that the current split of U.S. and foreign flagged emissions would continue. However, this assumption, in combination with our assumed growth rates, implies that the manufacture of Category 3 vessels in the U.S. for the U.S. flagged fleet would occur in the future at rates greater than the recent build rate of around two vessels per year. More likely, seven to nine new U.S. flagged vessels would need to be built per year to accommodate the U.S. flagged vessel emissions growth assumptions. We request comment on whether the U.S. flagged fleet is expected to grow at this rate in the future, or instead whether a growing fraction of vessel emissions would come from foreign flagged vessels in the future. Specifically, we request comment on the likely replacement rates and expected new capacity of the U.S. fleet in the future.

III. What Engines Are Covered?

The scope of application of this proposal is broadly set by Clean Air Act section 213(a)(3), which instructs us to set standards for new nonroad engines and new nonroad vehicles. In this case, the proposed rule is intended to cover all new marine diesel engines installed on vessels flagged or registered in the United States that have a specific engine displacement greater than or equal to 30 liters per cylinder. Under the requirements of the Clean Air Act, once emission standards apply to a group of

[42] Memorandum to Docket A–2001–11 from Jean Marie Revelt, "Santa Barbara County Air Quality News, Issue 62, July–August 2001 and other materials provided to EPA by Santa Barbara County," March 14, 2002. Air Docket A–2001–11.

engines, a manufacturer of a new engine must get a certificate of conformity from us before selling an engine, importing an engine, or otherwise introducing an engine into commerce in the United States.[43] [44] We also require vessel manufacturers to install only certified engines on new vessels that will be flagged or registered in the United States once emission standards apply. The certificate of conformity (and corresponding engine label) provide assurance that engine manufacturers have met their obligation to make engines that meet the emission standards over the useful life we specify in the regulations.

The scope of application for emission standards for commercial marine diesel engines up to 30 liters per cylinder was established in our 1999 rulemaking (64 FR 73300, December 29, 1999). In that rule, we adopted a set of clarifying definitions that apply to those commercial marine diesel engines and the vessels that use them. We are proposing to apply those definitions to Category 3 marine diesel engines for the purpose of identifying the engines and vessels that must comply with the proposed standards. According to those definitions, which can be found in 40 CFR 94.2, a Category 3 marine diesel engine would be subject to the proposed standards if it is:

- Manufactured after the emission standards become effective, whether domestic or imported;
- Installed for the first time in a marine vessel flagged in the U.S. after having been used in another application subject to different emission standards; or
- Installed on a new vessel flagged in the U.S.

At the same time we are soliciting comment on whether the emission standards should also apply to marine engines on foreign vessels entering U.S. ports and to no longer exclude such foreign vessels from the emission standards under 40 CFR § 94.1(b)(3). We are inviting comment on whether to modify the definition of a "new marine engine" to find that engine emission standards would apply to Category 1, 2 and 3 marine diesel engines that are manufactured after the standards become effective and that are installed on a foreign flagged vessel that enters a U.S. port. If we were to adopt such an approach, we anticipate the standards would also apply to any marine engine that is installed on a foreign vessel if the vessel is manufactured (or that otherwise become new) after the standards become effective.

We are also proposing to eliminate the foreign trade exemption. Under this exemption, contained in 40 CFR section 94.906(d), engines on vessels flagged or registered in the United States that spend less than 25 percent of total operating time within 320 kilometers of U.S. territory are not required to comply with the proposed limits. This would generally affect auxiliary engines, which are usually less than 30 liters per cylinder.

EPA is not considering inclusion of gas turbines in this rulemaking given the limited amount of information that we currently have about emissions from turbines. EPA's current belief is that gas turbines generally have lower emissions than diesels. However, we are requesting that commenters provide to us any emissions information that is available as well as whether it would be appropriate to regulate turbines and diesels together. Commenters supporting the regulation of turbines should also address whether any special provisions would be needed for the testing and certification of turbines.

In the remainder of this section we discuss the proposed scope of application of the rule in greater detail.

A. What Is a Marine Vessel?

For the purpose of our marine diesel engine standards, "marine vessel" has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3 (see 40 CFR 94.2). According to that definition, the word "vessel" includes "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

B. What Is a Category 3 Marine Diesel Engine?

In our 1999 commercial marine diesel engine rule, we defined marine engine as an engine that is installed or intended to be installed on a marine vessel. We also differentiated between three types of marine diesel engines. As explained in that rule, this approach is necessary because marine diesel engines are typically derivatives of land-based diesel engines and the land-based engines are not all subject to the same numerical standards and effective dates.

The definitions for the different categories of marine diesel engines are contained in 40 CFR 94.2. Category 1 marine diesel engines, those having a rated power greater than or equal to 37 kilowatts and a specific engine displacement less than 5.0 liters per cylinder, are similar to land-based nonroad engines used in construction and farm equipment. Category 2 marine diesel engines, those having a specific engine displacement greater than or equal to 5.0 liters per cylinder but less than 30 liters per cylinder, are most often similar to locomotive engines. Category 1 and Category 2 marine diesel engines are used as propulsion engines (i.e., an engine that moves a vessel through the water or directs the movement of a vessel (40 CFR 94.2)) on tugs, fishing vessels, supply vessels, and smaller cargo vessels. They are also used as auxiliary engines (i.e., a marine engine that is not a propulsion engine (40 CFR 94.2)) to provide electricity for navigation equipment and crew service or other services such as pumping or powering winches or anchors.

Category 3 marine diesel engines, which are the primary focus of this proposal, are defined as having a specific engine displacement greater than or equal to 30 liters per cylinder. These are very large engines used for propulsion on large vessels such as container ships, tankers, bulk carriers, and cruise ships. Most of these engines are installed on ocean-going vessels, although a few are found on ships in the Great Lakes. Category 3 marine diesel engines have no land-based mobile source counterpart, although they are similar to engines used to generate electricity in municipal power plants. In marine applications they are either mechanical drive or indirect drive. Mechanical drive engines can be direct drive (engine speed is the same as propeller speed; this is common on very large ships) or have a gearbox (i.e., they have reduction gears; this is common on ships using medium speed Category 3 marine diesel engines). Indirect drive engines are used to generate electricity that is then used to turn the propeller shaft. These are common in cruise ships since they have heavy electricity demands. Category 3 marine diesel engines typically operate at a lower speed and higher power than Category 1 and Category 2 engines, with the slowest speed being 130–200 rpm.

[43] The term "manufacturer" means any person engaged in the manufacturing or assembling of new engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. 40 CFR 94.2.

[44] For this proposal, we consider the United States to include the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands. See CAA section 302(d) definition of "State."

TABLE III.B–1—MARINE ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder	hp range (kW)	rpm range
1	disp. < 5 liters (and power ≥ 37 kW)	37–2,300	1,800–3,000
2	5 ≤ disp. < 30 liters	1,500–8,000	750–1,500
3	disp ≥ 30 liters	2,500–80,000	80–900

C. What Is a New Marine Diesel Engine?

1. The Current Regulatory Definition

As set out in 40 CFR 94.2, a new marine engine is (i) a marine engine, the equitable or legal title to which has never been transferred to an ultimate purchaser; (ii) a marine engine installed on a vessel, the equitable or legal title to such vessel has never been transferred to an ultimate purchaser; or (iii) a marine engine that has not been placed into service on a vessel. In cases where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, an engine ceases to be new after it is placed into service.

What this means is that a marine engine is new and is subject to the proposed standards before its initial sale is completed or it is placed into service. Practically, it means that any engine must meet the proposed emission standards that are in effect the first time it is sold or placed into service or the first time the vessel on which it is installed is sold or placed into service. This is true for any engine that is sold for the first time as a marine engine (placed into service on a marine vessel), regardless of whether it has previously been used in other nonroad or on-highway purposes. This clarification is necessary because some marine engines are made by "marinizing" existing land-based nonroad or highway engines. Without this clarification a marinized used highway or land-based engine would not be subject to the standards since its title was already transferred to the initial highway or land-based nonroad user.

With respect to imported marine diesel engines, 40 CFR 94.2 defines "new" as an engine that is not covered by a certificate of conformity at the time of importation and that was manufactured after the starting date of the emissions standards which are applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States). According to this definition, the proposed standards would apply to engines that are imported by any person, whether newly manufactured or used, and whether they are imported as uninstalled engines or if they are already installed on a marine vessel that is imported into the U.S. In one example, a person may want to import a vessel built after the effective date of the standards but the engine does not have a certificate of conformity from EPA because the engines and vessel were manufactured elsewhere. We would still consider it to be a new engine or vessel, and it would need to comply with the applicable emission standards. This provision is important to prevent manufacturers from trying to avoid the emission standards by building vessels abroad, transferring their title, and then importing them as used vessels.

2. Should Engines on Foreign Flag Vessels That Enter U.S. Ports Be Covered?

Today's proposal solicits comment on whether to modify the definition of a "new" marine engine to find that engine emission standards apply to Category 1, 2, and 3 marine diesel engines that are built after the standards become effective and that are installed on foreign flag vessels that enter U.S. ports. Such vessels and their engines would be subject to U.S. engine emission standards as a condition of port state entry.

The 1999 marine engine rule did not apply to marine engines on foreign vessels. 40 CFR 94.1(b)(3). At that time we concluded that engines installed on vessels flagged in another country that come into the United States temporarily will not be subject to the emission standards. Those vessels are not considered imported under the U.S. customs laws, and under the interpretation adopted in that rule we did not consider their engines "new" for purposes of Clean Air Act section 213, 42 U.S.C. 7547. 64 FR 73300, 73302 (Dec. 12, 1999).

Section 213 authorizes regulation of "new nonroad engine" and "new nonroad vehicle." However, Title II of the Clean Air Act does not define either "new nonroad engine" or "new nonroad vehicle." Section 216 defines a "new motor vehicle engine" to include an engine that has been "imported." EPA modeled the current regulatory definitions of "new nonroad engine"and "new marine engine" at 40 CFR 89.2 and 40 CFR 94.2, respectively, after the statutory definitions of "new motor vehicle engine" and "new motor vehicle." Because "new nonroad engine" is not defined in the statute, EPA is seeking comment on whether "new nonroad engine" could be defined to include marine engines on foreign vessels that enter U.S. ports and that are manufactured after the standards go into effect, whether or not they are considered imported under the U.S. customs laws. EPA also invites comment on whether the term "import," which is not defined in Title II, should be defined to include foreign flag vessels, for purposes of the definition of "new nonroad engine" only, whether or not they are considered imported under the U.S. customs laws.

EPA has discretion in defining "new nonroad engine" as it is used in Section 213 of the Act. EPA solicits comment on whether it would be appropriate and within EPA's authority to exercise this discretion to define "new nonroad engine" to include marine engines on foreign vessels that enter US ports, in light of environmental and international oceans policy and any other relevant factors, including consideration of their significant emissions contribution to air quality problems in the United States. If EPA were to regulate foreign-flagged vessels, such vessels would be subject to enforcement as a condition of port entry.

Even if EPA determined that it had the discretion to define "new nonroad engine" as outlined above, EPA could conclude that the most appropriate exercise of its discretion would involve retention of the 1999 definition of "new nonroad engine." EPA could conclude that revising the definition would not be warranted at this time because of the potential implications that setting engine emission standards for foreign vessels might have on international commerce and future international negotiations under MARPOL and in other fora. EPA will consider, therefore, whether setting a national standard in this situation and changing its interpretation of "new nonroad engine" to apply this standard to foreign vessels could adversely affect the U.S.' position with respect to the variety of other international issues that are addressed under MARPOL and in other fora. In considering whether to impose requirements on foreign vessels that are

more stringent than those imposed on such vessels by their flag states or which may be more stringent than those set out in international instruments (or agreements), EPA will consider whether this would raise questions of international oceans policy or would have adverse ramifications on U.S. foreign policy.

In such a case, it might be more appropriate at this time to exercise any discretion EPA may have by retaining the 1999 definition of "new nonroad engine."

However EPA decides this issue it would be free to revisit it in the future as appropriate. For example, EPA could revisit any decision to retain the 1999 definition if negotiations with other nations do not lead to international agreement on emissions that adequately protect air quality in the U.S. when foreign vessels enter U.S. ports.

EPA also clarifies that any extension of the rule to foreign flag vessels would not include extension to any warship, naval auxiliary, or other ship owned or operated by a foreign state and used for government noncommercial service.

3. Should Engines on Foreign Flag Vessels Be Covered Regardless of the Number of Their Annual Visits?

If we were to apply the standards to engines that are manufactured after the standards become effective and that are installed on foreign flag vessels that enter U.S. ports, one thing to consider is whether this provision should be limited by the number of times a vessel visits U.S. ports annually.

Were we to apply the standards to engines on foreign flag vessels, using a strict approach, any engines on a vessel manufactured (or that otherwise becomes new) after the effective date of the standards, or manufactured before the effective date but has engines that are manufactured after the effective date, that comes to the United States, whether once a year, twenty times a year, or even more, would be required to have compliant engines.

An alternative approach would apply the standards only to those vessels that are frequent visitors to the United States. A review of 1999 data on vessel entrances from the United States Maritime Administration for 1999 indicates that there is considerable variation in the number of vessel entrances per ship. According to that data, which is described in more detail in Chapter 2 of the draft Regulatory Support Document for this rulemaking, there were about 2,500 foreign flag vessels that made only one or two entrances into the United States in 1999. These vessels accounted for 33 percent of all foreign flag vessels that entered this country, but they accounted for only about 5 percent of all vessel entrances. There were about 3,900 foreign flag vessels that entered the United States four or fewer times in that year, accounting for about 52 percent of all vessels, but they accounted for only about 12.5 percent of all vessel entrances. In other words, there is a large set of vessels that come to the United States only a few times a year. The vast majority of entrances by foreign flag vessels, 87.5 percent, are made by about 3,700 vessels that come here 5 or more times a year. We estimate that emissions from engines on foreign flag vessels were on average about 1.7 tons NO_X per vessel in 2000. This means that foreign vessels that enter U.S. ports only once or twice a year contributed about 6,100 tons of NO_X in 2000 (about 3 percent of total Category 3 NO_X emissions of 195,000 tons), and foreign flag vessels that entered U.S. ports four or fewer times a year contributed about 14,500 tons of NO_X in 2000 (about 7.4 percent of Category 3 NO_X emissions).

If we were to conclude that it was appropriate under the Clean Air Act to apply the standards to engines on foreign flag vessels, it might be appropriate to exempt engines on foreign-flag vessels that come to the United States only a few times a year. This could be a temporary exemption that would apply only as long as a vessel remains below the threshold number of vessel entrances. To qualify for such an exemption, the shipowner would have to show that the ship does not frequently enter U.S. ports. This demonstration could be made based on the average number of times the vessel entered the United States in the previous two years, for existing vessels, or on the expected usage of the vessel for new vessels (e.g., a regular container or tanker route), for new vessels. In any case, a shipowner that did not obtain an exemption would have to demonstrate in some form that the vessel's engines are compliant. In other words, under such an approach, each foreign flag that seeks to enter a U.S. port would be required to have either a compliant engines or an exemption from the program based on the frequency of its visits. Under this approach, such a requirement would apply for every trip, not just trips in excess of the threshold number of trips to obtain the exemption.

This alternative relies on the assumption that a vessel that enters the United States only periodically does not have dramatically different number of vessel entrances from year to year. We request comment on whether this is, in fact, the case. Another important aspect of such an exemption for foreign flag vessels, if we were to include them in this rule, is what would happen if the vessel wished to make a third, or fifth, entry into a U.S. port. This is important because of the certification burden associated with making that extra annual trip. The owner of a ship with such an exemption would have to be confident that the vessel would not seek entry more than the allowable number of times. Alternatively, it might be possible to petition EPA for permission to enter an extra time. This might require entering into a settlement agreement in advance of a violation of the terms of the exemption. The settlement could include a fine, a restriction on the number of entries in the future, or some other requirement. We seek comment on this as well as alternative methods to address the case in which a ship would seek to enter U.S. ports in excess of the number of visits specified in the exemption, and on whether obtaining an advance agreement with EPA would be too burdensome.

We request comment on all aspects of this potential alternative. Specifically, we request comment on the number of times a ship should be allowed to enter U.S. ports in a twelve-month period before being required to have compliant engines. We also request comment on whether there is much variability in port entries from year to year for vessels that come to U.S. ports only periodically.

D. What is a New Marine Vessel?

The definition of new vessel is set out in 40 CFR 94.2. This definition is similar to the definition of new engine: a new marine vessel is a vessel the equitable or legal title of which has never been transferred to an ultimate purchaser. In the case where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, a vessel ceases to be new when it is placed into service. Thus, a vessel is new and must have a certified engine and meet any other requirements for new vessels until its initial sale is completed or it is placed into service.

In addition, a vessel is considered to be new when it has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. As noted in our 1999 rulemaking, this provision is intended to prevent someone from re-using the hull or other parts from a used vessel to avoid emission standards. When applying this provision, the modifications must be completed prior

to the effective date of the standards that would otherwise apply. For example, if a second tier of engine standards goes into effect in 2007, modifications that are completed by December 31, 2006 will not trigger the engine requirements and the engines on that vessel would not have to meet the standards. However, if the vessel modifications are completed on or after January 1, 2007, and they exceed 50 percent of the value of the modified vessel, then the engines on the vessel must meet the standards regardless of whether they have been changed as part of the vessel modification.

The definition in 40 CFR 94.2 refers to the "value" of the modifications, rather than the costs. This should therefore be based on the appraised value of the vessel before modifications compared with the value of the modified vessel. The following equation demonstrates the calculation, showing that a vessel is new if:

$$\frac{[\text{assessed value after modifications}] - [\text{assessed value before modifications}]}{[\text{assessed value after modifications}]} \geq 0.5$$

If the value of the modifications exceeds 50 per cent of the final value of the modified vessel, we would treat the vessel as new under 40 CFR part 94. To evaluate whether the modified vessel would be considered new, one would need to project the fair market value of the modified vessel based on an objective assessment, such as an appraisal for insurance or financing purposes, or some other third-party analysis. While the preliminary decision can be based on the projected value of the modified vessel, the decision must also be valid when basing the calculations on the actual assessed value of the vessel after modifications are complete.

E. Would the Foreign Trade Exemption Be Retained?

In addition to their main propulsion engines, which are generally Category 3 marine diesel engines, ocean-going commercial vessels typically have several Category 1 and Category 2 engines that are used in auxiliary power applications. They provide electricity for important navigational and maneuvering equipment, and crew services.

Several commenters to our earlier marine diesel engine rulemaking expressed concern that requiring ship owners to obtain and use compliant Category 1 and Category 2 engines for vessels that spend most of their time outside the U.S. could be burdensome for those vessels if these engines need to be repaired or replaced when they are away from U.S. ports. Consequently, we provided a foreign trade exemption for these engines. A vessel owner can obtain this exemption for Category 1 and Category 2 marine diesel engines if it can be demonstrated to the Administrator's satisfaction that the vessel: (a) Will spend less than 25 percent of its total engine operation time within 320 kilometers of U.S. territory; or (b) will not operate between two U.S. ports (40 CFR 94.906(d)). Engines that are exempt under this provision must be labeled to indicate that they have been certified only to the MARPOL Annex VI NO_X curve limits and that they are for use solely on vessels that meet the above criteria.

Today, we are proposing to eliminate this foreign trade exemption because the conditions that led to the need for it no longer hold. Specifically, we have learned that many engine spare parts are kept onboard vessels to enable ship operators to perform maintenance and repairs while the ship is underway. In addition, obtaining parts that are not kept onboard is not expected to be a problem. Modern package delivery systems should allow ship owners to obtain parts quickly, even overnight, and necessary parts can be shipped to the next convenient port on a ship's route. In the unlikely case that an engine fails catastrophically and must be replaced by a compliant engine, we are confident that the ship operator will be able to make arrangements to obtain a certified engine since the major manufacturers of marine diesel engines operate abroad as well as in the United States. Because the burden associated with repairing or replacing engines away from the United States is not significant, we believe it is appropriate to eliminate the exemption. We do not expect this change to have any impact on shipowners and operators, however, we request comments on the elimination of this exemption. Would this change have any measurable impact on U.S. flag shipowners or operators? Would it put U.S. flag shipowners or operators at a competitive disadvantage, in particular if a Tier 2 standard is included in the final rule? If so, please provide information supporting this concern.

IV. Standards and Technological Feasibility

A. What Engine Emission Standards Are Under Consideration?

Manufacturers of Category 3 marine engines have available a wide range of technologies to control emissions. Many of these technologies are similar to those that have been developed for smaller nonroad and highway diesel engines. While Category 3 marine engines are much larger than other regulated diesel engines, many of the same engineering principles of emission formation and control apply. In fact, manufacturers have applied significant effort to reduce emissions from these engines, both to meet Annex VI NO_X standards and to develop technologies to address concerns in specific areas. At the same time, it is clear that a substantial opportunity remains to adapt technologies to Category 3 marine engines

The following discussion of emission standards and the associated control technologies applies without respect to whether the standards ultimately apply only to U.S.-flag vessels or to all vessels calling on U.S. ports. Engine technology has become a very global field, with emission-control technology and compliant engines coming from all parts of the world. Manufacturers and owners of foreign-flag vessels would not face any unique constraints in using engines certified to EPA emission standards compared with U.S.-flag vessels. Nevertheless, we are proposing emission standards only for engines installed on U.S.-flag vessels, so references in this section to Category 3 marine engines apply specifically to those engines that would be subject to the proposed emission standards, unless otherwise noted.

Clean Air Act section 213 directs EPA to adopt standards requiring: * * *the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

To implement this Clean Air Act directive, we are seeking comment on two separate tiers of emission standards

for new marine diesel engines, as described below.

This section also describes an approach for setting Tier 2 HC and CO standards, applying Tier 1 standards to engines between 2.5 and 30 liters per cylinder, and defining voluntary low-emission standards.

1. Tier 1 Emission Standards

We propose to adopt a first tier of standards starting in the 2004 model year[45] equivalent to the Annex VI NO_X limits. Manufacturers have introduced basic emission-control technologies for all types of marine diesel engines in response to the Annex VI standards. This effort has demonstrated the feasibility of in-cylinder technologies including optimized turbocharging, higher compression ratio, and optimized fuel injection, which generally includes timing retard and changes to the number and size of injector holes to increase injection pressure.

As described in Section V, we are proposing to accept emission data for Tier 1 certification based on testing with either distillate or residual fuel. Since most or all manufacturers have been using distillate fuel to comply with Annex VI requirements, we expect manufacturers to meet Tier 1 standards generally by submitting their available emission data from testing with distillate fuels. However, since Annex VI does not include detailed specifications for test fuels, we believe that we will need to correct emission data for the effect of fuel nitrogen content. This correction is described later in this section. We would require that certified engines continue to meet Tier 1 emission standards throughout their useful life when tested with either distillate or residual fuel, after correction for the effect of fuel nitrogen. The proposed Tier 1 NO_X limits, reflecting the fuel adjustment, are set out in Table IV.A–1.

TABLE IV.A–1.—PROPOSED TIER 1 NO_X EMISSION LIMITS (g/kW-HR)*

Engine speed (n)	n ≥ 130 rpm**	n < 130 rpm
Tier 1	$45.0 \times n^{-0.2} + 1.4$	18.4

*The proposed regulations specify emission standards based on testing with measured emission values corrected to take into account the nitrogen content of the fuel. Emission values are corrected to values consistent with testing engines with fuel containing 0.4 weight percent nitrogen. Testing with fuel containing 0.2 weight-percent nitrogen (typical for in-use distillate marine fuels) would have a correction of 1.4 g/kW-hr, so the proposed Tier 1 NO_X standards would match the Annex VI NO_X standards at this test point.

**No cap would apply to engines over 2000 rpm, because Category 3 engines all have engine speeds well below that speed.

We are also proposing to apply the Tier 1 standards to all marine diesel engines with specific displacement between 2.5 and 30 liters per cylinder. This would apply to these engines from 2004 to 2006, after which the EPA Tier 2 marine engine emission standards established in December 1999 would apply (64 FR 73300, December 29, 1999). All testing to show compliance for these engines would be based on testing with distillate fuels meeting the specifications in 40 CFR 94.108.[46] As with the Category 3 engines, this would merely formalize the Annex VI standards, which these engines should already meet. Including these engines in this proposal would remove any ambiguity regarding the applicability of emission standards. We are not proposing to include engines under 2.5 liters per cylinder, because the December 1999 emission standards generally start already in 2004. Marine diesel engines below 0.9 liters per cylinder need not meet EPA emission standards until 2005. Most of those engines are under 130 kW and are therefore not subject to Annex VI standards.

2. Effect of Fuel Variables on Emission Standards

Another objective of the Clean Air Act is to adopt test procedures that represent in-use operating conditions as much as possible, including specification of test fuels consistent with the fuels that compliant engines will use over their lifetimes. This raises the question of testing Category 3 marine engines with distillate and residual fuel. Distillate fuel has a higher quality than residual fuel, but costs significantly more, so vessels with Category 3 marine engines primarily use residual fuel. The Annex VI emission standard is based on allowing manufacturers to test with marine distillate fuels, which generally have nitrogen levels of 0.0 to 0.4 weight percent. As discussed in the Draft Regulatory Support Document, NO_X emission levels increase with greater amounts of nitrogen that are bound up in the fuel. Residual fuels generally have higher nitrogen concentrations (typically 0.2 to 0.6 weight percent).

We are proposing that manufacturers of Category 3 engines may certify that they meet the applicable emission standards using either distillate or residual fuel. The proposed regulations include a range of fuel specifications for each fuel type (40 CFR 94.108). However, for testing engines after installation in the vessel, we would expect manufacturers to use residual fuel. This would add assurance that emission-control technologies reduce emissions under real operation in vessels. Without this assurance, manufacturers could implement and optimize technologies to achieve substantial emission control with distillate fuel without necessarily reducing emissions when engines operate with residual fuel.

To appropriately account for the emission-related effects of fuel quality, we analyzed the effect of nitrogen in contributing to NO_X emissions. The first step is to assign a default nitrogen content for distillate fuels as a benchmark to properly characterize the Annex VI NO_X standards. Fuel sampling shows an average concentration of 0.2 percent nitrogen in distillate fuel by weight (i.e., weight percent).[47] The comparable average value for residual fuels is 0.4 weight percent. To adjust the standard for testing with high-nitrogen residual fuel, we calculated the amount of additional NO_X that would form if all the additional fuel-bound nitrogen would react to form NO_X. This calculation depends on assigning a value for brake-specific fuel consumption, for which we use 220 g/

[45] We are proposing to base model years on the date on which the engine is first assembled. In other rules, we have defined the date of manufacture to be the date of the final assembly of the engine. However, we recognize that Category 3 engines are often disassembled for shipment to the site at which it is installed in the ship.

[46] Without the fuel-based corrections described below, the proposed Tier 1 standards for these engines default to $NO_X = 45.0 \ ^{-0.2}$, with emissions capped at 9.8 g/kW-hr for engine speeds over 2000 rpm.

[47] Lloyds report.

kW-hr.[48] The resulting correction of 1.4 g/kW-hr shows up as an additive term in the equation in Table IV.A–1, since it is a constant value (independent of speed), assuming a consistent brake-specific fuel consumption rate.[49] For all testing with Category 3 engines, we would require measuring fuel-bound nitrogen and correcting measured values to what would occur with a nitrogen concentration of 0.4 weight percent (see Section V). This corrected value would be used to determine whether the engine meets emission standards or not. This correction methodology would apply equally to testing with distillate or residual fuels. Note that Annex VI includes a 10-percent allowance for higher emissions when performing simplified in-use testing with residual fuel. However, we believe that the nitrogen-based correction for any testing with any fuel is a better way to ensure that the targeted emission reductions are achieved in use.

This proposed approach to account for fuel nitrogen would help us ensure that engines meet the targeted level of emission control for the whole range of in-use fuels. At the same time, it allows substantial testing flexibility without compromising our ability to set an emission standard requiring the greatest degree of emission reductions for any given fuel. We request comment on this approach to testing with distillate and residual fuels. In particular, we request comment on the appropriate adjustment in the emission standard to account for the effects of testing with residual and distillate fuels in general and fuel-bound nitrogen in particular. We also request comment on how this approach to test fuels affects the cost of emission testing.

3. Tier 2 Emission Standards

EPA is considering adoption of a second tier of standards that would reflect additional reductions that could be achieved through engine-based controls and would apply to new engines built after 2006 or later. The year that EPA considers most appropriate at this time is 2007. The NO_X standards we are considering for potential Tier 2 standards are based on a 30 percent reduction from Tier 1 to allow manufacturers both greater flexibility in choosing the combination of emission control technologies to apply to their engines and a compliance margin for certification purposes. The NO_X limits we are considering for a second tier of standards are contained in Table IV.A–2.

TABLE IV.A–2.—TIER 2 STANDARDS CURRENTLY UNDER CONSIDERATION, NO_X EMISSION LIMITS (g/kW-HR)*

Engine speed (n)	n ≥ 130 rpm**	n < 130 rpm
Tier 2	$31.5 \times n^{-0.2} + 1.4$	13.3

* See notes to Table IV.A–1.
** See notes to Table IV.A–1.

Control of diesel engine emissions typically focuses on NO_X and PM emissions. HC and CO limits for diesel engines generally receive less attention because the diesel combustion process inherently prevents high rates of HC and CO emissions. We estimate that HC emissions are currently at 0.4 g/kW-hr, which is significantly lower than NO_X emissions from Category 3 engines, even after manufacturers substantially reduce NO_X emissions. Hydrocarbon emissions nevertheless combine with NO_X emissions to form ozone. We have generally adopted emission standards for other types of diesel engines in the form of a single standard for combined NO_X and HC emissions. To prevent increases in HC emissions, we are considering a Tier 2 standard at the baseline level of 0.4 g/kW-hr. This may achieve modest reductions in HC emissions, but more importantly would prevent HC emission increases that might otherwise result from controlling NO_X emissions alone. We request comment on whether we should set an emission standard for HC emissions and how to best to set an appropriate standard if one is warranted. We further request comment on setting a combined NO_X+HC standard for Category 3 engines as part of a second tier of standards. Commenters supporting a NO_X+HC standard should also address how to use NO_X-only onboard emission measurements in the context of a NO_X+HC standard, since it may not be possible to measure HC emissions.

We do not expect manufacturers to apply control technologies to reduce CO emissions. In fact, for current technologies, CO emissions generally decrease as manufacturers improve fuel consumption rates, so there is no incentive that would lead manufacturers to increase CO emissions. In other EPA programs for diesel engines, we generally set CO emission standards to prevent emission increases over time. We are considering this same approach with Tier 2 standards for Category 3 marine engines. Uncontrolled CO levels are generally less than 1 g/kW-hr. We are therefore considering a Tier 2 emission standard of 3 g/kW-hr for these engines, which would ensure that manufacturers don't cause significant increases in CO emissions when applying technologies designed to address NO_X emissions. A tighter standard may cause a manufacturer to spend a disproportionate amount of effort developing emission-control technologies for small changes in CO emissions. We request comment on regulating CO emission levels this way and specifically whether this is an appropriate level for a CO emission standard.

Regarding PM from Category 3 marine engines, the majority of emissions comes directly from the high concentration of sulfur in the fuel. Short of changing in-use fuel quality, emission-control technologies only address the remaining portion of PM, since engine technologies are ineffective at reducing sulfur-related PM emissions. Furthermore, no acceptable procedure exists for measuring PM from Category 3 marine engines, because current established PM test methods show unacceptable variability when sulfur levels exceed 0.8 weight percent, which is common for both residual and distillate marine fuels for Category 3 engines. No PM test method or calculation methodology has been developed to correct that variability for these engines. For these reasons, we are not considering a PM standard for Category 3 engines. We request comment on our approach; commenters supporting PM emission standards should address these issues and suggest

[48] "Commercial Marine Emissions Inventory Development, Draft Final Report," EPA Work Assignment Number 1–1, Prepared by ENVIRON International Corporation, April 2002.

[49] In contrast, Annex VI and the proposed Tier 1 standards allow for a 10-percent increase in emissions when testing with residual fuel, which makes the fuel correction a function of engine speed. For most Category 3 engines, 1.4 g/kW-hr is roughly 10 percent of the Annex VI NO_X emission standard.

an appropriate standard reflecting an achievable level of control, considering costs and other statutory factors. See the section below for discussion of regulating in-use fuels to achieve PM, SO_X, and possibly additional NO_X reductions.

Testing has shown that optimizing engine systems and developing additional control technologies will allow manufacturers of Category 3 marine engines to meet emission standards more stringent than Annex VI levels. Such improvements will require additional time. As discussed in Section IV.C, we believe manufacturers can achieve these proposed emission standards by further optimizing their designs and developing additional technologies for better control of fuel injection, charge air induction and mixing, and the overall design of combustion chambers and the timing of combustion events. We request comment on the level of the Tier 2 standards. Section IV.B discusses the timing of introducing the proposed Tier 1 standards and the Tier 2 standards under consideration.

4. Emission Effects of Test Conditions and Engine Operating Modes

Section V describes how we propose to address varying test conditions for emission measurements to show that engines meet emission standards when operated over the ISO E3 duty cycle. In general, we define a range of conditions for barometric pressure, humidity, ambient air temperature and ambient water temperature for testing according to the proposed duty cycle. Weighted engine emissions may not exceed the emission standards within the specified ranges of ambient conditions. For humidity and ambient water temperature, we specify a proposed method for correcting emission levels to a reference condition. We don't propose to allow any correction or adjustment based on varying ambient air temperatures or barometric pressures within the specified ranges. The specified ranges of test conditions apply to both laboratory testing and testing onboard a vessel. We are also proposing other provisions that would require equivalent emission control under other ambient conditions.

An additional concern relates to the way emissions vary under different engine operating conditions. For Category 1 and Category 2 engines, we adopted "not-to-exceed" provisions to define an objective measure to ensure that engines would be reasonably controlling emissions under the whole range of expected normal operation, as well as the defeat-device prohibition. Since these smaller engines are mass produced for a wide range of vessels used in many different applications, we expected "normal operation" for these engines to vary considerably around the ideal propeller curve. We are not considering not-to-exceed standards for Category 3 engines, since each engine intended to operate on a propeller curve is matched with a propeller for custom installation on a specific vessel. Also, the very large mass of ocean-going vessels make them relatively insensitive to perturbations caused by varying vessel loads, water currents, or weather conditions. As a result, engine operation should invariably be limited to a very narrow range around the propeller curve. Propulsion engines that operate at constant speed (whether coupled to a variable-pitch propeller or generator for electric-drive units) will similarly operate over a very narrow range. Moreover, we are considering a requirement that manufacturers test their production engines after installation on the vessel to show compliance with Tier 2 emission standards, which further removes the possibility of engines departing significantly from areas of engine operation over for which they are demonstrated to control emissions.

The proposed ISO E3 duty cycle includes four test modes weighted to reflect the operation of commercial marine vessels. The modal weightings are based on 70 percent of engine operation occurring at 75 percent or more of the engine's maximum power. For Category 1 and Category 2 engines, we have applied this same duty cycle, which reflects the way such engines are expected to operate. We are concerned, however, that Category 3 engines operate at significantly lower power levels when they are operating within range of a port. Ship pilots generally operate engines at reduced power for several miles to approach a port, with even lower power levels very close to shore. Because of the relatively low weighting of the low-power test modes, it is very possible that manufacturers could meet emission standards without significantly reducing emissions at the low-power modes that are more prevalent for these engines as they operate close to commercial ports. This issue would generally not apply to vessels that rely on multiple engines providing electric-drive propulsion, since these engines can be shut down as needed to maintain the desired engine loading.

We are considering a variety of options to address this concern. We could re-weight the modes of the duty cycle to emphasize low-power operation. This has several disadvantages. For example, we have no information to provide a basis for applying different weighting factors. Also, changing the duty cycle would depart from the historic norm for marine engine testing. This would make it more difficult to make use of past emission data, which is all based on the established modal weighting. An alternative approach would be to cap emission rates at the two low-power modes. We could set the cap at the same level as the emission standard, or allow for a small variation above the emission standard. For mechanically controlled engines, such an approach could dictate the overall design of the engine. On the other hand, we expect most or all new engines to have electronic controls, which would enable the manufacturer to target emission controls specifically for low-power operation without affecting the effectiveness of emission controls at higher power. We request comment on the need to adopt special provisions to ensure appropriate control of emissions during low-power operation. We specifically request comment on an additional requirement to limit emission levels of the two low-power modes to the level of the NO_X emission standard for each engine.

An additional concern relates to variation in emission levels between test modes. The proposed defeat device provisions (which already apply to Category 1 and Category 2 engines) would prevent manufacturers from producing their engines to control emissions more effectively at established test points than at other points not included in the test. This is especially important for Category 3 engines that leave the U.S., because we are expecting ship operators to measure emissions to show that the engines still meet emission standards within a certain range of a U.S. port. As described in Section V.B.10, outside the U.S., ship operators may make adjustments outside the range of adjustable parameters to which the engine is certified. Engine manufacturers would be required to develop emission targets to allow the operator to ensure that the engine has been readjusted to the certified configuration. These emission targets would vary with operating conditions and would include targets for engine speeds other than the test points speeds. We are proposing that Category 3 engine manufacturers design their engines to achieve equivalent control for varying engine speeds after any changes are made to compensate for changes such as switching fuels. In identifying the NO_X

emission targets, manufacturers would have the choice of either applying the same injection timing map for the tested and nontested engine speeds, or ensuring that NO_X emissions for nontest speeds follow a linear interpolation between test points. Ship operators would be required to adjust their engines to have NO_X levels below the target level.

5. Voluntary Low-Emission Standards

We are also proposing voluntary low-emission standards, consistent with the approach we have taken in several other programs, to encourage the introduction and more widespread use of low-emission technologies Manufacturers would need to reduce emissions 80 percent below Annex VI levels (excluding the nitrogen adjustment), as shown in Table IV.A–1, to qualify their engines for designation as voluntary low-emission engines. These reduced emission levels would apply to testing with both residual and distillate fuels, with the appropriate adjustments for nitrogen content of the fuel. Data show that engines utilizing selective catalytic reduction are capable of meeting these emission levels. If we establish an objective qualifying level for voluntary low-emission engines, this would make it easier for state and local governments or individual port authorities to develop meaningful incentive-based programs to encourage preferential use of these very low-emitting engines.

Engines certified to the voluntary low-emission standards would also need to meet HC and CO levels at levels we are considering for the second tier of standards. The voluntary low-emission standards are contained in Table IV.A–3.

TABLE IV.A–3.—PROPOSED BLUE SKY NO_X EMISSION LIMITS (g/kW–HR)*

Engine speed (n)	n ≥ 130 rpm**	n < 130 rpm
Blue Sky	$9.0 \times n^{-0.2} + 1.4$	4.8

* See notes to Table IV.A–1.
** See notes to Table IV.A–1.

6. Hotelling Emissions

In addition to emissions from engines while the ship is moving in port, many ships run one or more engines to produce electricity for ship operations while in port for loading and unloading. These emissions are concentrated locally in the port area, which may have a disproportionate effect on neighboring communities. Several options are available specifically to address this concern for "hotelling" emissions. Many of these go beyond our usual approach of setting emission standards for new engines, but we request comment on these and other possible approaches, given the potential to achieve substantial additional reductions in this area.

Focusing on port emissions raises several questions. (1) Would it be appropriate for regulatory provisions to focus on reducing emissions specifically from port facilities, including hotelling emissions from ships? (2) Should EPA provide targets or incentives to encourage port authorities to reduce overall port emissions, including land-based equipment and vehicles? (3) What form might such a policy take—regulatory, voluntary, administered by EPA or local governments, including financial or logistical incentives? (4) Is it appropriate to adopt national policies to ensure emission reductions in all port areas or should such policy development be tailored to port-specific concerns? (5) Should EPA emission standards differentiate between in-port and transit emission levels? If so, what form or emission levels would be appropriate for in-port operations?

While we are not proposing to take action to address hotelling or other in-port emissions separately, we request comment on these issues and on any other possible approaches to encourage or ensure that emission controls are applied appropriately in port areas.

B. When Would the Engine Emission Standards Apply?

Proposing emission standards for new Category 3 marine engines starting in 2004 allows less than the usual lead time for meeting EPA requirements. We note, however, that manufacturers are already meeting the Annex VI standards, which apply to engines installed on vessels built on or after January 1, 2000. The Tier 1 standards proposed in this document require no additional development, design, or testing beyond what manufacturers are already doing to meet Annex VI standards.

Under the proposed EPA regulations, engine manufacturers would need to comply with emission standards for all engines produced after the specified date. This date would be based on the point of final engine assembly, which for large Category 3 marine engines typically occurs when the engine is installed in the vessel. Shipbuilders and owners would not be responsible for meeting EPA standards, but we are proposing to apply the prohibition from 40 CFR 94.1103(a)(5), which prevents shipbuilders from selling vessels with noncompliant engines if they initiate construction of a vessel after the date that regulations begin to apply. This raises a question about vessels whose keel is laid before new standards take effect if vessel completion does not occur until after standards take effect. This question is best addressed by an example—if EPA were to adopt Tier 2 standards that would apply in January 2007 and if a ship's keel is laid in June 2006, with final vessel assembly in June 2007, that vessel could use Tier 1 engines only if the engine manufacturer completes the engine assembly before January 1, 2007. This should not be an issue for Tier 1 engines, since vessels are generally already using engines that meet Annex VI NO_X limits.

As described in the Draft Regulatory Support Document, manufacturers are well underway in pursuing emission-control technologies that would reduce emissions from Category 3 marine engines beyond Annex VI levels. If EPA were to adopt Tier 2 standards in a final rule in 2003, manufacturers would have four years to implement technologies needed to meet such standards by 2007. This would include time in the early years for selecting specific approaches and developing those technologies. Manufacturers would also need that time to integrate the various technologies into an overall engine design that performs well and is durable. Given that engine manufacturers already have limited experience in applying these technologies to Category 3 marine engines, we believe the Tier 2 standards will be achievable in the time frame under consideration. In addition, Tier 2 emission standards are already scheduled to apply to Category 2 engines in 2007. To the extent that some Category 3 engines compete directly with Category 2 engines, sharing an implementation date helps in maintaining a level playing field between competitive engines. We request comment on the implementation

dates for the Tier 2 program under consideration.

C. What Information Supports the Technological Feasibility of the Engine Emission Standards?

Annex VI calls for marine diesel engines over 130 kW to meet emission standards if they are installed on vessels built on or after January 1, 2000. Engine manufacturers are meeting the Annex VI standards today with a variety of emission-control technologies. Chapter 4 of the Draft Regulatory Support Document identifies several technologies that individual manufacturers have already incorporated to reduce emissions. The most common approach has been to focus on increased compression ratio, adapted fuel injection, valve timing and different fuel nozzles to trim NO_X emissions. Manufacturers have generally been able to do this with little or no increase in fuel consumption. By building engines that can meet the Annex VI standards, manufacturers have shown that they can meet the identical Tier 1 standards proposed here for Category 3 marine engines.

As described in the Draft Regulatory Support Document, we have relied on existing data to account for fuel effects in selecting the proposed Tier 1 and potential Tier 2 NO_X emission standards for testing Category 3 marine engines with residual fuel. Engines designed to meet Annex VI NO_X standards using in-use distillate fuels should be able to meet the proposed Tier 1 standards without adopting any new technologies.

While manufacturers have used a wide variety of technologies to meet Annex VI standards for Category 3 marine engines, engines have so far generally incorporated only a few of the available emission-control technologies. To meet more stringent standards, manufacturers would need to integrate Tier 1 technologies more broadly into the fleet and pursue several additional approaches. These include:

—*Improved fuel injection.* This includes injection timing, injection pressure, rate shaping (or split injection), and common rail injection systems. Electronic controls would also allow for more precise metering and timing of individual injections.

—*Intake air management.* Manufacturers can use more effective turbocharging and aftercooling to reduce NO_X emissions. Also, valve timing can be manipulated to vary expansion and compression ratios or to recirculate exhaust gases.

—*Combustion chamber modifications.* Several design variables affect the compression and mixing of the fuel-air mixture before and during combustion, including higher compression ratios, piston geometry, and injector location.

Test data show that these technologies can reduce emissions up to 40 percent below Annex VI NO_X standards.[50] We believe manufacturers could incorporate emission-control technologies to achieve a 30-percent reduction below Annex VI standards for all their Category 3 marine engines. Some industry representatives have indicated that this level of control is achievable.[51] Specifying 30 percent instead of 40 percent allows for a compliance margin for manufacturers to ensure that they meet emission standards consistently with all the engines they produce in an engine family. This also allows for manufacturers to show that they meet emission standards under the range of prescribed testing and operating conditions, as described above, including measures to cap emission levels at low-power modes to the level of the proposed emission standards. These technologies, and accompanying emission data, are described in more detail in Chapter 4 of the Draft Regulatory Support Document, while Chapter 5 adds specific detail regarding our estimated deployment of each of the targeted control technologies in the analysis to develop costs estimates related to the emission standards.

The analysis of emission-control technologies in most cases applies equally to two-stroke and four-stroke engines. While there are many fundamental differences between these types of engines, most emission-control strategies could be applied effectively to both types. Perhaps the most significant difference between these engines is the tendency for significantly larger displacements and slower operating speeds with two-stroke engines. The emission standards for Category 3 marine engines incorporate the same shape of the NO_X curve specified by Annex VI (and shown in Table IV.A–1), which reflects the generally increasing NO_X emission levels for larger engines with slower operating speeds. The emission standards therefore implicitly take into account higher emission levels for two-stroke engines.

Section VII discusses a range of alternative approaches we considered in developing this proposal and explains our reasons to defer their adoption at this time.

If we adopt Tier 2 standards as part of this rulemaking, we intend to revisit and reopen the Tier 2 standards in approximately 2005. At that time we would fully reassess the circumstances and re-determine the appropriate level of the standards. We believe it is important to preserve our ability to coordinate our actions under the Clean Air Act with the future actions of the U.S. government involving MARPOL. To maximize this coordination and to allow for all appropriate harmonization, we would establish a rulemaking schedule for a future reopening and revisiting of any Tier 2 standards. In this future rulemaking we would reconsider the level of any Tier 2 standards based on all the circumstances then present, including the information then available concerning technological feasibility, cost, and other relevant aspects of emissions control for these engines, as well as the then current status of emissions standards under MARPOL. This reconsideration could lead to revised Tier 2 standards to reflect the appropriate level of the standard under the Clean Air Act based on the circumstances present at that time. We would implement this process by adopting in this rule a specific schedule for a future rulemaking, including for example a set date for final action on the future rulemaking.

D. Is EPA Considering Not Adopting Tier 2 Standards in This Rulemaking?

EPA is also considering not adopting Tier 2 standards in this rulemaking, and instead establishing a schedule for a future rulemaking and addressing Tier 2 standards in that future rulemaking. For these reasons, EPA has not included proposed regulations in this Notice. In that future rulemaking, EPA would propose and establish appropriate Tier 2 standards based on an assessment of all of the circumstances then present, including the information then available concerning technological feasability, cost, and other relevant aspects of emissions control for these engines, as well as the then current status of emissions standards under MARPOL. This would be similar to the reopening rulemaking discussed above, involving reopening of any Tier 2 standards adopted in the current rulemaking. However, instead of revisiting Tier 2 standards adopted in the current rulemaking, under this alternative no Tier 2 standards would be set until the future rulemaking. The schedule for the future rulemaking would be the same as that discussed above, approximately 2005, and as with the reopening

[50] Ingalls, M., Fritz S., "Assessment of Emission Control Technology for EPA Category 3 Commercial Marine Diesel Engines," Southwest Research Institute, September 2001 (Docket A–2001–11, document II–A–08).

[51] Mayer, Hartmut, Euromot, e-mail response to EPA questions, January 31, 2002 (Docket A–2001–11, IIA–D–01).

rulemaking this schedule would be included in the regulations adopted in this rulemaking.

The benefit of this alternative would stem from its potential to facilitate the international process of updating the Annex VI emissions standards. As discussed earlier in this preamble, EPA anticipates that further discussions will be held at the IMO, in the Marine Environment Protection Committee, concerning adoption of a second, more stringent level of emissions standards. If delaying the initial establishment of Tier 2 standards to a future rulemaking facilitates the successful completion of updating the Annex VI emissions standards, the overall environmental result might be better than adoption of Tier 2 standards in this rulemaking. In addition, it could facilitate EPA's actions to harmonize its regulations as appropriate with future Annex VI provisions. This future rulemaking would occur whether or not Annex VI negotiations were concluded by that date. Delaying setting Tier 2 standards until a future rulemaking. however, also raises the issue of whether adoption in this rulemaking of only Tier 1 standards and establishment of a schedule for a future Tier 2 rulemaking would be consistent with the Agency's obligations under the Clean Air Act. EPA invites comment on all issues associated with this alternative.

E. Is EPA Considering Any Fuel Standards?

The majority of Category 3 engines are designed to run on residual fuel. This fuel is made from the very end products of the oil refining process, formulated from residues remaining after the primary distilling stages of the refining process. It has higher contents of ash, metals, and nitrogen that may increase exhaust emissions. Residual also has sulfur content up to 45,000 ppm; the global average sulfur concentration is currently about 27,000 ppm, though fuel sold in the U.S. has sulfur levels somewhat above the average.[52] Operating on fuels with such high sulfur contents results in high SO_X and direct sulfate PM emissions.

Using a residual fuel with a lower sulfur content would reduce the fraction of PM emissions from ash and metals. Using distillate fuel instead of residual fuel could result in even lower emissions. The simpler molecular structure of distillate fuel may result in more complete combustion with reduced levels of carbonaceous PM. Operation on distillate fuel would also reduce NO_X emissions because distillate fuel generally contains less nitrogen and has better ignition qualities. Because of these benefits, we request comment on fuel controls to reduce exhaust emissions from Category 3 marine engines.

MARPOL Annex VI contains requirements for fuels used onboard marine vessels. These requirements, which will be effective when the Annex goes into force, consist of two parts. First, Annex VI specifies that the sulfur content of fuel used onboard ships cannot exceed 45,000 ppm (4.5 percent). Information gathered in an international monitoring program indicates refiners are currently complying with this requirement. Second, the Annex provides a mechanism to designate SO_X emission control areas, within which ships must either use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust gas cleaning system to reduce SO_X emissions. To date, two SO_X emission control areas have been designated: the North Sea and English Channel, and the Baltic Sea. The Annex VI fuel provisions do not go into effect, however, until the Annex enters into force (see Section I.C. above).

Operators who choose not to use exhaust gas cleaning systems can meet the Annex VI SO_X requirement by using low-sulfur residual fuel or by switching to distillate fuel while they operate in SO_X Emission Control Areas. Due to the nature of distillate fuel, this would also reduce NO_X emissions. In general, engines that are designed to operate on residual fuel oil are capable of operating on distillate fuel. For example, if the engine is to be shut down for maintenance, distillate fuel is often used to flush out the fuel system. However, there are several complications associated with this option. Switching to distillate fuel requires 20 to 60 minutes, depending on how slowly the operator wants to cool the fuel temperatures. According to engine manufacturers, switching from a heated residual fuel to an unheated distillate fuel too quickly could cause damage to fuel pumps. There could also be fuel pump durability problems if the engine is operated on distillate fuel for more than a few days. For continued operation on distillate fuel, ships would need to have separate (or modified) pumps and lines. In addition, modification to the fuel tanks may be necessary to ensure sufficient capacity for low-sulfur fuel.

Alternatively, ships can use residual fuels produced to meet the 15,000 ppm (1.5 percent) sulfur requirement. Refiners can produce low-sulfur residual fuel from a low-sulfur crude oil or they can put the fuel through a de-sulfonation step in the refinery process. They can also produce it by blending marine distillate fuel, which typically has fuel sulfur levels between 2,000 and 3,000 ppm.

Given the PM, and SO_X benefits of using low-sulfur residual fuels and the added NO_X benefit of using distillate or distillate-blend fuels, we are requesting comment on whether we should set standards for the fuel that ships use. We are also seeking comment on what form such fuel standards should take. For example, we could adopt the Annex VI special control area sulfur limits, either through the Annex VI process or through regulation under the Act. This would set a maximum sulfur limit of 15,000 ppm. However, lower sulfur contents are feasible and would yield greater PM and SO_X benefits. As a comparison, the sulfur content of highway diesel fuel is under 500 ppm today, with a 15-ppm cap applying starting in 2007. The sulfur content of nonroad diesel is not regulated, but generally ranges from 2,000 to 3,000 ppm. Reducing the sulfur content of the fuel would reduce PM and SO_X emissions by 10 and 44 percent, respectively (see Chapter 4 of the Draft Regulatory Support Document). An alternative approach would be to require that ships use distillate fuels, which would achieve the same or greater reduction of PM and SO_X emissions, with an additional 10-percent reduction in NO_X emissions resulting from the decreased nitrogen content of the fuel. Chapter 5 of the Draft Regulatory Support Document presents costs estimates for these fuel-based regulatory options. We request comment on these possible approaches to addressing in-use fuel quality.

We also seek information on the costs and expected benefits of further reductions in allowable fuel-sulfur levels, for both ship owners and fuel suppliers. Finally, we seek comment on how to apply the standard. Historically, we have regulated in-use fuels by establishing minimum specifications that apply to those who sell the fuel. This approach may not be effective for this sector because ship owners could choose to purchase their fuel outside the U.S. If we don't adopt any requirements related to in-use fuels in this rulemaking, we could revisit these questions in the context of a technology review, as described above.

We are not proposing fuel-based regulations in this rule because regulating fuel sold in the U.S. would not necessarily ensure that distillate fuel

[52] Sulphur Monitoring 2002. Report to Marine Environmental Protection Committee, 47th Session. MEPC 47/INF.2, August 28, 2001. A copy of this document can be found in Docket A–2000–11.

was used in U.S. waters. The Clean Air Act limits us to setting requirements on fuel entered into commerce in the U.S. If we can regulate only the fuel sold in the U.S., then a fuel sulfur standard would be unlikely to have a significant impact on emissions because ships may choose to bunker before entering or after leaving the U.S. However, Regulation 14 of MARPOL Annex VI allows areas in need of SO_X emission reductions to petition to be designated as SO_X Emission Control Areas (SECA). Within such waters, the maximum sulfur content of the fuel will be limited to 15,000 ppm.[53] We intend to work through the MARPOL process to designate certain areas in the U.S. as sulfur control areas which would require the use of distillate fuel. We request comment on whether all waters under U.S. jurisdiction or only specific areas should be designated as SECAs, and whether such designation(s) could be expected to have an adverse impact on port traffic within SECAs. EPA also invites comment on our authority under the Clean Air Act to regulate this fuel.

V. Demonstrating Compliance

A. Overview of Certification

1. How Would I Certify My Engines?

We are proposing to base certification data and administration requirements for new Category 3 marine engines on the existing program for Category 1 and Category 2 marine engines. These provisions are contained in 40 CFR part 94, and were described in detail in the preamble to the FRM that promulgated those regulations (64 FR 73300, December 29, 1999). In general, these provisions require that a manufacturer do the following things to certify engines:

- Divide engines into groups of engines with similar emission characteristics. These groups are called "engine families".
- Test the highest emitting engine configuration within the family.
- Determine deterioration rate for emissions and apply it to the "zero-hour" emission rate. The deterioration rate is essentially the difference between the emissions of the engine when produced and the point at which it would need to be rebuilt.
- Determine the emission-related maintenance that will be necessary to keep the engines in compliance with the standards.
- Submit the test data to EPA along with other information describing the engines within the engine family. This submission is called the "application for certification".

The certification provisions proposed for new Category 3 engines are discussed more fully in later sections. You should also read the proposed regulatory text, and the existing Category 2 regulations in 40 CFR part 94. These later section highlight the differences that we are proposing to apply to Category 3.

2. How Is the Proposed Certification Method Different From That Used Under Annex VI?

In general, the two methods are similar. Our certification process is similar to the Annex VI pre-certification process, while our production-line testing program (described later) is similar to the Annex VI initial certification survey. However, the Clean Air Act specifies certain requirements for our certification program that are different from the Annex VI requirements. The most important differences between the proposed approach and the method used under Annex VI are related to witness testing (we allow, but do not require witness testing), the durability requirements, and test procedures. Our proposed durability requirements and testing requirements are discussed in other sections. It is also worth noting that, as described in Section III, we are proposing to apply the standards based on the date of final assembly of the engine, while Annex VI generally applies the standards based on the start-date of the manufacture of the vessel (i.e., the date on which the keel is laid), which would generally occur prior to the final assembly of the engine. Overall, we believe that our proposed regulations are sufficiently consistent with Annex VI that manufacturers would be able to use a single harmonized compliance strategy to certify under both systems. The relationship between our proposed program and the Annex VI requirements is described in more detail in section V.D.

3. How Does a Certificate of Conformity Relate to a Statement of Voluntary Compliance or an EIAPP?

The Clean Air Act requires that manufacturers obtain a certificate of conformity before they introduce a new engine into commerce. Once it goes into force, MARPOL ANNEX VI will require manufacturers to obtain an "Engine International Air Pollution Prevention Certificate" (EIAPP). We anticipate that engines that receive an EPA certificate of conformity will also be eligible for an Engine International Air Pollution Prevention Certificate, since the proposed Tier 1 emission limits are the same as the Annex VI NO_X limits and the Tier 2 limits under consideration are more stringent.

It should be noted that EIAPPs will not be issued until the Annex goes into force and can be issued only by the flag state Administration. Prior to entry into force of the Annex, and to encourage vessel owners to purchase MARPOL Annex VI compliant engines, we have developed a voluntary certification program. Under this program, the engine manufacturer can apply for and obtain a Statement of Voluntary Compliance to the MARPOL Annex VI NO_X limits.[54] It is anticipated that ship owners will be able to exchange this Statement of Voluntary Compliance for an EIAPP after the Annex enters into force. If a shipowner does not have a valid Statement of Voluntary Compliance for an engine, it may be necessary to recertify the engine to obtain an EIAPP after the Annex enters into force. Finally, it should be noted that to obtain an EIAPP in this way, the Statement of Voluntary Compliance must be issued by EPA. A shipowner with a Statement of Voluntary Compliance issued by another Administration will have to apply for certification to obtain an EIAPP.

4. Could I Use a Continuous Emission Monitoring System to Demonstrate Compliance for Certification?

You would generally not be able to use a continuous emission monitoring system to generate emission data that would be sufficient for our certification purposes. However, as we describe later, such a system could probably be used for production line testing or for in-use verification.

5. What Would the Roles of the Engine Manufacturer and Ship Owner Be After the Engine Is Installed?

Unlike the provisions of MARPOL Annex VI, under our proposed regulations, the engine manufacturer would have some responsibilities for in-use compliance. The manufacturer would be required to demonstrate that its engine would be capable of complying with the standards through the "useful life" of the engine (as described below, the useful life would generally be the first rebuild cycle). The manufacturer would be responsible for remedying failures that occur during that period. The ship owner would be

[53] Unless SO_X emission controlled by secondary means which at present is not clear.

[54] Information on how to obtain a Statement of Voluntary Compliance can be found on our website, *www.epa.gov/otaq/marine.htm.*

responsible for ensuring that all proper maintenance is performed during the entire service life of the engine. After Annex VI goes into force internationally, the ship owner would also be responsible for compliance with the provisions contained in the NO_X Technical Code. including the recordkeeping requirements for the Record Book of Engine Parameters and the various survey requirements. EPA and Coast Guard will work together to develop procedures to verify onboard performance of Annex VI requirements, as Coast Guard has the general authority to carry out such procedures on vessels.

6. How Would Engines on Foreign-Flagged Vessels Be Certified?

We are asking for comment regarding whether EPA should regulate all engines installed in foreign-flagged vessels that will call at a U.S. port (Categories 1, 2, and 3). In general, we would apply the same compliance provisions to foreign-flagged vessels as we would to U.S.-flagged vessels. We do not believe that manufacturers or owners of foreign-flag vessels would face unique constraints compared with manufacturers and owners of U.S.-flag vessels. Thus, the compliance discussions in the section V would apply without regard to whether the standards ultimately apply only to U.S.-flag vessels or to all vessels calling on U.S. ports.

It is worth discussing, however, how engines on foreign-flagged vessels would be certified if we determined that it was appropriate to regulate them in the rule. If we extended our regulations to these engines, compliance could be demonstrated for certification in one of two ways. Both would require that an application be submitted to EPA. It would not be sufficient to have obtained a certificate from a country other than the U.S. The simplest way to obtain an EPA certificate would be for the ship manufacturer to install a certified engine during the construction of the ship. In this case, we would treat this engine in the same manner as engines installed on U.S.-flagged vessels. Our proposed regulations would already allow this. This approach would also work for replacement auxiliary engines. The ship owner would only be required to purchase a certified marine engine.

The second approach would be for the engine to be certified after it has been installed in a vessel that will call at a U.S. port, but before the vessel is within 175 nautical miles of the U.S. As with our requirements for newly manufactured engines, we would require that emission test data be submitted in an application for certification to demonstrate that the engine complies with our requirements. This could be done by either the engine manufacturer or the ship owner. We recognize that we may need to allow different certification procedures to be used in these special cases. In fact, our existing regulations for smaller marine engines include an allowance for EPA to establish special certification procedures for engines on imported vessels (§ 94.222). We could modify this provision to allow these special certification procedures for foreign-flagged vessels subject to our standards irrespective of whether such vessels are considered to be imported.

It is also worth noting that any vessel subject to our standards that has one or more uncertified engines installed could be denied the right to enter a U.S. port, because the vessel would not be in compliance with U.S. law. Similarly, a vessel with an engine that has within 175 nautical miles of the U.S. coastline operated outside the range of operating parameters within which the engine is certified to comply with the applicable emission standard could be denied the right to enter a U.S. port. In addition, EPA could bring an enforcement action against the vessel and its operator under the Clean Air Act for injunctive relief and for penalties of up to $27,500 for each day that a violation occurs. As is described in section III.C.3, if we were to apply our proposed standards to foreign-flagged vessels, we would consider exemption provisions to allow vessels with uncertified engines to make occasional, but not frequent visits to U.S. ports.

B. Other Certification and Compliance Issues

1. How Are Engine Families Defined?

We are proposing that engine grouping for the purpose of certification be accomplished through the application of an "engine family" definition. Engines expected to have similar emission characteristics throughout their useful life are proposed to be classified in the same engine family. We are proposing to define engine families consistent with MARPOL. To provide for administrative flexibility in the proposal, we would have the authority to separate engines normally grouped together or to combine engines normally grouped separately based upon a manufacturer's request substantiated with an evaluation of emission characteristics over the engine's useful life. We are requesting comment on the proposed requirements for selecting engine families. Do the proposed criteria provide sufficient certainty that NO_X emissions would be similar for all of the engines within a particular family?

2. Which Engines Would Be Tested?

We are proposing that manufacturers select the highest emitting-engine (i.e., "worst-case" engine) in a family for certification testing. This is consistent with the Annex VI requirements. In making that determination, the manufacturer shall use good engineering judgement (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring the worst-case engine to be tested, we are assured that all engines within the engine family are complying with emission standards for the smallest number of test engines. If manufacturers believe that the engine family is grouped too broadly, they may request separating engines with dissimilar calibrations (based on an evaluation of emission characteristics over the engine's useful life) into separate engine families.

For these large marine engines, conventional emission testing on a dynamometer becomes more difficult. Often the engine mock-ups that are used for the development of these engines use a single block for many years, while the power assemblies are changed out. We propose that for Category 3 engines, certification tests may be performed on these engine mock-ups, provided that their configuration is the same as that of the production engines. In addition, we are proposing to allow single-cylinder tests, since a single-cylinder test should give the same brake-specific emission results as a full engine test, as long as each cylinder in an engine is equivalent in all material respects.

We are also proposing that manufacturers be required to allow EPA to perform confirmatory testing using their certification engines. In other rules, we have required manufacturers to provide us with actual engines for our confirmatory testing program. However, this would not be practical for Category 3 engines because of their size and cost.

3. How Does EPA Treat Adjustable Parameters?

Diesel engines are often designed with adjustable components. For example, it is common to be able to adjust the fuel injection timing of an engine. EPA has historically required that these important adjustable parameters be physically limited to the range over which an engine would comply with the standards. Thus, while an uncontrolled diesel engine would typically have a broad (or even unlimited) range of adjustability, EPA-certified engines have

a very narrow range of adjustability. Typically, this narrow range is enforced through physical stops on the adjustable parts. In some cases, manufacturers seal a component after final assembly to prevent any adjustment in use. Disabling physical stops, breaking seals, or otherwise adjusting an engine outside of the certified range is considered tampering with the emission controls, and is a violation of section 203(a) of the Clean Air Act.

For marine engines, broad adjustability allows engines to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. While we recognize the need for this practice, we are also concerned that the engine meet the proposed emission limits throughout the range of adjustment. Therefore, the Agency has established provisions for Category 2 engines to allow manufacturers to specify in their applications for certification the range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance only across that range. We are proposing to also allow such adjustments for Category 3 engines. Practically, this requirement means that a manufacturer would specify different fuel injection timing calibrations for different conditions. These different calibrations would be designed to account for differences in fuel quality, which can be very significant for Category three engines. Operators would then be prohibited by the anti-tampering provisions from adjusting engines to a calibration different from the calibration specified by the manufacturer. (See section V.B.10 for a discussion of adjustments away from the U.S.) Annex VI also allows engines to be adjusted in use, and requires the engine manufacturer to include a description of the allowable adjustments in the Technical File for the engine.

Given the broad range of ignition properties for in-use residual fuels, we expect that this allowance for Category 3 engines would result in a broader range of adjustment than is expected for Category 2 engines. Because of this broader allowance, we are also proposing that operators be required to perform a simple field measurement test to confirm emissions after a parameter adjustment or maintenance operation. This would not be required for adjustments or maintenance that would not affect emissions. In addition, given the degree to which Category 3 engines regularly undergo major maintenance (e.g., replacement of an entire power assembly), we believe that all Category 3 engines as a class should be considered to be inherently adjustable. We do not believe that a manufacturer could make an engine that would be unadjustable in practice. Therefore, we are proposing that all new Category 3 engines be equipped with emission measurement systems and with electronic-logging equipment that automatically records all adjustments to the engine and the results of the required verification tests. EPA believes this is a nominal burden. We request comment on this proposed requirement. It is important to emphasize that we believe that it is essential that the logging equipment automatically record all adjustments without requiring the operator to turn on the data logger. (As is described in section V.B.10, this requirement would apply to all adjustments without regard to whether they occur within 175 nautical miles of the U.S. coast.) This would allow us to rely on the data log to ensure that the vessel is consistently being adjusted properly. We would also require that such adjustments be manually recorded as well, consistent with Annex VI requirements.

We are proposing to use a simpler measurement system than the type specified in Chapter 6 of NO_X Technical Code. As is described in the RSD, we believe that onboard emission equipment that is relatively inexpensive and easy to use could be used to verify that an engine is properly adjusted and is operating to the specifications of the engine manufacturer. We do not believe that it would be necessary to perform a complete certification-type emission test after each adjustment. Under the proposed approach, operators should be able to complete this testing during normal operation without stopping or slowing the vessel. We also expect that this equipment will provide useful information to the ship's crew, that will enable them to better monitor the engine performance from a non-emission perspective. We believe that the proposed requirement to include this equipment should result in little or no net burden to ship operators. It is worth noting the fact that Annex includes specifications that would allow operators to choose to verify emissions through onboard testing suggests that MARPOL also envisioned that onboard measurement systems could be of value to operators.

We are requesting comment on the broader Annex VI approach to address engine adjustments, which is to specify that ship operators must keep the engine adjusted within the limits specified by the engine manufacturer and to verify the compliance through periodic surveys. Ship operators would have the choice between verifying the emissions performance through parameter check or through onboard testing. Commenters should address the reliability of this approach. We have concerns that the Annex VI parameter check approach could be difficult to enforce, since operators that adjusted their engines outside of a manufacturers specifications would have no incentive to record such violations. It is also not clear that a parameter check could be reliable, given the infrequency with which these surveys will likely occur. Commenters should address both the parameter check method and the testing method. Are they equivalent? Is the reliability of the testing method affected by whether the tests are scheduled in advance or are performed as part of a surprise inspection? Are surprise test inspections practical?

We also have concerns that, under the Annex VI approach, manufacturers would not be able to identify the specific adjustments that would be required for the full range of in-use conditions. While it is known that changes in fuel properties can require changes in engine calibrations, the properties themselves are poorly understood. We do not believe that manufacturers could specify to the operator that if fuel property A is equal to X, fuel property B is equal to Y, and fuel property C is equal to Z, then the fuel injection timing should be adjusted to a specific setting to make sure that the engine meets the emission standards. Not every important fuel property is readily quantifable, and different fuel properties can interact to affect performance. How would an operator record that a parameter was properly adjusted for a given in-use fuel if not all of the relevant fuel properties are quantifiable?

We also request comments on other approaches to ensure that engines with adjustable parameters meet the proposed emission requirements. Should we require that engine manufacturers design their engines to be automatically adjusted for changes in fuel quality of other conditions and prohibit all other adjustments? Would such a prohibition be practicable? We are also requesting comment on the need for and the feasibility of indicators on the outside of the vessel (e.g. a light) to indicate whether the pollution controls are working properly. Obviously, such a feature would need to be hard-wired into the vessel controls to be reliable.

4. How Would Engines Be Labeled?

We are proposing that each new engine have a permanent emission label on the engine block, or on some other part of the engine that would not be replaced in service. This label would have to include specific emission-related information such as engine family name, model year, and basic maintenance specifications. This inclusion of this information on the label would be in addition to the recordkeeping requirements specified in the NO_X technical code.

5. How Does EPA Ensure Durable Emission Controls?

To achieve the full benefit of the emissions standards, we need to ensure that manufacturers design and build their engines with durable emission controls. It is also necessary to encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation. Therefore, we believe it is necessary to adopt measures to address concerns about possible in-use emission performance degradation. The proposed durability provisions, described in the following sections, are intended to help ensure that engines are still meeting applicable standards in use. Most of these provisions are carried over from our program for smaller marine compression-ignition engines. We request comment on all aspects of this durability program.

The most fundamental issue related to durability is the concept of useful life. The Clean Air Act specifies that useful life is the period during which an engine is required to meet the emission standards. For Category 3 marine engines subject to our standards, we are proposing that the useful life be the period during which an engine is expected to be properly functioning with respect to reliability and fuel consumption without being rebuilt. For engines that are rebuilt completely at one time, the useful life would be the expected period between original manufacture and the first engine rebuild. For engines that are maintained by replacing individual power assemblies, the useful life would be the expected period between original manufacture and the point at which the last power assembly is replaced. We expect that this period will vary to some degree among engine models. Therefore, we are proposing that manufacturers specify the useful life for their engines at the time of certification. Their specification would be subject to EPA approval, and could not be less than a minimum period of 3 years or 10,000 hours of operation (based on all engine operation, not just operation in or near U.S. waters). This specification would not limit in-use operation. Rather it would determine how the manufacturer would address emission deterioration (i.e., the manufacturer would be required to demonstrate to EPA that the engine would meet the standards for the full useful life). We are also proposing that the useful life period may not be less than any mechanical warranty that the manufacturer offers for the engine.

These minimum useful life values are lower than the minimum values for Category 2 engines due to the effect of using residual fuel, which generally has much higher sulfur levels than distillate fuels. The high sulfur levels create a more corrosive environment within the combustion chamber, which decreases durability. The period of years (three years) is also affected by the higher usage rate in terms of hours per year. We request comment on this issue.

6. What Are the Manufacturer's Responsibilities for Warranty and Defect Reporting?

Tied to the useful life is the minimum period for the warranty required under section 207(a) of the Clean Air Act. We believe it is important to ensure that the engine manufacturer has designed and built the engine to ensure that it would comply with the emission standards throughout its useful life, as long as it is properly maintained. Therefore, we are proposing that the warranty period be equal to the useful life period (e.g., 10,000 hours or 3 years). Under the performance warranty, the engine manufacturer would be responsible to repair any properly maintained and used engine that fails to meets the standard in use during the warranty period. (Engine operators would be responsible to repair any engines that failed to meet the standards because of improper maintenance.) We request comment on this approach.

We are also proposing defect-reporting requirements. These provisions require Category 3 engine manufacturers to report to EPA whenever a manufacturer identifies a specific emission-related defect in 2 or more engines (or 2 or more cylinders within the same engine). In most cases, we would expect the defects to be identified as part of a manufacturer's warranty process. However, the manufacturer would be required to report all defects, without regard to how they were identified. It is important to clarify that the defect reporting requirements would not require the manufacturer to collect new information. The manufacturer would be required to track and report to EPA information that they obtain through normal business practice. We request comment on this issue.

7. What Are Deterioration Factors?

To further ensure that the proposed emission limits are met in use, we are proposing to require the application of a deterioration factor (DF) to engines in evaluating emission control performance during the certification and production-line testing process. The emissions from new engines are adjusted using the DF to account for potential deterioration in emissions over the life of the engine due to aging of emission control technologies or devices. The resulting emission level is intended to represent the expected emissions at the end of the useful life period for a properly maintained engine. We believe that the effectiveness of some emission control technologies, such as aftertreatment, sophisticated fuel-delivery controls, and some cooling systems, can decline as these systems age. The DF is applied to the certification emission test data to represent emissions at the end of the useful life of the engine. We are proposing that marine diesel engine DFs be determined by engine manufacturers in accordance with good engineering practices. The DFs, however, would be subject to EPA approval, and must be consistent with in-use test data. For example, if we had in-use test data from earlier model year engines from the same basic engine family that showed that NO_X emissions generally deteriorate by 0.5 g/kW-hr over the useful life, then we would approve a DF that assumed no deterioration in NO_X emissions. Additionally, the DF should be calculated for the worst-case engine configuration offered within the engine family.

It is not our intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, we are proposing to apply the DF requirement to all engines so that we can be sure that reasonable methods are being used to ascertain the capability of engines to meet standards throughout their useful lives. Consistent with other programs, we propose to allow manufacturers the flexibility of using durability emission data from a single engine that has been certified to the same or more stringent standard for which all of the data applicable for

certification has been submitted. In addition, we request comment on whether this flexibility should be extended to allow deterioration data from highway, nonroad, or stationary engines to be used for similar marine diesel engines.

Finally, we are proposing that DFs be calculated as an additive value (i.e., the arithmetic difference between the emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs should be calculated as a multiplicative value (i.e., the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration. Given the type of emission controls projected to be used to meet the proposed standards (calibration changes and combustion chamber redesign, but not aftertreatment), it is possible that NO_X emissions may actually decrease with time as the piston rings and cylinder liners wear (thereby reducing peak pressures). In such cases, we would require that the manufacturer use an additive DF of zero.

It is important to note that one of the reasons we are proposing a very flexible DF program for this rulemaking because we do not expect deterioration to be a major problem for these engines. Our history with in-cylinder NO_X control suggests that engine-out NO_X emissions are relatively stable over time. If we were to adopt an aftertreatment-forcing standard or a standard for PM, we would likely consider more specific requirements for calculating DFs. For example, it might be appropriate to apply to these engines the more specific DF provisions that have been developed for on-highway heavy-duty engines (40 CFR 86.004–26). Commenters that favor the adoption of an aftertreatment-forcing standard or a standard for PM should address whether they believe that the proposed DF program would be sufficient to ensure that manufacturers design their aftertreatment devices to be durable.

8. What Requirements Are Proposed for In-Use Maintenance?

In previous rules, we have required manufacturers to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission control system. (Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties.) If such required maintenance is not performed by the engine operator, then in-use emissions deterioration can result. We are proposing to require that Category 3 engine operators be required to perform this maintenance, or equivalent maintenance. This provision is comparable to our requirement for railroads to perform emission-related maintenance for locomotives (40 CFR 92.1004). In that approach, locomotive owners who fail to properly maintain a locomotive are subject to civil penalties for tampering. For marine engines, properly rebuilding engines and power assemblies would be considered to be a part of emission related maintenance. We believe that these requirements would generally be consistent in practice with the provisions specified for ship operators in Technical File required by the NO_X Technical Code.

An important part of this proposal is the allowance for operators to perform the maintenance differently than specified by the manufacturer, provided that maintenance is performed in such a way to keep the engines performing properly with respect to emissions. With the proposed emission verification requirements, it would be straightforward for ship operators to determine if their maintenance practices are sufficient. As long as their engines pass the verification tests, EPA would consider the maintenance to be equivalent. For ships that travel far from U.S. waters, this requirement would mean that maintenance would need to be performed in such a way that the engines would pass the verification tests before they come within 175 nautical miles of the U.S. coastline. (See section V.B.10 for more information about special provisions that apply for ships that travel more than 175 nautical miles from the U.S.)

Unlike our regulation for smaller marine engines, we are not proposing minimum allowable maintenance intervals for Category 3 marine diesel engines. This is also consistent with our approach for locomotives. In both cases, we believe that maintenance would be jointly agreed to by the engine manufacturer and the engine owner prior to purchase.

We are requesting comment on whether we should allow a manufacturer or owner to petition EPA to amend the emission-related maintenance instructions after the engine is in use, either within or after the useful life. This may be necessary because of the very long service lives of these engines. It may not be reasonable for us to require an owner of a 20-year old engine to be bound to maintenance practices that were set 20 years earlier. We are requesting comment on how such amendments would be made.

9. Do the Proposed Regulations Affect Engine Rebuilding?

We are proposing in-use maintenance provisions that would require operators to perform emission related maintenance properly. We are proposing that this would also apply whenever an engine or engine subsystem is rebuilt. These provisions would require that all rebuilds return the engine to its original certified condition. (Failure to rebuild an engine to its original certified condition would be considered tampering with the emission controls.) We believe that the proposed provisions would address the vast majority of in-use maintenance and rebuilding practices. However, we are concerned about special circumstances in which an owner wants to upgrade the engine to be comparable to a newer configuration rather than simply returning it to its original configuration. Under Annex VI, such "substantial modifications" are allowed, but the owner is required to recertify the engine. Should we adopt a similar provision? We are also requesting comment on a voluntary rebuild standard for older ships with engines that are not subject to our standards or the Annex VI requirements. For example, should we create a program for owners of ships built before 2004 to voluntarily certify that they comply with the EPA standards for model year 2004 ships?

As described in the previous section, for ships that travel far from the U.S., the proposed in-use maintenance provisions that would require operators to perform emission related maintenance so that an engine meets the manufacturer's maintenance requirements when it is within 175 nautical miles of the United States. For rebuilds performed away from the U.S., this would require that all rebuilds be performed so that the engine could be returned to its original certified condition before the ship returns to within 175 nautical miles of the United States. (See section V.B.10 for more information about special provisions that apply for ships that travel more than 175 nautical miles from the U.S.)

10. Compliance With a Certificate of Conformity Beyond 175 Nautical Miles of the U.S. Coast

As described in section V.B.3, we are proposing to allow engines to be adjusted in use in accordance with the certificate of conformity, and to limit

this adjustability under our Clean Air Act authority to prohibit tampering. We are also proposing different compliance requirements than those adopted in prior rulemakings for new nonroad vehicles and new nonroad engines for Category 3 marine engines installed in vessels that operate outside the U.S. Under this approach a vessel operator would be conditionally allowed to adjust an engine's operating parameters different from the manufacturer's specification. This would be allowed when a vessel that is proceeding toward or out of a U.S. port is more than 175 nautical miles about (200 statutory miles) from the U.S. coastline. More precisely, we would allow this for vessels that are more than 175 nautical miles from the baseline from which the territorial sea is measured, including U.S. states or territories outside of the U.S. mainland.

This flexibility is not included in the Annex VI provisions. While we considered proposing our program without this flexibility, we believe that it is an appropriate flexibility, as is described below.

Under the proposed approach, engine adjustments different from engine manufacturer's specifications would be conditional on readjusting the engine's parameters within its certified range and confirming that emissions are within the range of emissions to which the engine is certified to comply before a vessel seeking to enter a U.S. port is 175 nautical miles from the U.S. coastline. Failure to take these actions would constitute tampering with the engine in violation of section 203(a)(3)(A) of the CAA and 40 CFR 94.1103(a)(3)(i). To confirm that emissions are within the range of emissions at which the engine is certified to comply, operators would have to perform a simple field measurement test after each parameter adjustment or maintenance operation that could reasonably be expected to affect emissions. (All adjustments and maintenance would be presumed to affect emissions unless there was a reasonable technical basis for believing that they did not affect emissions.) Furthermore, we would require that all new Category 3 engines be equipped with electronic-logging equipment that automatically records all adjustments to the engine and the results of the required verification tests. The logging equipment would be required automatically record all adjustments without requiring the operator to turn on the data logger, without regard to whether they occur within 175 nautical miles of the U.S. coast. It would not be possible to rely on the data log to ensure that the vessel is consistently being adjusted properly if the operator could turn the logger on and off. Since the logging would occur automatically, we do not believe there would be a significant burden to the operator. Such adjustments would also have to be manually recorded as well. Obviously, we would not allow adjustments that damaged the engine or its emissions controls or otherwise prevented the engine from being able to comply with our regulations after the readjustment.

Prior rulemakings that establish emission standards for new nonroad engines and vehicles prohibit anyone from disabling or otherwise tampering with an engine or vehicle that is covered by a certificate of conformity. See for example 40 CFR 94.1103(a)(3)(i). Our normal practice has been to require an engine to meet the emission standards at all specifications within an adjustable range. In addition, we normally require an engine manufacturer to make an engine's parameters unadjustable outside the range at which an engine is certified. We have adopted these practices to minimize the possibility that a certified engine can be intentionally or unintentionally adjusted to exceed the emission levels at which it is certified. If we take a different approach and allow Category 3 marine engines to conditionally allow a vessel operator to adjust an engine's operating parameters outside the range of specifications within which the engine is certified to comply with the applicable emission standards, we would be increasing the possibility that a certified engine would exceed the emission levels at which it is certified when it is in or near the United States. We are, nonetheless, proposing such an approach because of the unique issues associated with Category 3 marine engines that are installed in a vessel. These engines spend much of their time in international waters far away from U.S. coastal regions, where their emissions would have little or no effect on U.S. air quality. Tailoring the scope of the prohibition against tampering with a certified engine would allow vessel operators to readjust their engines for different performance characteristics in international waters when their emissions do not affect the U.S.

Although section 203(a)(3)(A) of the CAA prohibits the disabling of or tampering with emission control technology on a compliant motor vehicle or motor vehicle engine, there is no express statutory prohibition on such conduct with respect to new nonroad engines or vehicles. Although section 213(d) does provide that emission standards for new nonroad engines and vehicles "shall be enforced in the same manner" as standards prescribed for new motor vehicles and new motor vehicle engines, it is unclear whether this means "exactly equivalent" enforcement requirements or "analogous, comparable or consistent" enforcement requirements. The CAA, therefore, is ambiguous as to how emission standards for new nonroad engines and vehicles should be enforced.

We believe that it would be reasonable to interpret section 213(d) to allow the Agency to fashion enforcement provisions for new nonroad engines and vehicles that are consistent with, but not necessarily equivalent to, those applicable to new motor vehicles and new motor vehicle engines. Such an interpretation is consistent with the rest of section 213(d), which recognizes the need for different solutions to implement emission standards for new nonroad engines and vehicles. Specifically, section 213(d) provides that emission standards for nonroad engines and vehicles like emissions standards for new motor vehicles and new motor vehicle engines are subject to sections 206, 207, 208 and 209 "with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate."

In this case, the need for a different solution than the one that we have traditionally adopted is warranted by the fact that the engines we propose to regulate operate primarily outside of the United States. As discussed above, marine Category 3 engines installed in vessels spend much of their time in waters far away from U.S. coastal regions, where their emissions would have little or no effect on U.S. air quality. Enforcing emission standards for these kinds of engines, therefore, is different than enforcing standards for motor vehicles and motor vehicle engines that operate primarily, if not exclusively, inside the United States. However, vessel operators that adjust an engine's operating parameters outside the range within which the engine is certified to comply with the applicable emission standards, would have to readjust the engine's parameters to its certified calibration and confirm that emissions are within the range of emissions to which the engine is certified to comply before a vessel seeking to enter a U.S. port is 175 nautical miles from the U.S. coastline.

As described in previous sections, we are proposing to apply this same approach for engine maintenance and rebuilding. Within 175 nautical miles of the U.S., improper maintenance or

rebuilding of an engine would be considered to be tampering to the extent that it compromised the emission performance of the engine. On the other hand, engine maintenance and rebuilding that occurs more than 175 nautical miles away from the U.S. would be treated as any other type of emission-related adjustment. Ship operators could maintain or rebuild the engine however they would choose, provided that the engine is returned to a certified configuration and passes the emission verification test specified in § 94.1003(b) of the proposed regulations before it comes within 175 nautical miles of the U.S.

We are proposing this limit of 175 nautical miles to control Category 3 emissions that affect U.S. air quality, especially emissions from coastwise traffic. As described in the draft RSD, we believe that the emissions that occur within 175 nautical miles (200 statutory miles) of the U.S. coastline represent a significant fraction of the total inventory and that these emissions can significantly affect U.S. air quality. Assuming a 10 mile per hour wind blowing toward the coast, these emissions would reach the coast in less than one day. Setting this threshold at some shorter distance would not adequately account for these emissions. We considered proposing a larger distance. The Ozone Transport Assessment Group [55] has estimated that within the continental U.S., emissions can affect air quality as far away as 500 statutory miles from the emission source. Other analyses have suggested that NO_X and SO_X emissions could be transported even farther than that. However, there is uncertainty associated with the transport of ship emissions. Most transport studies have focused on transport that occurs over land, and emissions over the ocean do not have the same effect as land-based emissions due to different meteorological conditions. While we recognize that some emissions that occur beyond 175 nautical miles could potentially affect U.S. air quality, these effects are hard to quantify. At this time, we cannot determine that emissions beyond 175 nautical miles would have a significant effect in most cases.

We will continue to investigate this issue throughout this rulemaking, and will incorporate any new information into the final rule. For example, the Department of Defense (DoD) has recently presented information to EPA supporting the significance of offshore emissions, but suggesting that a different, shorter (offshore distance) limit may be appropriate to address the emissions from marine vessels that would affect on-shore air quality. DoD's extensive work on the marine vessels issue in Southern California resulted in a conclusion that emissions within 60 nautical miles of shore could make it back to the coast due to eddies and the nature of the sea breeze effects. Their analysis of satellite data, however, showed a distinct tendency for a curved line of demarcation separating the offshore (unobstructed) or parallel ocean wind flow from a region of more turbulent, recirculated air which would impact on-shore areas. That curved line of demarcation was close to San Nicolas Island which is about 60 nm offshore from the California coast. DoD also indicated that studies and published information on other coastal areas in California indicate that they experience somewhat narrower (perhaps 30 nm) region of "coastal influence". We are investigating how this information would related to other coastal regions such as the Gulf Coast and the East coast, which would be expected to have their own unique meteorological conditions that might call for different lines of demarcation between on-shore and off-shore effects.

We believe that the proposed distance would protect U.S. air quality without placing an undue burden on ship operators. Nevertheless, we request comment on the proposed distance. We encourage commenters to address both the long-distance effect of marine engine emissions on U.S. air quality and the potential impact of this proposed approach on ship operations. We are requesting comment regarding the appropriateness of applying a single distance to all coastal regions, without considering prevailing wind patterns. For example, would it be more appropriate to set a larger distance for the Pacific coast and a smaller distance for the Atlantic coast? Would such an approach be practical? We are also requesting comment on whether we should treat the waters around U.S. island territories such as Guam in the same way that we treat the coastal waters around the continental U.S. Would emissions around these islands affect their air quality to the same extent as coastal emissions around the U.S. mainland? Alternatively, we could exempt the island territories from these requirements, pursuant to section 324(a) of the Act, if petitioned by the governors of the territories.

Finally, it is worth noting that since we expect that manufacturers would design their engines to have good performance when adjusted to their compliant calibrations, it should not make a major difference to operators exactly where they conduct the verification test. Therefore, we would expect that operators that adjust their engines outside of the manufacturer's recommended range would begin readjusting their engines when they reach the 200-mile EEZ limit. This would allow them to adjust their engines and complete the verification test before they reached the proposed 175-mile limit. It would also provide time to readjust the engine if it were to fail the initial emission verification test. If we determine that some distance other than the proposed 175-mile limit would better divide those emissions that affect U.S. air quality from those emissions that do not, should we incorporate some additional cushion to ensure that operators would have sufficient time to readjust and retest an engine before its emissions could adversely affect U.S. air quality?

11. Are There Proposed Post-Certification Testing Requirements?

To ensure compliance of production engines, we are proposing a simple testing program that is modeled loosely on our production line testing (PLT) requirements for other marine engines. The general object of any PLT program is to enable manufacturers and EPA to determine, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards. We are not proposing a specific testing requirement, and would allow manufacturers flexibility in determining how to test the engines. However, we are proposing some minimum requirements. First, we would require that each certified engine that a manufacturer produces be tested. We would also require that either the test directly measure brake-specific emissions, or measure other parameters that provide equal assurance that each engine meets the standards. The testing would need to occur after final installation, but before final delivery to the ultimate purchaser. We would suspend the certificate of conformity for any failing engine, or if the engine manufacturer's submittal reveals that the tests were not performed in accordance with the applicable testing procedure. The manufacturer must then bring the engine into compliance before we could reinstate the certificate of conformity subsequent to a suspension. We would also suspend the certificate of conformity for an engine family whenever an engine fails. The manufacturer would need to identify and remedy the cause of the failure

[55] Final Report of the Ozone Transport Assessment Group, Chapter 4.

before we could reinstate the certificate of conformity for future production within that family. EPA will work with the U.S. Coast Guard to develop procedures to verify onboard performance of these field measurement provisions, as Coast Guard has the general authority to carry out such procedures on vessels.

12. What Would the Prohibited Acts and Related Requirements Be?

We are proposing to regulate Category 3 engines under 40 CFR part 94. This means that we are proposing to extend the general compliance provisions for smaller marine engines to Category 3 marine engines. These include the general prohibition introducing an uncertified engine into commerce, as well as the tampering and defeat-device prohibitions. However, as described in Section V(B)(10), we are proposing to modify the tampering provision for Category 3 engines to allow operation outside of the otherwise allowable range of adjustment when the vessel is far away from the U.S. All other aspects of the existing tampering prohibition would apply. These prohibitions are listed in § 94.1103. EPA seeks comment on extending these provisions to Category 3 engines, and on any additional modifications that should be made to these provisions to accommodate special features of these engines.

13. Would There Be General Exemptions for Engines?

We are proposing to extend the exemptions provisions for smaller marine engines to Category 3 marine engines. These include, for example, exemptions for the purpose of national security and exemptions for engines built in the U.S. for export to other countries. These exemptions, which are described in Subpart J of 40 CFR Part 94, would exempt the engines from the proposed requirements, but would require that the manufacturer keep records or label the engines in some cases. Both the exemption and the related requirements are allowed under our general standard-setting authority.

14. What Regulations Would Apply for Imported Engines?

We are proposing to extend the current importation provisions found in 40 CFR Part 94 for smaller marine engines to Category 3 marine engines. This means that we are proposing that engines that are imported would generally be subject to the proposed requirements based on their date of original manufacture. The existing provisions for smaller engines include permanent and temporary exemptions from this requirement. The most significant of these import exemptions for ocean-going vessels is the allowance to temporarily import an engine for repair.

15. What Would Be a Manufacturer's Recall Responsibilities?

Section 207(c)(1) of the Act specifies that manufacturers must recall and repair in-use engines if we determine that a substantial number of them do not comply with the regulations in use. We are proposing to apply the existing provisions for smaller marine engines to Category 3 marine engines. These provisions are described in Subpart H of 40 CFR Part 94.

C. Test Procedures for Category 3 Marine Engines

Engine manufacturers are currently testing according to the test procedures outlined in The Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines in the "Annex VI of MARPOL 73/78 Regulations for the Prevention of Air Pollution from Ships and NO_X Technical Code" from the International Maritime Organization. We are proposing to certify Category 3 marine engines using these MARPOL test procedures for diesel marine engines with modification. The modifications, which are described in the following sections, are required to ensure that the test data used for certification are consistent with the requirements of the Clean Air Act.

1. What Duty Cycle Would I Use to Test My Engines?

The duty cycle used to measure emissions is intended to simulate operation in the field. Testing an engine for emissions consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emissions performance of engines designed to those standards.

To address operational differences between engines, we are proposing two different duty cycles for different types of C3 marine engines. Engines that operate on a fixed-pitch propeller curve would be certified using the International Standards Organization (ISO) E3 duty cycle. This is a four-mode steady-state cycle developed to represent in-use operation of marine diesel engines. The four modes lie on an average propeller curve based on the vessels surveyed in the development of this duty cycle. We are proposing ISO E2 for propulsion engines that operate at a constant speed. These are the cycles used by MARPOL.

2. What Kind of Fuel Would Be Required for Emission Testing?

To facilitate the testing process, we generally specify a test fuel that is intended to be representative of in-use fuels. Engines would have to meet the standard on any fuel that meets the proposed test fuel specifications, with one modification as described later. This test fuel is to be used for all testing associated with the regulations proposed in this document, to include certification, production line and in-use testing.

We are proposing that the official test fuel specification for C3 engines be a residual fuel. We are proposing to allow a range of fuels based on the ASTM D 2069–91 specifications for residual fuel. We would allow testing using any residual fuel meeting the specifications for RMH–55 grade of fuel including fuels meeting the specifications for RMA–10 grade of fuel. We request comment on this specification. An alternative to this approach might be to narrowly define a worst-case test fuel. Your comments should address whether the grade of the test fuel would affect the feasibility or the stringency of the proposed standard. We also are requesting comment on whether there needs to be a specification for ignition properties of the test fuels, such as cetane.

This ASTM specification does not include any specification for the nitrogen content of the fuel. Organically-bound nitrogen is a normal component of residual fuels that has a very significant effect on NO_X emissions. However, the effect on NO_X can be calculated from the nitrogen content of the fuel. Therefore, we are proposing to include a broad specification for the nitrogen content of the fuel (between zero and 0.6 weight percent), and to require correction of the NO_X emissions based on the nitrogen content of the fuel.

We are also proposing to allow certification testing on marine distillate fuel to be consistent with MARPOL testing (see section IV.A.2). However, distillate fuels tend to have lower nitrogen content than residual fuels. To account for this, we would correct the NO_X emissions, based on fuel nitrogen content, to be equivalent to testing with residual fuels. We request comment on this approach. Your comments should address whether we should account for

factors other than nitrogen content of the fuel in our correction.

Finally, based on our current understanding of the importance of fuel nitrogen levels, we are proposing to also establish a nitrogen-correction for testing Category 1 and Category 2 engines using residual fuel. This correction would be consistent with the Category 3 correction. However, since the Category 1 and Category 2 standards are based on zero-nitrogen fuel, the Category 1 and Category 2 correction would correct to 0.0 percent nitrogen instead of 0.4 percent nitrogen for Category 3. In the Category 1 and Category 2 FRM, we intended to set the standards so that they could be achieved by Category 2 engines that use residual fuel. After reconsidering the effect of fuel nitrogen, we now believe that this correction is necessary to achieve that goal.

3. How Would EPA Account for Variable Test Conditions?

We are not proposing to limit certification testing based on barometric pressure or ambient humidity. We are proposing to limit the allowable ambient air temperature to 13°C to 30°C and charge air cooling water to 17°C to 27°C. However, since a manufacturer would not always be able to stay within these ranges for tests conducted after the engine is installed in the ship, we are proposing to allow production testing and in-use testing under broader conditions. Engine manufacturers would need to provide information about how emissions are affected at other temperatures to allow production testing and in-use testing conducted under the broader conditions to be used to verify compliance with the emission standard.

We are proposing to use the MARPOL Annex VI correction factors for temperature and humidity for certification testing. We would allow the use of the corrections for a broader range of test conditions, provided the manufacturer verifies the accuracy of the correction factors outside of the range of test conditions for certification.

4. How Does Laboratory Testing Relate to Actual In-Use Operation?

If done properly, laboratory testing can provide emission measurements that are the same as measurements taken from in-use operation. However, improper measurements may be unrepresentative of in-use operation. Therefore, we are proposing regulatory provisions to ensure that laboratory measurements accurately reflect in-use operation. In the proposed regulations, there is a general requirement that manufacturers must use good engineering judgment in applying the MARPOL Annex VI test procedures to ensure that the emission measurements accurately represent emissions performance from in-use engines. We are proposing specific requirements that the manufacturers ensure that intake air and exhaust restrictions and coolant and oil temperatures are consistent with in-use operation. Most importantly, we are proposing that manufacturers' simulation of charge-air cooling replicate the performance of in-use coolers within ±3°C.

The definition of maximum test speed, (the maximum engine speed in revolutions per minute, or rpm) is an important aspect of the test cycles proposed in this document. Under Annex VI, engine manufacturers are allowed to declare the rated speeds for their engines, and to use those speeds as the maximum test speeds for emission testing. However, we are concerned that a manufacturer could declare a rated speed that is not representative of the in-use operating characteristics of its engine in order to influence the parameters under which their engines could be certified. Therefore, we are proposing to apply the current definition of "maximum test speed" in § 94.107 to Category 3 engines that are subject to our standards.

5. What is Required to Perform a Simplified Onboard Measurement?

We are proposing that simplified onboard measurements be used to confirm proper adjustment of in-use engines as described in sections V.B.3 and V.B.10. These systems must be capable of measuring NO_X concentration, exhaust temperature, engine speed, and engine torque. Operators would compare the NO_X concentration and exhaust temperature to limits provided by the manufacturer. Tests that showed emissions higher than allowed under the manufacturer's specifications would mean that the engine was not properly adjusted. If the engine was within 175 nautical miles of the U.S. coast, then this would require that the engine be readjusted and retested. Such exceedances 175 nautical miles of the U.S. coast would not be considered to be violations of the regulations, provided they were corrected immediately.

D. Comparison to Annex VI Compliance Requirements

1. Why are EPA's proposed compliance requirements different from the Annex VI requirements?

We have attempted to propose compliance requirements that are sufficiently consistent with Annex VI that manufacturers would be able to use a single harmonized compliance strategy to certify under both systems. However, the Clean Air Act specifies certain requirements for our compliance program that are different from the Annex VI requirements. The most important differences between the proposed approach and the method used under Annex VI are related to witness testing, the durability requirements, and test procedures. It is the durability requirements of the Clean Air Act that represent the most fundamental differences between the Annex VI certification program and the program required by the Clean Air Act. Section 213 of the Act requires that the engine manufacturer be responsible for ensuring compliance with the emission standards for the full useful life of the engine. The Annex VI certification provisions do not include this kind of requirement, and make the ship operators fully responsible for ensuring in-use compliance through periodic survey requirements. Thus, we cannot adopt the Annex VI certification and compliance requirements to implement the requirements of the Clean Air Act.

We believe that adopting certification provisions similar to our existing Category 1 and 2 requirements would best meet the requirements of the Clean Air Act.

2. What Would Be the Most Significant Differences Between the Two Programs?

There are a number of differences between the two programs. These differences are summarized below. They were also discussed in more detail in the earlier subsections of this section V.

- Liability for in-use compliance—We require that the engine manufacturer be responsible for ensuring compliance with the emission standards for the full useful life of the engine, while the Annex VI program makes the ship operators fully responsible for ensuring in-use compliance. Both our regulations and Annex VI provisions would require ship operators to properly maintain their engines and to keep records of the maintenance and engine adjustment. Under Annex VI, these records are referred to as the Record Book of Engine Parameters.
- Durability demonstration—We require that the engine manufacturer

demonstrate prior to production that they comply with the emission standards for the full useful life of the engine (see section V.B.5). The Annex VI program would only require that the manufacturer demonstrate that the engine meets the standards when it is installed in the vessel; there is no Annex VI durability demonstration.

• Witness testing—We allow, but do not require witness testing for U.S. compliance. Some other countries require witness testing for marine engines. Manufacturers would need to take this into consideration if they plan to sell the same engines in the U.S. and those other countries.

• Test procedures—We are proposing to certify Category 3 marine engines using the Annex VI test procedures for diesel marine engines with modification. The modifications, which are described section V.C, are required to ensure that the test data used for certification are representative of in-use operation. We expect that manufacturers would be able to use data from certification tests conducted according to the modified EPA procedures for Annex VI certification.

• Test fuel—As described in section V.C.2, we are proposing that the official test fuel specification for C3 engines be a residual fuel. Annex VI specifies using distillate test fuels and uses distillate testing as the basis of its standards. We are proposing to allow certification testing on marine distillate fuel to be consistent with Annex VI. However, we would correct the NO_X emissions, based on fuel nitrogen content, before the test results are compared to our residual fuel based standards.

• Compliance date for standards—As described in Section III, we are proposing to apply the standards based on the date of final assembly of the engine, while Annex VI generally applies the standards based on the start-date of the manufacture of the vessel (i.e., the date on which the keel is laid). Since the laying of the keel would almost always occur prior to the final assembly of the engine, this provides manufacturers with somewhat more lead time than is provided by the Annex VI provision. Note that this difference would not matter for Tier 1, since the effective date of the Annex VI limits has already passed (January 1, 2000).

• Production testing—We are proposing a simple production testing program ensure that certification designs would be translated into production engines that meet applicable standards. We are not proposing a specific testing requirement, and would allow manufacturers flexibility in determining how to test the engines. Annex VI also requires verification that engines are properly installed, but allow this to be demonstrated by either a parameter check or by testing.

• Technical file—Annex VI requires that engine manufacturers provide operators with a Technical File that contains maintenance instructions, test data, and other compliance information. We are proposing only to require the manufacturer to provide maintenance instructions necessary to ensure that the engine would continue to meet the emission standards in use.

• In-use compliance—To ensure that an engine in-use continues to meet the standards, we are proposing that operators be required to perform a simple field measurement test to confirm emissions after a parameter adjustment or maintenance operation. The Annex VI program would require only periodic surveys of the engine, which can take the form of a simplified onboard test or, more frequently, a parameter check. The parameter check can be as simple as reviewing the record book of engine parameters to see if any adjustments were made to the engine that were outside the range of acceptable parameter adjustments specified by the engine manufacturer. Both of these would be carried out by representatives of the flagging state.

• Parameter adjustment—We are proposing to allow manufacturers to specify in their applications for certification the range of adjustment across which the engine is certified to comply with the applicable emission standards. This would allow a manufacturer to specify different fuel injection timing calibrations for different conditions. These different calibrations would be designed to account for differences in fuel quality. Operators would then be prohibited by the anti-tampering provisions from adjusting engines to a calibration different from the calibration specified by the manufacturer when they are within 175 miles of the U.S. coast. We are also proposing to require all new Category 3 engines be equipped with emission measurement systems and with automatic electronic-logging equipment that automatically records all adjustments to the engine and the results of the required verification tests. (See sections V.B.3 and V.B.10 for more details.) Annex VI would prohibit operators from adjusting engines to a calibration different from the calibration specified by the manufacturer under any circumstances.

• Onboard measurement—We are proposing that simplified onboard measurements be used to confirm proper adjustment of in-use engines as described in sections V.B.3 and V.B.10. Annex VI allows such systems, but does not require them.

3. Could a Manufacturer Comply With Both the EPA Requirements and the Annex VI requirements at the Same Time?

A manufacturer that complied with the proposed EPA requirements would need to do very little additional work to meet the Annex VI requirements. First, the engine manufacturer would need to provide the operator with a Technical File that contains more information than would be required by EPA. The manufacturer may also need to ensure that the relevant emission testing is witnessed appropriately.

For manufacturers that have already complied with the Annex VI, the amount of additional work that would required to comply with the proposed EPA requirements, would be dependent on how the manufacturer conducted its emission testing. Annex VI allows manufacturers more discretion in testing engines than would be allowed under our proposed regulations, and does not necessarily require that the engine be tested fully consistent with in-use operation. Under the proposed regulations, tests of engines that are not consistent with in-use operation would not be allowed, unless the manufacturer could demonstrate that the test results were equivalent to test results that would result form testing conducted in accordance with the proposed regulations. In these cases, manufacturers would need to repeat the tests according to the proposed test procedures. On the other hand, manufacturers that used their good engineering judgment to test their engines consistent with their in-use operation would generally be allowed to use the same test data for EPA certification. For future testing, manufacturers would be able to test their engines in compliance with both the Annex VI procedures and the proposed EPA procedures.

With respect to the other proposed compliance requirements not related to certification testing, manufacturers would need to do the following things in addition to the Annex VI requirements:

• Demonstrate prior to production that the engines would comply with the emission standards for the useful life of the engine.

• Warrant to the purchasers that the engines would comply with the EPA requirements for the useful life of the engine.

• Perform a simple production test after installation.

- Install an onboard measurement system.
- Specify how the operator should adjust the engine in use and how proper adjustment should be verified through testing.

VI. Projected Impacts

A. What Are the Anticipated Economic Impacts of the Proposed Standards?

Our analysis of the projected impacts of the proposed standards consists primarily of estimating the costs, emission benefits, and cost per ton of pollutant reduced.

With regard to the proposed Tier 1 standards, we expect the costs of the proposed Tier 1 standards to be negligible. We do not anticipate that there will be any engineering or design costs associated with the Tier 1 standards because manufacturers are already certifying engines to the Annex VI standards through our voluntary certification program (see Section E.2 of the preamble for this rule). While there will be certification and compliance costs, these costs will be negligible on a per-engine basis. The emission reductions from the proposed Tier 1 standards will reflect only reductions from engines that are currently in noncompliance with the Annex VI NO_X limits. For these reasons, the projected impacts of this rule are expected to be negligible.

Additionally, because the total annualized costs associated with complying the proposed rule are a small percentage of total market revenues, it is unlikely that market prices or production will change as a result of the proposed rule. Furthermore, the total annualized costs associated with applying the reductions to all vessels is smaller; thus, we would still not anticipate appreciable changes in market prices or quantities to be associated with the proposed rule.

The remainder of this section discusses the projected impacts of a second tier of standards currently under consideration that would reflect a 30 percent reduction from Tier 1.

B. What Are the Anticipated Economic Impacts of the Standards Under Consideration?

As described below, aggregate annualized costs of adopting the Tier 2 standards discussed above are estimated to be about $1.6 million per year. In assessing the economic impact of setting emission standards, we have made a best estimate of the combination of technologies that an engine manufacturer would most likely use to meet the new standards discussed in this Notice. The analysis presents estimated cost increases for new engines. These estimates include consideration of variable costs (for hardware and assembly time), fixed costs (for research and development, and retooling), and compliance costs (for certification testing and onboard emission measurements). The analysis also considers total operating costs, including maintenance and fuel consumption. Cost estimates based on these projected technology packages represent an expected change in the cost of engines as manufacturers begin to comply with new emission standards. All costs are presented in 2002 dollars. Full details of our cost analysis can be found in Chapter 5 of the Draft Regulatory Support Document.

Table VI.B–1 summarizes the projected costs for meeting the Tier 2 emission limits under consideration. Anticipated incremental new engine cost impacts of the Tier 2 emission limits discussed in this notice for the first years of production range from $94,000 to $153,000 per engine with an calculated composite cost of $115,000. Long-term impacts on engine costs are expected to be lower, ranging from $25,000 to $63,000 per engine with a composite cost of $39,000. Most of this cost reduction is accounted for by the fact that research, testing, and other fixed costs dominate the cost analysis, but disappear after the projected ten-year amortization period. Some additional cost reduction is expected to result from learning in production. We believe that manufacturers would be able to combine emission-control technologies to meet the Tier 2 emission standards under consideration without increasing fuel consumption or other operating costs. The cost analysis, however, includes an estimated $5,000 of annual expenses to maintain equipment for onboard emission measurement, which corresponds with a net-present-value at the point of sale of $61,000. See Chapter 5 of the Draft Regulatory Support Document for a more detailed discussion of the analysis to estimate the costs of emission-control technology for meeting a second tier of emission standards.

TABLE VI.B–1.—SUMMARY OF PROJECTED COSTS TO MEET TIER 2 EMISSION STANDARDS—U.S.-FLAG ONLY

Time Frame	Medium-speed engines			Slow-speed engines		
	6 cyl.	9 cyl.	12 cyl.	4 cyl.	8 cyl.	12 cyl.
Total cost per engine (yr. 1)	$93,587	$98,977	$104,368	$106,414	$129,723	$153,031
Total cost per engine (yr. 6 and later)	25,452	28,902	32,352	33,661	48,579	63,496
Annual operating costs	5,000	5,000	5,000	5,000	5,000	5,000

Table VI.B–2 shows the same cost estimates for the scenario of requiring engines on foreign-flag vessels to meet emission standards. Near-term costs are generally lower in this scenario because fixed costs can be amortized over substantially larger numbers of engines. The same manufacturers produce engine used in U.S. and foreign-flagged vessels. In addition, the majority of the vessels visiting the U.S. are foreign flagged. Therefore, we do not estimate separate costs for applying the Tier 2 standards to foreign flagged vessels only.

TABLE VI.B–2.—SUMMARY OF PROJECTED COSTS TO MEET TIER 2 EMISSION STANDARDS—INCLUDING FOREIGN-FLAG

Time frame	Medium-speed engines			Slow-speed engines		
	8 cyl.	12 cyl.	16 cyl.	4 cyl.	8 cyl.	12 cyl.
Total cost per engine (yr. 1	$35,970	$41,360	$46,751	$48,797	$72,106	$95,414
Total cost per engine (yr. 6 and later)	25,452	28,902	32,352	33,661	48,579	63,496
Annual operating costs	5,000	5,000	5,000	5,000	5,000	5,000

The above analysis presents unit cost estimates for each power category. With current data for engine and vessel sales for each category and projections for the future, these costs can be translated into projected direct costs to the nation for the new emission standards in any year. Aggregate annualized costs (based on a 20-year stream) are estimated to be about $1.6 million per year. This is based on the present value of an annuity discounted at 7 percent over a 20-year stream of costs. Aggregate annualized costs not including the NO_X monitoring costs are estimated to be about $1 million. Applying the Tier 2 emission standards described in this notice also to engines on foreign-flag vessels would increase aggregate annualized costs to about $54 million. In both cases, estimated aggregate costs per year fall substantially after five years as manufacturers would no longer need to recover their amortized costs.

The annualized aggregate cost (no operating costs) of $1 million represents 0.17 percent of total annual shipbuilding industry revenues based on the 1997 value of shipments. Because the total annualized costs associated with complying the Tier 2 standards under consideration are a small percentage of total market revenues, it is unlikely that market prices or production will change as a result of these proposed rules. Furthermore, the total annualized costs associated with applying the reductions to all vessels is smaller; thus, we would still not anticipate appreciable changes in market prices or quantities to be associated with the standards under consideration.

C. What Are The Anticipated Emission Reductions of the Standards Under Consideration?

The following discussion gives a brief overview of the methodology we used to determine the emissions reductions from Category 3 marine diesel engines associated with this proposed rule and alternatives we are considering. Chapter 6 of the Draft Regulatory Support Document provides a detailed explanation of the methodology and results. Section II of this preamble and Chapter 2 of the Draft Regulatory Support Document contain information about the health and welfare concerns associated with Category 3 marine diesel engine pollution.

To model the emission reductions of the standards discussed in this Notice we applied an engine replacement schedule and the emissions standards to the baseline inventory. We also accounted for the MARPOL Annex VI NO_X limits. Although these standards are not yet effective, they are being largely complied with around the world, and we expect this trend to continue. Thus, we are using the Annex VI limits as the baseline for purposes of showing the expected emissions reductions from the Tier 2 standards. Thus, we are assuming that all U.S. and foreign flagged vessels built after 1999 will comply with the Annex VI limits, and show the benefits of the Tier 2 standards relative to this baseline. We are only considering that the Tier 2 standards apply to U.S. flagged vessels. Thus, we only applied the expected emissions reductions from the Tier 2 standards to the portion of the national inventory attributable to U.S. flagged vessels. Also, because the HC and CO standards are intended only to prevent future increases in HC and CO emissions, and because we are not considering PM standards, we are claiming no emissions reductions in HC, CO or PM. Table VI.C–1 shows our estimates of Category 3 vessel NO_X emissions with and without the Tier 2 standards, as well as the impact of the MARPOL Annex VI NO_X limits.

It is important to note that we only modeled the emissions reductions within 175 nautical miles of the U.S. coast. However, reductions from the Annex VI standards and the Tier 2 standards would also likely occur outside of 175 nautical miles of the U.S. coast. To the extent that vessels in compliance with these limits visit foreign ports some emissions reductions would likely be seen in those areas as well.

TABLE VI.C–1.—CATEGORY 3 MARINE VESSEL NO_X NATIONAL EMISSIONS INVENTORIES

	1996	2010	2020	2030
No control baseline (thousand short tons)	190	303	439	659
MARPOL Annex VI:				
(thousand short tons)	190	274	367	531
Percent reduction (relative to no control)	.....	9.6%	16.2%	19.5%
Tier 2:				
Control (thousand short tons)	190	269	343	475
Percent reduction (relative to MARPOL Annex VI)	.....	2.0%	6.8%	10.5%

As discussed in Section III, we are only proposing to apply the emissions standards to U.S. flagged vessels. The effect of applying the Tier 2 standards to both U.S. and foreign flagged vessels is shown in Table VI.C–2. As can be seen from this table, the projected emissions reductions from applying a second tier of standards would be substantially greater in 2030 if foreign flagged vessels were also to comply with such limits. EPA believes this information provides support for pursuing an international agreement to limit emissions to such levels in the context of additional reductions under MARPOL.

TABLE VI.C–2.—EFFECT OF APPLICATION OF TIER 2 EMISSIONS STANDARDS BASED ON VESSEL FLAG (U.S. FLAGGED VESSELS VS. ALL VESSELS)

Scenario	2020		2030	
	NO_X (1000 tons)	% reduction	NO_X (1000 tons)	% reduction
Baseline (Annex VI)	367		531	
U.S. Flagged Only	343	6.8	475	10.5
All Vessels	306	16.7	392	26.1

D. What is the Estimated Cost Per Ton of Pollutant Reduced for This Proposal and Alternatives We are Considering?

We estimated the cost per ton of NO_X reduction of the NO_X emission standards discussed in this Notice. Chapter 7 of the Draft Regulatory Support Document contains a more detailed discussion of the cost per ton analysis. The calculated cost per ton of the proposed emission standard presented here includes all of the anticipated effects on costs and emission reductions.

1. Tier 1 Cost Per Ton

The proposed Tier 1 standards are equivalent to the MARPOL Annex VI standards. Because engines already comply with the MARPOL Annex VI standards, we not claiming any benefits or costs to meet the EPA proposed Tier 1 standards.

2. Tier 2 Cost Per Ton

To determine the cost per ton of NO_X reduction associated with the Tier 2 emission standards discussed in section IV.A.3, we only considered emissions reductions beyond those achieved by the MARPOL Annex VI standards. Table VI.D–1 presents the cost per ton of the Tier 2 standards discussed in this notice for U.S. flagged Category 3 marine engines. By weighting the projected cost and emission benefit numbers presented above by the populations, we also calculated the aggregate cost per ton of NO_X reduced for Category 3. The net present value (NPV) of the costs and emissions reductions shown here are discounted at a rate of 7 percent per year. For comparison, estimates are also presented here for applying these standards to foreign flagged vessels as well. These cost per ton estimates are higher because only emission reductions within 175 nautical miles of the U.S. coast are considered and foreign flagged vessels have less of their operation near the U.S. than U.S. flagged vessels.

TABLE VI.D–1.—COST PER TON OF THE MARINE TIER 2 STANDARDS FOR NO_X

Model year grouping	NPV benefits per ship (short tons)	NPV operating costs per ship	Engine & vessel costs per ship	Discounted cost per ton
U.S. Flagged Vessels Only (proposed)				
1 to 5	1,149	$66,000	$115,000	$145
6+			39,000	87
Foreign Flagged Vessels Only (for comparison)				
1 to 5	45	$66,000	$57,000	$2,590
6+			39,000	2,235
All Vessels (for comparison)				
1 to 5	73	66,000	57,000	1,585
6+			39,000	1,368

The costs and reductions presented in the above table are based on an 11,000 kW engine which, as discussed in Chapter 7 of the draft RSD, we believe represents the average sized engine visiting U.S. ports. An engine of this size would cost about $2.5 to 3.0 million. It would be used in a vessel which would cost about $100 to $200 million to construct. Therefore, the $180,000 cost estimate of engine improvements represents about 0.1 percent of the total vessel cost. All costs are in 2002 dollars.

3. Comparison to Other Programs

In an effort to evaluate the cost per ton of the NO_X controls discussed above for Category 3 marine engines, we looked at the cost per ton for other recent EPA mobile source rulemakings that required reductions in NO_X (or $NMHC+NO_X$) emissions. Our final standards for Category 1 and 2 marine engines yielded a cost per ton of $24–$180 per ton of $HC+NO_X$ reduced (in 1997 dollars). In contrast, the 2007 standards for highway heavy-duty engines yielded a cost per ton of approximately $1600–$2100 per ton of $NMHC+NO_X$ (in 1999 dollars). The rulemaking proposed in this document has a low cost-per-ton value compared with other mobile source programs. Chapter 7 presents additional cost-per-ton estimates for comparison with the Draft Regulatory Support Document.

E. What Are the Estimated Health and Environmental Benefits for This proposal?

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new standards are expected to have beneficial impacts with respect to crop damage from ozone reductions, secondary particulate formation, acid deposition, eutrophication, visibility, and the viability and diversity of species in forests. These effects are described in more detail in Section II–B and in Chapter 2 of the Draft Regulatory Support Document.

We are not able to quantify or monetize the benefits at this time due to a lack of emissions inventories that would locate the emissions in specific ports, lack of appropriate national air quality modeling systems that can be used in marine settings, and lack of time to develop such techniques. However, to the extent that U.S.-flag Category 3 marine vessels operate in a given port area, that area would benefit from significantly reduced emissions.

F. What Would Be the Impacts of a Low Sulfur Fuel Requirement?

As discussed above in section IV, we are requesting comment on low sulfur fuel requirements. This analysis looks at two approaches to meeting a cap of 15,000 ppm S beginning in 2007. The first approach is to use a low sulfur marine distillate oil which would likely be a blend of residual fuel and distillate fuel. The second approach would be to use number 2 diesel fuel (3000 ppm S) such as used in land-based applications today. These two approaches provide a range of costs and benefits that could be

achieved by requiring the use of low sulfur fuel. For the purpose of this analysis, we only include the operation of ships within 175 nautical miles of the U.S. coast which is where we believe emissions will have the most significant impact on U.S. air quality.

1. Cost and Economic Impacts

Many ships are already equipped to operate on either distillate or residual fuel. Using any sort of distillate fuel for all operation near the U.S. coast could result in additional hardware costs. These costs would be for modifications to the fuel plumbing and storage associated with longer periods of operation on distillate fuel. The cost of using marine diesel oil would be about 60 percent higher than for the higher sulfur residual fuel. The cost of the number 2 diesel would be about twice the cost of operating on residual fuel. Table VI.F–1 presents the discounted lifetime costs for either using 15,000 ppm S or 3,000 ppm S fuel on all ships operating within 175 nautical miles of the U.S. coast. Chapter 5 of the Draft Regulatory Support Document develops the analysis of these cost estimates.

TABLE VI.F–1.—ESTIMATED AVERAGE PER ENGINE COST INCREASES FOR ALTERNATIVE APPROACHES

Fuel Used	Increased Hardware Costs	Increased Operating Costs
15,000 ppm S residual fuel	$50,000	$139,000
3,000 ppm S distillate fuel	50,000	273,000

2. Environmental impacts

For the 1.5 percent sulfur residual fuel scenario, our estimates of SO_X and PM reductions are based strictly on the reduction of sulfur in the fuel from 27,000 to 15,000 ppm. In this case by itself, no NO_X reductions are anticipated. Table VI.F–2 presents the emission reductions due to using this low sulfur fuel for all operation of U.S. and foreign vessels within 175 nautical miles of the U.S. coast. However, as discussed in section IV.D, there are some issues regarding how we might enforce such a fuel requirement for all operation within 175 nautical miles of the U.S. coast.

TABLE VI.F–2.—PROJECTED CATEGORY 3 EMISSIONS INVENTORIES FOR SWITCHING TO 15,000 PPM S FUEL

	1996	2010	2020	2030
PM:				
Baseline case (thousand short tons)	17.1	26.0	36.7	54.2
Control case (thousand short tons)	17.1	21.3	30.1	44.5
Reduction (thousand short tons)	.....	4.7	6.6	9.7
Percent reduction from baseline	.....	18	18	18
SO_X:				
Baseline case (thousand short tons)	156.2	192.8	271.2	399.7
Control case (thousand short tons)	156.2	108.0	151.9	223.9
Reduction (thousand short tons)	.....	84.8	119.3	175.8
Percent reduction from baseline	.....	44	44	44

For the 3,000 ppm fuel case, our estimates of SO_X reductions are based on a reduction of sulfur in the fuel from 2.7 to 0.3 percent. Our estimates of PM reductions are based on changes in several fuel components. We estimate that PM from a marine engine operating on residual fuel is made up of 45 percent sulfate, 25 percent carbon soot, 20 percent ash, and 10 percent soluble organic hydrocarbons. Reducing sulfur in the fuel would reduce direct sulfate PM by about 90 percent. In addition, if distillate fuel is used, the ash content and the density of the fuel would be reduced. This analysis results in a total per vessel PM reduction of 63 percent. Using residual fuel can lead to NO_X increases due to nitrogen in the fuel. For this analysis we use a per vessel NO_X reduction of ten percent based on a reduction of nitrogen in the fuel. Table VI.F–3 presents the potential SO_X, PM, and NO_X reductions from using distillate fuel for all Category 3 vessel operations.

TABLE VI.E–3.—PROJECTED CATEGORY 3 EMISSIONS INVENTORIES FOR SWITCHING TO 3,000 PPM S FUEL

	1996	2010	2020	2030
NO_X:				
Baseline case (Annex VI—thousand short tons)	190.0	274.1	367.5	530.8
Control case (thousand short tons)	190.0	246.7	330.7	477.7
Reduction (thousand short tons)	.....	27.4	36.8	51.3
Percent reduction from Annex VI baseline	.....	10	10	10
PM:				
Baseline case (thousand short tons)	17.1	26.0	36.7	54.2
Control case (thousand short tons)	17.1	9.6	13.6	20.1
Reduction (thousand short tons)	.....	16.4	23.1	34.1
Percent reduction from baseline	.....	63	63	63
SO_X:				
Baseline case (thousand short tons)	156.2	192.8	271.2	399.7
Control case (thousand short tons)	156.2	21.2	29.8	44.0
Reduction (thousand short tons)	.....	171.6	241.4	355.7
Percent reduction from baseline	.....	89	89	89

The reductions of SO_X and fine PM emissions from this alternative both within port and transported into urban areas are expected to have beneficial impacts with respect to PM-related cancer and non-cancer health effects, acid deposition, eutrophication, visibility. These effects are described in more detail in Section IIB and in Chapter 2 of the Draft Regulatory Support Document.

We are not able to quantify or monetize the benefits at this time due to a lack of emissions inventories that would locate the emissions in specific ports, lack of appropriate national air quality modeling systems that can be used in marine settings, and lack of time to develop such techniques. Nevertheless, certain ports with high traffic in U.S. flagged Category 3 marine vessels could experience significant benefits from SO_X and PM reductions.

3. Cost per ton

We estimated the cost per ton of both 15,000 ppm sulfur residual fuel and 3,000 ppm sulfur distillate fuel. For this analysis, we consider operation of all ships within 175 nautical miles of the U.S. coast. In determining the cost per ton, we apportion the costs between reductions in PM and SO_X emissions.

One approach would be to apply all of the costs to PM and consider the SO_X reductions to come at no additional cost; however, we recognize that there is benefit to reducing both PM and SO_X. Therefore, we apply 10 percent of the cost to SO_X reductions. If all the costs were applied to PM, the estimated $/ton for PM control would be about 10 percent higher than shown below. No costs are applied to NO_X control, so a cost per ton value is not presented. We request comment on this partition of costs.

TABLE VI.F–4.—COST PER TON OF A LOW SULFUR FUEL REQUIREMENT

Pollutant	NPV of total lifetime costs per ship	NPV of tons reduced per ship	Discounted cost per ton
15,000 ppm sulfur			
PM	$170,000	4.3	$38,000
SO_X	19,000	61	302
3,000 ppm sulfur			
PM	$291,000	8.7	$33,000
SO_X	$32,000	121	262

VII. Other Approaches We Considered

A. Standards Considered

Earlier in this preamble we discuss two tiers of standards for new Category 3 marine engines. The first tier is equivalent to the MARPOL Annex VI NO_X limits to which manufacturers have recently begun designing their engines. The second tier is 30 percent below this Tier 1 limit; we anticipate that this standard can be met relatively soon using in-cylinder controls. This section discusses two other approaches we considered when developing this proposal and presents our analysis of the feasibility and impacts of setting such standards. We considered alternative NO_X emission standards 50 and 80 percent below Annex VI levels. Under either of these scenarios, additional lead time beyond 2007 may be necessary; however, in this discussion, we consider a 2007 implementation date for our analysis of the alternative approaches so that a direct comparison can be made to the Tier 2 standard under consideration. Our analysis of alternative approaches applies equally to U.S. and foreign vessels. Also, if we were to adopt either of these alternative standards, all the provisions for certifying engines described in Section V would apply. However, as described below, we believe it is not appropriate to set standards for Category 3 marine engines based on these approaches at this time, due to remaining technological and operational issues. However, we may consider these approaches as the basis of new standards in the future.

1. NO_X Level 50 Percent Below Tier 1

One alternative that we are considering is an emission level one-half of the MARPOL limits. We believe reductions on this order could be achieved by introducing water into the combustion process. Water can be used in the combustion process to lower

maximum combustion temperature, and therefore lower NO_X formation, with an insignificant increase in fuel consumption. Water has a high heat capacity, which allows it to absorb enough of the energy in the cylinder to reduce peak combustion temperatures. Data presented below and in Chapter 8 of the Draft Regulatory Support Document suggest that a 30 to 80 percent NO_X reduction can be achieved depending on ratio of water to fuel and on the method of introducing water into the combustion chamber. This data is primarily based on developmental engines; however, given enough lead time, we believe that introducing water into the combustion process may become an effective emission control strategy.

Water may be introduced into the combustion process through emulsification with the fuel, direct injection into the combustion chamber, or saturating the intake air. Water emulsification refers to mixing the fuel and water prior to injection. This strategy is limited due to instability of suspending water in fuel. To increase the effective stability, a system can be used that emulsifies the water into the fuel just before injection. Another option is to stratify the fuel and water through a single injector. The Draft Regulatory Support Document presents data on these approaches showing a 30–40 percent reduction in NO_X with water fuel ratios ranging from 0.3 to 0.4.

More effective control of the water injection process can be achieved through the use of an independent nozzle for water. Using a separate injector nozzle for the water allows larger amounts of water to be added to the combustion process because the water is injected simultaneously with the fuel, and larger injection pumps and nozzles can be used for the water injection. In addition, the fuel injection timing and the amount of water injected can be better optimized. Data presented in the Draft Regulatory Support Document show NO_X reductions of 40 to 70 percent with water-to-fuel ratios ranging from 0.5 to 0.9 if a separate nozzle is used for injecting water.

Other strategies for introducing water into the combustion process are being developed that will allow much higher water to fuel ratios. These strategies include combustion air humidification and steam injection. With combustion air humidification, a water nozzle is placed in the engine intake and an air heater is used to offset condensation. With steam injection, waste heat is used to vaporize water which is then injected into the combustion chamber during the compression stroke. Data on initial testing, presented in the Draft Regulatory Support Document, show NO_X reductions of more than 80 percent with water to fuel ratios as high as 3.5.

Fresh water is necessary for any of these water-based NO_X-reduction strategies. Introducing salt water into the engine could result in serious deterioration due to corrosion and fouling. For this reason, a ship using water strategies would need to either produce fresh water through the use of a desalination or distillation system or store fresh water on board. Cruise ships may already have a source of fresh water that could be used to enable this technology. This water source is the "gray" water, such as drainage from showers, which could be filtered for use in the engine. However, the use of gray water would have to be tested on these engines, and systems would have to be devised to ensure proper filtering. For example, it would be necessary to ensure that no toxic wastes are introduced into the gray waste-water stream. One manufacturer stated that today's ships operating with direct water injection carry the amount needed to operate the system between ports (two to four days). Also, when and where a ship operates can have an effect on the available water. A ship operating in cold weather uses all of the available steam heated by the exhaust just to heat the fuel. Also, a ship operating in an area with low humidity would not be able to condense water out of the air using the jacket water aftercooler.

Depending on the amount of water necessary, other vessels that use Category 3 marine engines may not be able to generate sufficient amounts of gray water for this technology. These ships would have to carry the water or be outfitted with new or larger distillation systems. Both of these options would displace cargo space. Finally, it should be noted that vessels that are currently equipped with water-based NO_X reduction technologies are four-stroke engines and include fast ferries, cruise ships and cargo ships. The specific vessels travel relatively short distances between stops and need a much smaller volume of fresh water for a trip than would be required for crossing an ocean. More information is needed regarding operation on ocean-going vessels before this technology could be used as the basis for a NO_X emission standard. If the ships were only to use this technology traveling from 175 nautical miles of the U.S. coast to port, less water storage capacity would be needed than if the ship used this NO_X reduction strategy at all times. However, ships operating primarily within 175 nautical miles of the U.S. coast would need to be able to carry a volume of water of about one-half the volume of fuel they carry if they wish to keep the same refueling schedule. Ships making long runs, such as from California to Alaska, would have to be able to store enough water for that trip even if they make it infrequently. Lastly, if this technology were applied to two-stroke engines there may be lubricity concerns with the cylinder liner. One manufacturer is developing a strategy to use DWI with EGR to minimize water requirements on such engines.

Durability issues may be a concern with water emulsification or injection systems. For onboard water emulsifying units, cavitation is used to atomize the water and mix it into the fuel. Although this works well at emulsifying the fuel, the water can cause significant wear of the injection pump. For water injection systems, high pressure water is injected similar to in a fuel injector. However, water does not have the inherent lubrication properties found in fuel. Therefore, more research may be necessary on more durable materials.

Another concern with the use of water in the combustion process is the effect on PM emissions. The water in the cylinder reduces NO_X, which is formed at high temperatures, by reducing the temperature in the cylinder during combustion. However, PM oxidation is most efficient at high temperatures. At this time, we do not have sufficient information on the effect of water emulsification and injection strategies on PM emissions to quantify this effect. We request information on the effect of using water in the combustion process on PM emissions.

For these reasons we believe it is premature to set a standard based on water-based technologies at this time. We request comment on this approach.

2. NO_X Level 80 Percent Below Tier 1

The other alternative we are considering for the Tier 2 standard is an emission level 80 percent below the MARPOL limits. We believe reductions of this order could be achieved through the use of selective catalytic reduction. Selective catalytic reduction (SCR) is one of the most effective means of reducing NO_X from large diesel engines. In SCR systems, a reducing agent, such as ammonia, is injected into the exhaust and both are channeled through a catalyst where NO_X emissions are reduced. As discussed in the draft RSD, SCR can be used to reduce NO_X emissions by more than 90 percent at exhaust temperatures above 300°C. These systems are being successfully used for stationary source applications, which operate under constant, high load

conditions. These systems are also being used in Category 3 engines used on ferries and cruise ships where they operate largely at high loads and over short distances so exhaust temperature and urea storage are not primary issues.

Several issues exist before application of this technology to all Category 3 engines can be deemed feasible. Issues include temperature at low load for SCR effectiveness, use of low sulfur fuel for system durability, space required for the SCR unit and urea storage, availability of regular down time for repair, availability of urea at ports, and application to slow-speed engines.

SCR systems available today are effective only over a narrow range of exhaust temperatures (above 300°C). To date, these systems have primarily been applied to four-stroke medium speed engines which have exhaust temperatures above 300°C at least at high load. Two-stroke slow speed engines have lower exhaust temperatures and are discussed later. The effectiveness of the SCR system is decreased at reduced temperatures exhibited during engine operation at partial loads. Most of the engine operation in and near commercial ports and waterways close to shore is likely to be at these partial loads. In fact, reduced speed zones can be as large as 100 miles for some ports. Because of the cubic relationship between ship speed and engine power required, engines may operate at less than 25 percent power in a reduced speed zone. During this low load operation, no NO_X reduction would be expected, therefore SCR would be less effective than the proposed Tier 2 standards during low load operation near ports. Some additional heat to the SCR unit can be gained by placing the reactor upstream of the turbocharger; however, this temperature increase would not be large at low loads and the volume of the reactor would diminish turbocharger response when the engine changes load. The engine could be calibrated to have higher exhaust temperatures; however this could affect durability (depending on the fuel used) if this calibration also increased temperatures at high loads. For an engine operating on residual fuel, vanadium in the fuel can react with the valves at higher temperatures and damage the valves.

SCR systems traditionally have required a significant amount of space on a vessel; in some cases the SCR was as large as the engine itself. However, at least one manufacturer is developing a compact system which uses an oxidation catalyst upstream of the reactor to convert some NO to NO_2 thus reducing the reactor size necessary. The reactor size is reduced because the NO_2 can be reduced without slowing the reduction of NO. Therefore, the catalytic reaction is faster because NO_X is being reduced through two mechanisms. This compact SCR unit is designed to fit into the space already used by the silencer in the exhaust system. If designed correctly, this could also be used to allow the SCR unit to operate effectively at somewhat lower exhaust temperatures. The oxidation catalyst and engine calibration would need to be optimized to convert NO to NO_2 without significant conversion of S to direct sulfate PM. NO_X reductions of 85 to 95 percent have been demonstrated with an extraordinary sound attenuation of 25 to 35 dB(A).[56]

Information from one manufacturer who has 40 installations of SCR reveals that the engines using the technology are either using low sulfur residual fuel (0.5%–1% S) or distillate fuel. Low sulfur residual fuel is available in areas which provide incentives for using such fuel, including the Baltic Sea, however such fuel is not yet available at ports throughout the United States. However, distillate fuel is available. Low sulfur fuel is necessary to assure the durability of the SCR system because sulfur can become trapped in the active catalyst sites and reduce the effectiveness of the catalyst. This is known as sulfur poisoning which can require additional maintenance of the system. The operation characteristics of ocean going vessels may interfere with correct maintenance of the SCR system. Ferries which have incorporated this technology to date do not run continuously and therefore any maintenance necessary can be performed during regular down times. The availability of time for repair can be an issue for ocean going vessels for they do not have regular down times.

Sulfur in fuel is also a concern with an oxidation catalyst because, under the right conditions, sulfur can also be oxidized to form direct sulfate PM. At higher temperatures, up to 20 percent of the sulfur could be converted to direct sulfate PM in an oxidation catalyst compared to about a 2 percent conversion rate for a typical diesel engine without aftertreatment. Depending on the precious metals used in the SCR unit, it could be possible to convert some sulfur to direct sulfate PM in the reactor as well. Manufacturers would have to design their exhaust system (and engine calibration) such that temperatures would be high enough to have good conversion of NO, but low enough to minimize conversion of S to direct sulfate PM. Direct sulfate PM emissions could be reduced by using lower sulfur fuel such as distillate.

A vessel using a SCR system would also require an additional tank to store ammonia (or urea to form ammonia). This storage tank would be sized based on the vessel use, but could be large for a vessel that travels long distances in U.S. waters between refueling such as between California and Alaska. The urea consumption results in increased operating costs. Also, if lower sulfur diesel fuel were required to ensure the durability of the SCR system or to minimize direct sulfate PM emissions, this lower sulfur fuel would increase operating costs. For SCR to be effective, an infrastructure would be necessary to ensure that ships could refuel at ports they visit. We believe that it would take some time to set up a system for getting fuel to ships that fill up using barges, especially if the standard were only to apply to U.S. flagged ships due to the low production volume. In addition, a ship that operates outside the U.S. for several months (or years) would have to ensure that it has urea available for any visits to U.S. ports.

Because SCR units are so easily adjustable, ship operators may choose to turn off the SCR unit when not operating near the U.S. coast. If they were to use this approach, they would need to construct a bypass in the exhaust to prevent deterioration of the SCR unit when not in use. To ensure that the SCR system is operating properly within 175 nautical miles of the U.S. coast, we would need to consider continuous monitoring of NO_X emissions for engines using SCR. Discussions of equipment and procedures for continuous monitoring are currently under discussion by IMO in the context of Annex VI.

If the combustion is not carefully controlled, some of the ammonia can pass through the combustion process and be emitted as a pollutant. This is less of an issue for Category 3 marine engines, which generally operate under steady-state conditions, than for other mobile-source applications. In addition, in ships where banks of engines are used to drive power generators, such as cruise ships, the engines generally operate under steady-state conditions near full load. If ammonia slip still occurred, an oxidation could be used downstream of the reactor to burn off the excess ammonia.

Slow-speed marine engines generally have even lower exhaust temperatures than medium speed engines due to their

[56] Paro, D., "Effective, Evolving, and Envisaged Emission Control Technologies for Marine Propulsion Engines," presentation from Wartsila to EPA on September 6, 2001.

two-stroke design. However, we are aware of four slow-speed Category 3 marine engines that have been successfully equipped with SCR units. Because of the low exhaust temperatures, the SCR unit is placed upstream of the turbocharger to expose the catalyst to the maximum exhaust heat. Also, the catalyst design required to operate at low temperatures is very sensitive to sulfur. Especially at the lower loads, the catalyst is easily poisoned by ammonium sulfate that forms due to the sulfur in the fuel. To minimize this poisoning on these four in-service engines, highway diesel fuel (0.05% S) is required. In addition, these ships only operate with the exhaust routed through the SCR unit when they enter port in the U.S. which is about 12 hours of operation every 2 months. Therefore, the sulfur loading on the catalyst is much lower than it would be for a vessel that continuously used the SCR system. To prevent damage to the catalyst due to water condensation, this system needs to be warmed up and cooled down gradually using external heating. Another issue associated with the larger slow-speed engines and lower exhaust temperatures is that a much larger SCR system would be necessary than for a vessel using a smaller medium-speed engine. Size is an issue because of the limited space on most ships.

We believe that more time is necessary to resolve the issues discussed above for the application of SCR to Category 3 marine engines. Therefore, we are not proposing to set a standard at this time that would require the use of a SCR system. However, given enough lead time, we believe that manufacturers will be able to refine their designs for efficiency, compactness, and cost. Therefore, we believe that SCR may be available for widespread application with Category 3 marine engines in the future, and we intend to consider this technology if or when we propose additional standards in the future. We are also including this technology in our Blue Cruise program because of the potential large NO_X reductions and because this technology may be an attractive NO_X control strategy for cruise ship which use banks of engines generally operating at high load. Because cruise ships make frequent stops on regular routes, they should be able to coordinate a workable urea supply strategy. We request comment on using SCR technology on ocean-going vessels and on setting voluntary standards based on SCR technology.

A second approach for meeting an 80 percent reduction in NO_X emissions would be to use fuel cells to power the vessel in place of an internal combustion engine. A fuel cell is like a battery except where batteries store electricity, a fuel cell generates electricity. The electro-chemical reaction taking place between two gases, hydrogen and oxygen generate the electricity from the fuel cell. The key to the energy generated in a fuel cell is that the hydrogen-oxygen reaction can be intercepted to capture small amounts of electricity. The byproduct of this reaction is the formation of water. Current challenges include the storage or formation of hydrogen for use in the fuel cell and cost of the catalyst used within the fuel cell.

Over the past 5 years several efforts to apply fuel cells to marine applications have been conducted. These include grants from the Office of Naval Research and the U.S. Navy. The Office of Naval Research initiated a three-phase advanced development program to evaluate fuel cell technology for ship service power requirements for surface combatants in 1997. In early 2000, the U.S. Navy sponsored an effort to continue the development of the molten carbonate fuel cell for marine use. The Society of Naval Architects and Marine Engineers released the technical report "An Evaluation of Fuel Cells for Commercial Ship Applications." The report examines fuel cells for application in commercial ships of all types for electricity generation for ship services and for propulsion.

Fuel cell research is currently supported by several sources, including the U.S. Maritime Administration (MARAD) and the state of California's Fuel Cell Partnership. MARAD's Division of Advanced Technology has also included the topic of fuel cells as a low air emission technology that should be demonstrated. California's Fuel Cell Partnership seeks to achieve four main goals which include (1) Demonstrate vehicle technology by operating and testing the vehicles under real-world conditions in California; (2) Demonstrate the viability of alternative fuel infrastructure technology, including hydrogen and methanol stations; (3) Explore the path to commercialization, from identifying potential problems to developing solutions; and (4) Increase public awareness and enhance opinion about fuel cell electric vehicles, preparing the market for commercialization.

At this time, we consider fuel cell technology still be in the early stages of development. We recognize that a mature fuel cell system could have significant environmental benefits and we will consider this technology in the future. We request comment on the feasibility of using fuel cells for power on marine vessels.

B. Potential Impacts of the Regulatory Alternatives

1. Costs

The following analysis presents estimated cost increases for Category 3 marine engines and vessels that would be associated with the alternative standards (see Table VII.B–1). This cost analysis follows the same methodology outlined above (VI.B) and described in more detail in the Draft Regulatory Support Document. For the 50 percent below Tier 1 case, hardware costs include water injectors, plumbing, and water storage. Operating costs include water and a small fuel oil consumption penalty. For the 80 percent below Tier 1 case, hardware costs include the cost of the SCR unit and operating costs include the cost of the urea. In the analysis of these two scenarios, we only include the operation of ships where we believe emissions will have the most significant impact on U.S. air quality. The entire increased production cost is therefore included, but the increased operating costs are only considered for operation within 175 nautical miles of the U.S. coast. These costs are based on year 1 (no learning curve adjustment) and are discounted at a rate of seven percent to present the net present value.

Table VII.B–1 presents our cost estimates for applying the standards to U.S. flagged vessels only and for applying the standards to all vessels operating within 175 nautical miles of the U.S. coast. When applying the costs to all vessels, the production costs decrease because the development costs are spread among more engines; operating costs decrease because the average vessel spends less time operating near the U.S. coast than the average U.S. flagged vessel. For water injection, the operating costs include the effective cost of the water. For SCR, the operating costs include urea consumption as well as ship operation on 0.05 percent sulfur fuel. These costs are for an average sized Category 3 marine engine which would cost about 2.5 to 3.0 million dollars. For the 50 percent below Tier 1 case, the increased production costs range from 3 to 6 percent of the cost of the engine. For the 80 percent below Tier 1 case, the increased production costs range from 20 to 25 percent of the cost of the engine.

TABLE VII.B–1.—ESTIMATED AVERAGE COST INCREASE PER SHIP FOR ALTERNATIVE NO_X STANDARDS

Alternative standard	Increased production costs per ship (thousand $)	Increased operating costs per ship (thousand $)
US Flagged Vessels Only		
50% below Tier 1	$207	$527
80% below Tier 1	1,014	9,542
Foreign Flagged Vessels Only		
50% below Tier 1	137	84
80% below Tier 1	972	410
All Vessels		
50% below Tier 1	137	95
80% below Tier 1	972	629

2. Reductions

We use the same methodology to model emissions inventories for the alternative approaches as we used for the proposed Tier 2 standards. This is outlined earlier in the preamble (VI.B) and described in more detail in the Draft Regulatory Support Document. Table VII.B–2 presents our estimates of Category 3 vessel emission reductions possible through the alternative standards applied only to U.S. flagged vessels. Table VII.B–3 presents our estimates of Category 3 vessel emission reductions possible through the alternative standards applied to all Category 3 vessels. As for the cost analysis, we only include operation within 175 nautical miles of the U.S. coast, so only the emission reductions in that area are presented below.

TABLE VII.B–2.—PROJECTED CATEGORY 3 NO_X REDUCTIONS FOR ALTERNATIVE APPROACHES APPLIED TO U.S. FLAGGED VESSELS

	1996	2010	2020	2030
Tier 1				
Control case (thousand short tons)	190.0	274.1	367.5	530.8
50% below Tier 1:				
Control case (thousand short tons)	190.0	265.6	326.8	439.1
Percent reduction from Tier 1		3.1	11.1	17.3
80% below Tier 1:				
Control case (thousand short tons)	190.0	260.4	301.9	382.9
Percent reduction from Tier 1		5.0	17.8	27.9

TABLE VII.B–3.—PROJECTED CATEGORY 3 NO_X REDUCTIONS FOR ALTERNATIVE APPROACHES APPLIED TO ALL VESSELS

	1996	2010	2020	2030
Tier 1				
Control case (thousand short tons)	190.0	274.1	367.5	530.8
50% below Tier 1:				
Control case (thousand short tons)	190.0	260.7	276.9	311.2
Percent reduction from Tier 1		4.9	24.7	41.4
80% below Tier 1:				
Control case (thousand short tons)	190.0	252.5	221.4	176.7
Percent reduction from Tier 1		7.9	39.8	66.7

3. Cost per ton

To determine the cost per ton of NO_X reduction of the Tier 2 emission standards described in this notice, we considered only benefits beyond those achieved by the Tier 1 standards (equivalent to the Annex VI standards). Although the Annex VI standards are not yet effective, manufacturers around the world are generally producing compliant engines and we expect this to continue. Thus, we are using the proposed Tier 1 standards as the baseline, and showing the benefits of the Tier 2 standards under consideration relative to this baseline. Table VII.B–4 presents the cost per ton of the alternative standards using the same methodology discussed for the potential Tier 2 standards above. For this analysis, we considered all costs incurred and emission reductions achieved within 175 nautical miles of the U.S. coast. The cost estimates presented here do not include future reductions in cost due to the learning curve. Both costs and benefits are discounted at a rate of seven percent.

In addition, this analysis presents estimates both for applying the alternative standards just to U.S. flagged and for applying the alternative NO_X standards to all vessels operating in U.S. waters. By including foreign flagged vessels under these alternative approaches, the cost per engine decreases because the development costs can be distributed across more engines. However, the cost per ton actually increases because U.S. flagged

vessels spend about 16 times more of their operating time within 175 nautical miles of the U.S. coast than foreign flagged vessels. Therefore, the tons of NO_X reduced per year in U.S. waters for an average foreign flagged vessel (which make up about 97 percent of the vessels) are lower. Operating costs included in this analysis would still be proportional to the amount of time the ship operates within 175 nautical miles of the U.S. coast.

TABLE VII.B–4.—COST PER TON OF THE ALTERNATIVE NO_X CONTROL APPROACHES

Approach	NPV of total lifetime costs (thousand $) per ship	NPV of NO_X tons reduced per ship	Discounted cost per ton
US Flagged Vessels Only			
50% below Tier 1	$734	1,915	$370
80% below Tier 1	10,557	3,064	3,405
Foreign Flagged Vessels Only			
50% below Tier 1	220	75	2,737
80% below Tier 1	1,381	119	10,607
All Vessels			
50% below Tier 1	232	122	1,768
80% below Tier 1	1,601	195	7,618

C. Summary

We considered two alternative approaches to a Tier 2 NO_X standard, namely a 50 or 80 percent reduction below Tier 1.

For a 50-percent reduction, we considered water injection with 0.5 water to fuel ratio. At the present time, the cost per ton for the water injection system ranges from $370 to $1,768 depending on if it applies to U.S. flagged vessels only or all vessels operating within 175 nautical miles of the U.S. coast. This analysis does not consider the lost space on a vessel due to water storage, nor does it consider the alternative of adding water distillation boilers which would add cost to the vessel, require space, and require additional fuel consumption. Water storage would either displace fuel storage and reduce the range of the vessel or reduce cargo space which would affect the money generated per cruise. In addition, more information is necessary on the effects of this technology on PM emissions. Because the water reduces the temperature in the combustion chamber, we are concerned that this could result in an increase in PM. Although this technology may be more attractive in the future, we are not focused on considering standards at this level at this time due to the water storage issues as well as the development time of advances in this technology to address lubricity concerns in the cylinder liners of two-stroke engines.

For the 80 percent NO_X reduction case, we considered the use of selective catalytic reduction with a urea consumption rate of about 8 percent of the fuel consumption rate. Our estimated cost per ton for this approach ranges from $3,405 to $7,618 depending on if it applies to U.S. flagged vessels only or all vessels operating within 175 nautical miles of the U.S. coast. This is considerably higher than the cost per ton figures for the recent mobile source programs presented in Chapter 7 of the Draft RSD. The cost per ton estimate for the use of SCR includes the cost of using lower sulfur fuel which we believe would be necessary for the durability of the system and to prevent increases in direct sulfate PM. In the future, however, technological advances increase the effectiveness of these units at lower temperatures and may reduce the cost of this system.

For SCR to be effective, an infrastructure would be necessary to ensure that ships could refuel at ports they visit. We believe that it would take some time to set up a system for getting fuel to ships that fill up using barges, especially if the standard were only to apply to U.S. flagged ships due to the low production volume. SCR would require space for urea storage, but it would likely be much less than that for water storage in the above approach because the volume of urea needed is only 5–10 percent of the volume of water needed for the water injection case considered above. In addition, at least one manufacturer is developing a compact SCR unit that will minimize the space needed for this system. We also believe that there are technical issues that need to be resolved such as effectiveness at low loads and the effect of the catalyst in the exhaust on direct sulfate PM emissions. As with water injection, we believe SCR may be appropriate for certain applications, but also believe that the remaining technology development and system cost prevent us from expecting manufacturers to apply SCR to all Category 3 marine engines at this time. We are therefore proposing to designate 80-percent reductions as a target for recognition as voluntary low-emission engines, rather than considering mandatory standards based on this technology.

D. Speed-based vs. Displacement-based Emission Standards

Annex VI specifies the NO_X emission standard as a function of engine speed. The shape of this curve was established with a mathematical relationship based on available emission data showing uncontrolled NO_X emission rates as a function of maximum engine speed. The numerical level of the standard was set based on a fixed percentage reduction relative to uncontrolled emission levels. The shape of the curve generally allows for higher emissions from larger engines, which tend to operate at slower speeds. On the other hand, a given percentage reduction for all engine sizes yields greater brake-specific emission reductions from larger engines, with greater percentage reductions flattening the curve.

This speed-based approach to setting standards has several advantages. It reflects the inherent tendency of larger (and slower-speed) engines to have higher NO_X-formation rates. It correspondingly reflects the challenges facing the design engineer to apply technology to reduce emissions. While maximum engine speeds can vary somewhat for a given engine, this parameter provides an effective correlation to an engine's emissions behavior. This is borne out by the emission data showing the trend of emissions as a function of engine speed on which the Annex VI NO_X curve is based. Also, defining the emission standard as a formula instead of setting different standards for discrete ranges prevents any complications related to step changes in the standard at any particular engine speed.

While we believe it is appropriate for the emission standards to be consistent with the Annex VI formula, this approach raises two issues that may become significant in the future. First, maximum engine speed is a design variable that can be set by the manufacturer based on an engine's particular application or a shipowner's preference. Under the speed-based formula, a manufacturer selling two otherwise identical engines may install them in different vessels that call for differing engine-speed ratings, which would allow the manufacturer to produce the engines to operate at different emission levels. For a given engine, it's not clear that emission standards should allow a higher emission level for engine installations

that call for a lower speed rating. Table VII.D–1 shows the effect of speed rating on the applicable emission standard for selected engine models that are currently available. For some engines, varying engine speed causes a difference in the NO_X standard of over 0.5 g/kW-hr.

TABLE VII.D–1.—EFFECT OF ENGINE SPEED ON EMISSION STANDARDS FOR SELECTED ENGINES

Engine	Speed 1 (rpm)	Standard 1 (g/kW-hr)	Speed 2 (rpm)	Standard 2 (g/kW-hr)	Difference (g/kW-hr)	Percent increase
1	111	/1/17.0	148	16.6	0.4	2.6
2	132	16.9	176	16.0	0.9	5.9
3	212	15.4	250	14.9	0.5	3.4
4	330	14.1	360	13.9	0.2	1.8
5	720	12.1	1000	11.3	0.8	6.8

[1] The NO_X formula would allow for emissions up to 17.5 g/kW-hr for an engine speed of 111 rpm, but Annex VI caps the NO_X standard at 17 g/kW-hr for engines with rated speed below 130 rpm.

The second concern with a speed-based emission standard is that future emission-control technologies may allow for more effective control of NO_X emissions at slow engine speeds. This would allow for a "flatter" NO_X curve, or even a single NO_X standard that would apply for all Category 3 engines, regardless of speed rating. It would not be appropriate to allow for higher emissions on low-speed engines if an emission-control technology enables a flatter relationship between NO_X emissions and engine speed. This will become especially important if or when there is a need to adopt PM emission standards, since PM emissions are unlikely to follow the same relationship to engine speed as NO_X emissions.

The alternative approach to defining emission standards would be to follow the approach in EPA's December 1999 rulemaking for Category 1 and Category 2 marine engines. Defining emission standards based on an engine's specific displacement (in liters per cylinder) would provide a clear and discrete emission standard for each engine. Table VII.D–2 shows a variety of typical engine sizes and engine-speed values correlated with the Tier 2 NO_X standards discussed in section IV.A.3 that would apply to each engine. A straightforward regression of specific displacement values and the Tier 2 NO_X levels shows a good correlation using the following simple formula:

$NO_X = 0.0047 \times (L/cyl) + 9.9$

The calculated value using this formula is within 0.1 g/kW-hr across the range of engines shown in Table IV.D–2. Most two-stroke engines operate at less than 130 rpm and are therefore subject to the capped standard that doesn't vary with engine speed. The table therefore includes no two-stroke engines. Many of these slow-speed engines, however, have specific displacements between 100 and 300 L/cyl. To implement a displacement-based standard that parallels the Annex VI approach, we would need to apply a cap of 13.3 g/kW-hr on the Tier 2 emission standards under consideration for two-stroke (or slow-speed) engines over 700 L/cyl, while using the above equation to define the emission standard for smaller engines. On the other hand, it may be more appropriate to adopt standards reflecting the relative power output of the slow-speed engines. Slow-speed engines generally produce about half as much power as medium-speed engines for a given displacement, so we could set comparable standards by using the displacement-based formula above, but dividing the displacement term by two for slow-speed engines. This would take into account the lower specific power from slow-speed engines, resulting in comparable standards for competing engines with similar total power output.

TABLE VII.D.–2 VALUES RELATED TO DISPLACEMENT-BASED STANDARDS [1]

Engine model	Engine speed (rpm)	Per-cylinder displacement (L)	Tier 2 standard	Tier 2 standard using displacement formula
Niigata 34HX	600	41	10.2	10.1
MAN B&W L48/60	514	109	10.4	10.4
MAN B&W PC4.2B	430	168	10.8	10.7
Wärtsilä 64	400	225	10.9	11.0
Wärtsilä 64 (longer stroke)	330	290	11.3	11.3
	130	[2] 700	13.3	[2] 13.2

[1] Source: Diesel and Gas Turbine Worldwide Catalog, 2001.
[2] Extrapolation.

The near-term adoption of emission standards equivalent to the Annex VI standards would not allow for restructuring emission standards based on displacement. It is also not clear that the advantages of displacement-based standards would warrant departing from the approach established internationally in the near term. We request comment on the appropriateness of adopting a displacement-based NO_X standard. We also request comment regarding the above formula and table of values and their use in establishing Tier 2 NO_X standards. We specifically request comment on whether the projected Tier 2 emission-control technologies would be expected to follow the trends implicit in the Annex VI formula. Finally, we request comment on the appropriateness of basing emission standards for two-stroke engines on engine speed (with standards set at the maximum value) or whether they should be expected to achieve the same degree of emission control as counterpart four-stroke engines with comparable power ratings.

VIII. The Blue Cruise Program

A. What Is the Blue Cruise Program?

As noted in previous sections, fleet turnover for marine vessels that use Category 3 marine diesel engines is very slow. The average life of these vessels is as high as 29 years, and many are scrapped only when their hulls can no longer be repaired. One consequence of the long lives of these vessels is that the full impact of an engine emission control program may not occur until well into the future.

To address this issue, and to create a mechanism to encourage purchasers of new ships to use advanced technology emission controls, we are proposing to develop a Blue Cruise program. This would be a voluntary program to encourage ship owners and operators to reduce their air and waste emissions and in so doing reduce the adverse impacts of their vessels on the environment. Basically, participant ship owners would be awarded a number of stars based on the types of air and waste emission control programs they adopt. These technologies and/or systems would be different depending on whether it is a new or existing vessel. The stars can be used by the participants on advertising materials, and even on the ship itself, to educate consumers and encourage them to choose their vessel for their transportation needs. Although the program is perhaps best suited to cruise ships, parts of the program could be extended to other types of ships as well. These stars would be issued to an individual ship, not an entire fleet.

The Blue Cruise program would be a cross-media program. This means that it would include the air and waste emissions of a vessel, including both solid and liquid waste. By choosing one option from each of the three categories, air, liquid waste, and solid waste, participants would reduce their overall impact on the marine environment.

The program described below is focused on cruise ships. This is because their emissions on a per vessel basis can be very high, both in terms of engines used to generate power for passenger comfort and entertainment and in terms of waste streams, including gray and black water and solid waste. According to Bluewater Network, a typical cruise ships generates as much as 210,000 gallons of sewage and 1,000,000 gallons of graywater, 130 gallons of hazardous wastes, and 8 tons of garbage during a one-week voyage.[57] Disposal of these wastes is controversial, and a report issued by the General Accounting Office in 2000 indicates that in the six-year period between 1993 and 1998, "cruise ships were responsible for 87 confirmed illegal discharge cases in U.S. waters."[58] In August 2000, the Bluewater Network sent an addendum to that petition, requesting EPA to also examine air pollution from cruise ships.

At the same time, cruise ship owners have taken steps to manage their waste streams more carefully. In June, 2001, the members of the International Council of Cruise Lines (ICCL), whose members include the major cruise lines that visit U.S. ports, adopted mandatory environmental standards that are to be integrated into each members's internationally mandated Safety Management Systems.[59] These standards address the waste streams noted in the Bluewater Network petition. In addition, ICCL has entered into a Memorandum of Understanding with State of Florida regarding waste management.

The Blue Cruise Program would expand on these recent pollution reduction activities by encouraging and rewarding cruise ship owners who take addition steps to reduce emissions and/or ensure that pollution reduction practices and measures are adhered to. While the focus in this discussion is on cruise ships, we request comment on whether this program should also apply to cargo and other commercial vessels and, if so, if the point system should be different for those vessels.

B. How Would the Program Work?

The Blue Cruise Program would have two components. The first component consists of making a commitment to reduce emissions through the application of technologies and/or systems that would reduce air pollution, water discharges, and waste streams. The second step involves ensuring that the equipment and/or systems that a ship owner agreed to apply are operating and being maintained correctly.

It should be noted that, due to the complexity of the program associated with its cross-media nature, the discussion of the Blue Cruise program in this section is not meant to be a comprehensive. Instead, it is a brief description of the overall concept that is meant to stimulate discussion of the value of such a program and the provisions it should include. We will continue to develop this program, soliciting comments from interested parties, as we prepare our final rule.

1. A Commitment To Reduce Emissions

To participate in the Blue Cruise program, a ship owner would need to take steps to reduce air emissions, water discharges, and waste streams from the vessel. For air pollution, this could involve installing new emission control devices on the ship's engine. For liquid waste pollution, this could involve applying new water treatment technology. For solid waste, this could involve developing systems to reduce, reuse, and recycle solid waste, as evidenced by joining EPA's WasteWise Program.[60] The exact choice of technologies and systems, of course, would depend on the technologies that are already in use on the vessel and the level of investment the ship owner desires to make. They key requirement is that the ship owner take steps to reduce three kinds of emissions: air, water, and solid waste.

The first step toward obtaining Blue Cruise status would be to sign up to the program. Similarly to the WasteWise program, a participant would assess the ship's air and waste streams and current state of pollution reduction technology; identify and submit goals, including obtaining and using new technologies and/or procedures; and measure and report progress. Successful participants would be awarded a number of stars, with five stars being the maximum number of stars awarded, which could be used to inform consumers and the world at large that they are taking steps to reduce emission beyond what is legally required. Once a participant signs up for the program, the actions agreed to become mandatory. In other words, while opting into the program is voluntary, compliance with the provisions once they are opted into is not.

We are proposing to develop a matrix of options that can be used by ship

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[57] See Bluewater Network's Petition to EPA to Address Cruise Ship Pollution, March 17, 2000. A copy of this document can be found in Docket A–20011–11, Document No. II–B–02. The August 2, 2000 Addendum to this Petition, regarding air emissions from cruise ships, can be found at A–20011–11, Document No. II–B–03.

[58] Marine Pollution: Progress Made to Reduce Marine Pollution by Cruise Ships, but Important Issues Remain. February 2000, GAO/RCED–00–48. A copy of this report can be found in Docket A–2001–11, Document No. II–A–22.

[59] ICCL Industry Standard E–01–01 (Revision 1), Cruise Industry Waste Management Practices and Procedures (see *http://www.iccl.org/policies/environmentalstandards.pdf*). A copy of this document can be found in Docket A–2001–11, Document No. II–A–21.

[60] WasteWise is a free, voluntary partnership program that helps organizations reduce their solid waste streams. The program provides technical assistance, networking, and recognition for successful waste reduction. Members are required to assess their waste streams, identify and submit waste reduction goals, and measure and report progress annually. More information about the WasteWise program can be found at the Office of Solid Waste website *www.epa.gov/wastewise*.

owners to make their emission control decisions. An example of a matrix is shown in Table VIII.B–1. In general, each option would be assigned a number of points, and stars would be given out depending on the number of points across all categories. A ship owner will be required to take action in each category, however.

TABLE VIII.B–1.—DRAFT BLUE CRUISE PROGRAM OPTIONS MATRIX

Category	Action	Pts
Air	Use low sulfur fuel while within 200 miles of U.S. coast (out 320 nautical miles).	
	Use shore-side power for hotelling.	
	Retrofit emission control devices when existing ships go in for refurbishing—Tier 1 technologies.	
	Retrofit emission control devices when existing ships go in for refurbishing—additional engine-based controls.	
	Retrofit emission control devices when existing ships go in for refurbishing—Tier 1 and 2 technologies.	
	Use engines that meet Voluntary Low Emission Standards for new builds.	
	Other.	
Water	Implement education programs for passengers on waste minimization.	
	Use biodegradable and bio-enzymatic cleaning supplies, non-phosphate soaps, and materials (e.g., toiletries supplied to passengers, salon chemicals, photo processing chemicals, etc.).	
	Ensure that all sinks, showers, toilets, hoses, etc. are low flow.	
	Ensure that only shower, galley, and stateroom sink wastes enter the gray water system.	
	Install gray water treatment systems that allow gray water to be used aboard the vessel for nonhuman consumption purposes.	
	At a minimum meet the Alaska Standards for Gray and Black Water Discharges and incorporate this program into the ship Environmental Management System plan.	
	Other.	
Solid Waste ..	Recycle materials shore side (possibly set up a closed loop, where vessel waste is recycled and sold to the vessel as new products).	
	Sign on to MOU with the States new approach to tracking RCRA waste and implement.	
	Participate in WasteWise	
	Other.	

We request comment on all aspects of this program, and especially on this approach to awarding stars under the program and the contents of the options table and point system. We also request comment on whether points should be weighted and, if so, how. For example, more weight could be assigned to air emissions for cruise ships since they are currently taking steps to reduce their waste emissions pursuant to the Cruise Industry Waste Management Practices and Procedures. Finally, we request comment on whether EPA should manage this program or whether it can be run by an independent organization.

2. Verification

For the Blue Cruise program to be meaningful, it will be necessary to ensure that not only ship owners install emission control technologies and equipment, but also that they are operated and maintained correctly. There are at least two ways to do this: self certification and third party verification.

With a self-certification system, a ship owner would certify to EPA annually that the emission control technologies and systems described in the application are functional and are being operated and maintained correctly. If a ship owner is unable to make this certification, then that ship's stars would be taken away and the ship would be disqualified from the program until ship can be brought back into compliance.

With a third party verification program, an outside entity would ensure that the emission control technologies and systems are functional and are being operated and maintained correctly. This approach may be necessary, at least at the beginning of the program, until the industry gains experience with the program. A model for third party verification could be the Coast Guard procedures put in place to conduct waste management inspections on board cruise vessels.

We request comment on these verification approaches, particularly on how a third party verification program can work.

IX. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under **DATES** above. If you have an interest in the proposed emission control program described in this document, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches that meet the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it "Confidential Business Information." You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of to the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a nonconfidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you don't identify information as confidential when we receive it, we may make it available to the public without notifying you.

B. Will There Be a Public Hearing?

We will hold a public hearing on June 13, 2002 at the Hyatt Regency Long Beach, 200 South Pine Avenue, Long Beach. California, phone (562) 491–1234. The hearing will start at 9:30 am and continue until everyone has had a chance to speak.

If you would like to present testimony at the public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis (Executive Order 12866)

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

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866 because it raises novel legal or policy issues due to the international nature of the use of Category 3 marine diesel engines and is therefore subject to OMB review. The Agency believes that this proposed regulation would result in none of the economic effects set forth in Section 1 of the Order. A Draft Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. Written comments from OMB and responses from EPA to OMB are in the public docket for this rulemaking.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards; (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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table X.B–1 provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE X.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION INDUSTRY

Industry	NAICS[a] codes	Defined by SBA as a small business if:[b]
Internal combustion engines	333618	<1000 employees
Ship building	336611	<1000 employees
Water transportation, freight and passenger	483	<500 employees

NOTES:
[a] North American Industry Classification System
[b] According to SBA's regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Our review of the list of manufacturers of Category 3 marine diesel engines (marine diesel engines at or above 30 l/cyl) indicates that there are no U.S. manufacturers of these engines that qualify as small businesses. We are unaware of any foreign manufacturers of such engines with a U.S.-based facility that would qualify as a small business. In addition, the proposed rule will not impose significant economic impacts on engine manufacturers. Engine manufacturers are already achieving the proposed Tier 1 limits, and our program will impose only negligible compliance costs. With regard to potential Tier 2 standards, we estimate that engine-based requirements may increase the price of an engine by about 9 percent and increase the price of a vessel by about 0.1 percent. Our review of the U.S. shipyards that build, or have built, ships that use Category 3 marine diesel engines indicates that there are no U.S. manufacturers of these ships that qualify as small businesses. Ship operators would have to perform field testing to periodically demonstrate the engine is performing within certified parameters. The testing devices that would be needed to perform field testing are expected to be incorporated in the engine system as delivered by the manufacturer. Operation of these systems is not expected to require significant crew resources since it can be done by crew currently responsible

for testing other engine parameters as normally required onboard a vessel to ensure efficient operation of the vessel. Ship operators would also be required to maintain the engine as specified by the engine manufacturer during the useful life of the engine. These costs are not expected to be greater than the costs of maintaining unregulated engines except to the extent that ship operators do not currently maintain engines as specified by the engine manufacturer. Maintenance costs are expected to be minimal given the overall costs of maintaining all of the vessel's systems and structures.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR No. 1897.03) has been prepared by EPA, and a copy may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW; Washington, DC 20460, by e-mail at *auby.susan@epamail.epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*.

The information being collected is to be used by EPA to ensure that new marine vessels and fuel systems comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

The estimated annual public reporting and recordkeeping burden for this collection of information is 281 hours per response, with collection required annually. The estimated number of respondents is 6. The total annual cost for the first 3 years of the program is estimated to be $138,595 per year and includes no annualized capital costs, $67,000 in operating and maintenance costs, at a total of 1,685 hours per year.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 29, 2002, a comment to OMB is best ensured of having its full effect if OMB receives it by June 28, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. According to the cost estimates prepared for this proposal, we estimate the aggregate costs (annualized over 20 years) of the proposed rule to engine manufacturers to be negligible.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

2. 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 6, 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."

This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers and ship builders. Tribal governments will be affected only to the extent they purchase and use vessels having regulated engines. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272

note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards for testing emissions from marine diesel engines. EPA proposes to use test procedures contained in the MARPOL NO_X Technical Code, with the proposed modifications contained in this rulemaking. The MARPOL NO_X Technical Code includes the International Standards Organization (ISO) duty cycle for marine diesel engines (E2, E3, D2, C1) and the American Society for Testing and Materials (ASTM) fuel standards.[61] These procedures are currently used by virtually all Category 3 engine manufacturers to demonstrate compliance with the Annex VI NO_X limits and to obtain Statements of Voluntary Compliance to those standards.

With regard to the proposed requirements for field NO_X testing and post-installation testing, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards. Therefore, EPA proposes to use the procedures contained in the draft regulations for this rulemaking (40 CFR 94.110, 94.1103).

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Protection of Children (Executive Order 13045)

Executive Order 13045, "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, Section 5–501 of the Order directs the Agency to 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 proposal is not subject to Executive Order 13045 because it is not economically significant under the terms of Executive Order 12866.

G. Federalism (Executive Order 13132)

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule creates no mandates on State, local or tribal governments. The rule imposes no enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule will be implemented at the Federal level and impose compliance obligations only on private industry. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Energy Effects (Executive Order 13211)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed standards have for their aim the reduction of emission from certain marine diesel engines, and have no effect on fuel formulation, distribution, or use. Although the proposal solicits comment on regulating the sulfur content of marine distillate and residual fuel, EPA is not proposing to regulate such fuel at this time.

List of Subjects in 40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: April 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

1. The authority for part 94 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 94.1 is amended by revising paragraph (b) to read as follows:

§ 94.1 Applicability.

* * * * *

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) and (2) of this section where such engines are:

(1) Marine engines with rated power below 37 kW; or

(2) Marine engines on foreign vessels.

* * * * *

3. Section 94.2 is amended in paragraph (b) by adding, in alphabetical order, definitions to paragraph (b) for "Brake-specific fuel consumption", "Hydrocarbon standard", "MARPOL Technical Code", "Maximum test speed", "Residual fuel", "Tier 1", "Vessel operator", and "Vessel owner", and revising the definitions for "Diesel fuel" and "New vessel" to read as follows:

[61] The Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines in the Annex VI of MARPOL 73/78 Regulations for the Prevention of Air Pollution from Ships and NO_X Technical Code, International Maritime Organization. See footnote 1 regarding how to obtain copies of these documents.

§ 94.2 Definitions.

* * * * *

(b) * * *

Brake-specific fuel consumption means the mass of fuel consumed by an engine during a test segment divided by the brake-power output of the engine during that same test segment.

* * * * *

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel or marine distillate fuel.

* * * * *

Hydrocarbon standard means an emission standard for total hydrocarbons, nonmethane hydrocarbons, or total hydrocarbon equivalent; or a combined emission standard for NO_X and total hydrocarbons, nonmethane hydrocarbons, or total hydrocarbon equivalent.

* * * * *

MARPOL Technical Code means the "Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines" in the "Annex VI of MARPOL 73/78 Regulations for the Prevention of Air Pollution from Ships and NO_X Technical Code" from the International Maritime Organization (which is incorporated by reference at § 94.5).

* * * * *

Maximum test speed means the engine speed defined by § 94.107 to be the maximum engine speed to use during testing.

* * * * *

New vessel means:

(1) (i) A vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(ii) A vessel that has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. The value of the modification is the difference in the assessed value of the vessel before the modification and the assessed value of the vessel after the modification. Use the following equation to determine if the fractional value of the modification exceeds 50 percent:

Percent of value = *[(Value after modification)—(Value before modification)]* × 100%

(Value after modification)

(2) Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

* * * * *

Residual fuel means a petroleum product containing the heavier compounds that remain after the distillate fuel oils (e.g., diesel fuel and marine distillate fuel) and lighter hydrocarbons are distilled away in refinery operations.

* * * * *

Tier 1 means relating to an engine subject to the Tier 1 emission standards listed in § 94.8.

* * * * *

Vessel operator means any individual that physically operates or maintains a vessel, or exercises managerial control over the operation of the vessel.

Vessel owner means the individual or company that holds legal title to a vessel.

* * * * *

4. Section 94.5 is amended by revising paragraph (b) to read as follows:

§ 94.5 Reference materials.

* * * * *

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part:

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. The table follows:

Document number and name	40 CFR part 94 reference
ASTM D 86–97: "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure"	§ 94.108
ASTM D 93–97: "Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester"	§ 94.108
ASTM D 129–95: "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)"	§ 94.108
ASTM D 287–92: "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method).	§ 94.108
ASTM D 445–97: "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)".	§ 94.108
ASTM D 613–95: "Standard Test Method for Cetane Number of Diesel Fuel Oil"	§ 94.108
ASTM D 1319–98: "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption".	§ 94.108
ASTM D 2069–91: "Standard Specification for Marine Fuels"	§§ 94.108, 94.109
ASTM D 2622–98: "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry".	§ 94.108
ASTM D 3228–92: "Standard Test Method for Total Nitrogen In Lubricating Oils and Fuel Oils By Modified Kjeldahl Method".	§§ 94.108, 94.109
ASTM D 5186–96: "Standard Test Method for "Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels By Supercritical Fluid Chromatography".	§ 94.108
ASTM E 29–93a: "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications".	§§ 94.9, 94.218, 94.305, 94.508

(2) *ISO material.* The following table sets forth material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator.

Copies of these materials may be obtained from International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland. The table follows:

Document number and name	40 CFR part 94 reference
ISO 8178–1: "Reciprocating internal combustion engines—Exhaust emission measurement—Part 1: Test-bed measurement of gaseous and particulate emissions".	§ 94.109

(3) *MARPOL material.* The "Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines" in the "Annex VI of MARPOL 73/78 Regulations for the Prevention of Air Pollution from Ships and NO_X Technical Code" from the International Maritime Organization has been incorporated by reference. Copies of this material may be obtained from International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

5. Section 94.8 is amended by revising paragraphs (a), (c), (d), (e), (f), and (g) to read as follows:

§ 94.8 Exhaust emission standards.

(a) This paragaph (a) contains multiple tiers of emission standards. The Tier 1 standards of paragraph (a)(1) of this section are the earliest tier and apply as specified until the model year that the Tier 2 standards of paragraph (a)(2) of this section (or later standards) become applicable for a given category (or sub-category) of engines.

(1) *Tier 1 standards for engines with displacement of 2.5 or more liters per cylinder.* (i) NO_X emissions from model year 2004 and later engines with a maximum test speed of 2000 rpm or less may not exceed 18.4 g/kW or the following engine speed-dependent value: $45.0 \times N^{-0.20} + 1.4$ where N = the maximum test speed of the engine in revolutions per minute. (Note: Speed-dependent standards are rounded to the nearest 0.1 g/kW-hr.)

(ii) NO_X emissions from model year 2004 and later engines with a maximum test speed greater than 2000 rpm may not exceed 11.2 g/kW-hr.

(2) *Tier 2 standards.* Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (g/kW-HR)

Engine size liters/cylinder, rated power	Category	Model year[1]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
disp. < 0.9 and power ≥ 37 kW	Category 1	2005	7.5	5.0	0.40
0.9 ≤ disp. < 1.2 all power levels	Category 1	2004	7.2	5.0	0.30
1.2 ≤ disp. < 2.5 all power levels	Category 1	2004	7.2	5.0	0.20
2.5 ≤ disp. < 5.0 all power levels	Category 1	2007	7.2	5.0	0.20
5.0 ≤ disp. < 15.0 all power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤ disp. < 20.0 power < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤ disp. < 20.0 power ≥ 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤ disp. < 25.0 all power levels	Category 2	2007	9.8	5.0	0.50
25.0 ≤ disp. < 30.0 all power levels	Category 2	2007	11.0	5.0	0.50

[1] The model years listed indicate the model years for which the specified standards start.

* * * * *

(c) In lieu of the THC+NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family. The ABT provisions of Subpart D of this part do not apply for Category 3 engines.

(d)(1) Naturally aspirated engines subject to the standards of this section shall not discharge crankcase emissions into the ambient atmosphere.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements. This requirement applies only for engines subject to hydrocarbon standards (e.g., THC standards, NMHC standards, or THC+ NO_X standards).

(e)(1) For Category 1 and Category 2 engines, exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed; or

(ii) 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106.

(2) For Category 3 engines, engines must be designed to provide equivalent emission performance over all operating conditions, as specified in § 94.205(f).

(f) The following define the requirements for low-emitting Blue Sky Series engines:

(1) *Voluntary standards.* (i) Category 1 and Category 2 engines may be designated "Blue Sky Series" engines by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (g/kW–HR)

Rated brake power (kW)	THC+NO_X	PM
power ≥ 37 kW, and displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5	5.0	0.12

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (g/kW–HR)—Continued

Rated brake power (kW)	THC+NO_X	PM
5≤displ.<15	5.0	0.16
15 ≤ disp. < 20, and power < 3300kW	5.2	0.30
15 ≤ disp. < 20, and power ≥ 3300kW	5.9	0.30
20 ≤ disp; <25	5.9	0.30
25≤ disp. <30	6.6	0.30

(ii) Category 3 engines may be designated "Blue Sky Series" engines by meeting a voluntary NO_X standard of 9.0 $xN^{-0.20}$ +1.4 where N = the maximum test speed of the engine in revolutions per minute (or 4.8 g/kW for engines with maximum test speeds less than 130 rpm). (**Note:** Speed-dependent standards are rounded to the nearest 0.1 g/kW-hr.) This standard would apply to all certification and in-use testing.

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) Standards for alternative fuels. The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions for Category 1 and Category 2 engines:

(1) Engines fueled with natural gas shall comply with NMHC+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section.

6. Section 94.9 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 94.9 Compliance with emission standards.

(a) * * *

(1) The minimum useful life is 10 years or 10,000 hours of operation for Category 1, 10 years or 20,000 hours of operation for Category 2, and 3 years or 10,000 hours of operation for Category 3.

* * * * *

(b) * * *

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in Subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 or Category 3 certification.

* * * * *

7. Section 94.10 is amended by revising paragraph (a) to read as follows:

§ 94.10 Warranty period.

(a) (1) Warranties imposed by § 94.1107 for Category 1 or Category 2 engines shall apply for a period of operating hours equal to at least 50 percent of the useful life in operating hours or a period of years equal to at least 50 percent of the useful life in years, whichever comes first.

(2) Warranties imposed by § 94.1107 for Category 3 engines shall apply for a period of operating hours equal to at least the full useful life in operating hours or a period of years equal to at least the full useful life in years, whichever comes first.

* * * * *

8. Section 94.11 is amended by adding paragraph (g) to read as follows:

§ 94.11 Requirements for rebuilding certified engines.

* * * * *

(g) For Tier 1 engines, and all Category 3 engines, the rebuilder and operator shall also comply with the recordkeeping requirements of MARPOL Technical Code (incorporated by reference at § 94.5).

9. Section 94.12 is amended by revising the introductory text to read as follows:

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions apply instead of other provisions of this part. The provisions of this section do not apply for Category 3 engines.

* * * * *

Subpart B—[Amended]

10. Section 94.106 is amended by revising the section heading and introductory text to read as follows:

§ 94.106 Supplemental test procedures for Category 1 and Category 2 marine engines.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e)(1). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

* * * * *

11. Section 94.107 is amended by revising paragraph (a) to read as follows:

§ 94.107 Determination of maximum test speed.

(a) *Overview.* This section specifies how to determine maximum test speed from a lug curve. This maximum test speed is used in §§ 94.105, 94.106, and 94.109 (including the tolerances for engine speed specified in § 94.105).

* * * * *

12. Section 94.108 is amended by revising paragraphs (a)(1), (b), and (d)(1), and adding paragraph (e) to read as follows:

§ 94.108 Test fuels.

(a) *Distillate diesel test fuel.* (1) The diesel fuels for testing Category 1 and Category 2 marine engines designed to operate on distillate diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–5 of this section, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM)[1]	Value (Type 2–D)
Cetane	D 613–95	40–48
Distillation Range:		
IBP, °C	D 86–97	171–204
10% point, °C	D 86–97	204–238
50% point, °C	D 86–97	243–282
90% point, °C	D 86–97	293–332
EP, °C	D 86–97	321–366
Gravity, API	D 287–92	32–37
Total Sulfur, weight%	D 129–95 or D 2622–98	0.03—0.80
Hydrocarbon composition:		
Aromatics, %vol.	D 1319–98 or D 5186–96	[2] 10
Paraffins, Naphthalenes, Olefins	D 1319–98	[3]
Flashpoint, °C (minimum)	D 93–97	54
Viscosity @ 38 °C, Centistokes	D 445–97	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.6.
[2] Minimum.
[3] Remainder.

* * * * *

(b) *Other fuel types.* For Category 1 and Category 2 engines that are designed to be capable of using a type of fuel (or mixed fuel) instead of or in addition to distillate diesel fuel (e.g., natural gas, methanol, or nondistillate diesel), and that are expected to use that type of fuel (or mixed fuel) in service:

(1) A commercially available fuel of that type shall be used for exhaust emission testing. The manufacturer shall propose for the Administrator's approval a set of test fuel specifications that take into account the engine design and the properties of commercially available fuels. The Administrator may require testing on each fuel if it is designed to operate on more than one fuel. These test fuel specifications shall be reported in the application for certification.

(2) NO_X emissions may be adjusted to account for the nitrogen concentration of the fuel (as measured by ASTM D 3228-92). The adjusted NO_X emissions shall be calculated using the following equation:

Adjusted NO_X emissions [g/kW-hr] = NO_X − [BSFC *3.25 *(FNF)]

Where:

NO_X = measured weighted NO_X level [g/KW-hr].

BSFC = measured brake specific fuel consumption [g/KW-hr].

FNF = fuel nitrogen weight fraction.

* * * * *

(d) *Correction for sulfur.* (1) Particulate emission measurements from Category 1 or Category 2 engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

* * * * *

(e) *Test Fuel for Category 3.* (1) Except as specified in paragraph (e)(4) of this section, or allowed by paragraph (e)(2) of this section, the test fuel for Category 3 marine engines shall:

(i) Be a residual fuel meeting the ASTM D 2069–91 specification for RMH–55 grade of fuel but not for RMC–10 grade of fuel.

(ii) Have a nitrogen content of 0.6 percent by weight or less.

(2) Marine distillate fuel may be used for certification testing.

(3) NO_X emissions shall be adjusted to account for the nitrogen concentration of the fuel (as measured by ASTM D 3228–92). The adjusted NO_X emissions shall be calculated using the following equation:

Adjusted NO_X emissions [g/kW-hr] = NO_X − [BSFC *3.25 *(FNF−0.0040)]

Where:

NO_X=measured weighted NO_X level [g/KW-hr].

BSFC=measured brake specific fuel consumption [g/KW-hr].

FNF=fuel nitrogen weight fraction.

(4) For engines that are designed to be capable of using a type of fuel (or mixed fuel) instead of or in addition to residual fuel (e.g., natural gas), and that are expected to use that type of fuel (or mixed fuel) in service, a commercially available fuel of that type shall be used for exhaust emission testing. The manufacturer shall propose for the Administrator's approval a set of test fuel specifications that take into account the engine design and the properties of commercially available fuels. The Administrator may require testing on each fuel if it is designed to operate on more than one fuel. These test fuel specifications shall be reported in the application for certification.

13. A new § 94.109 is added to subpart B to read as follows:

§ 94.109 Test procedures for Category 3 marine engines.

(a) Gaseous emissions shall be measured using the test procedures specified by Section 5 of the MARPOL Technical Code (incorporated by reference at § 94.5), except as otherwise specified in this paragraph (a).

(1) The inlet air and exhaust restrictions shall be set at the average in-use levels.

(2) Measurements are valid only for sampling periods in which the temperature of the charge air entering the engine is within 3°C of the temperature that would occur in-use under ambient conditions (temperature, pressure, and humidity) identical to the test conditions. You may measure emissions within larger discrepancies, but you may not use those measurements to demonstrate compliance.

(3) Engine coolant and engine oil temperatures shall be equivalent to the temperatures that would occur in-use under ambient conditions identical to the test conditions.

(4) Exhaust flow rates shall be calculated using measured fuel flow rates.

(5) Standards used for calibration shall be traceable to NIST standards. (Other national standards may be used if they have been shown to be equivalent to NIST standards.)

(6) Tests may be performed at any representative pressure and humidity levels. Tests may be performed at any

ambient air temperature from 13°C to 30°C and any charge air cooling water temperature from 17°C to 27°C.

(7) The test fuel shall be a residual fuel meeting the specifications of § 94.108. Distillate fuel may be used for certification testing. Emissions shall be corrected for the nitrogen content of the fuel, according to § 94.108(e)(3).

(8) Test cycles shall be denormalized based on the maximum test speed described in § 94.107.

(b) Analyzers meeting the specifications of either 40 CFR part 86, subpart N, or ISO 8178–1 (incorporated by reference at § 94.5) shall be used to measure THC and CO.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

14. A new § 94.110 is added to subpart B to read as follows:

§ 94.110 Test procedures for verifying emission performance of Category 3 marine engines installed in a vessel.

The test procedures of this section are designed to verify emissions performance of engines that have been installed in a vessel (and thus cannot be tested using an engine dynamometer) These procedures shall be used by vessel operators to verify compliance with the requirements of §§ 94.1003 and 94.1004. EPA may allow the use of these test procedures for other compliance demonstrations. For example, we will allow a manufacturer to use these test procedures to meet the production testing requirements of subpart F of this part, as long as they have been demonstrated to provide an equivalent demonstration of compliance to testing conducted in accordance with the test procedures of § 94.109.

(a) *General requirement.* All test systems shall be designed according to good engineering judgment to ensure accurate verification that the engine is complying with the requirements of this part.

(b) *Equipment.* The measurement system shall be permanently installed in the vessel, and shall include the following:

(1) A NO_X analyzer with an accuracy of ±2 percent of point or better, and a precision of ±5 percent of point or better, under steady-state laboratory conditions. The analyzer must reach at least 90 percent of its final response within 5.0 seconds after any step change to the input concentration greater than or equal 80 percent of full scale.

(2) An engine speed gauge with an accuracy and precision of ± 0.1 rpm or better under steady-state laboratory conditions.

(3) An engine output shaft torque gauge with an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(4) Other sensors as necessary to determine the operational conditions of the engine, such as a thermocouple in the exhaust stream.

(c) *Data logging.* The measurement system shall automatically log all test results and other test parameters. The data logger must also automatically log all adjustments to the engine that could affect emissions. The position of the vessel (e.g., longitude and latitude) must be recorded with all logs of test results and adjustments.

(d) *Calibration.* The measurement system shall include ports for zero and span gases. The analyzers shall be zeroed and spanned prior to each test. Full calibration of the system must be conducted as needed, according to good engineering judgment.

(e) *Test run.* The NO_X concentration in the exhaust shall be measured under normal operating conditions. Engine speed, engine torque, and other test parameters shall be measured simultaneously.

(f) *Compliance.* The measured NO_X concentration shall be compared to a table or algorithm supplied by the engine manufacturer. If the NO_X concentration is at or below the level specified by the engine manufacturer for the test conditions (*e.g.*, engine speed, engine torque, seawater temperature, nitrogen content of the fuel, etc.), then the engine is in compliance with the manufacturer specifications. If the NO_X concentration is above the level specified by the engine manufacturer for the test conditions, then the engine is not in compliance, and must be readjusted and retested.

Subpart C—[Amended]

15. Section 94.203 is amended by revising paragraph (d)(14) to read as follows:

§ 94.203 Application for certification.

* * * * *

(d) * * *

(14) (i) For Category 1 and Category 2 engines, a statement that the all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(ii) For Category 3 engines, a statement that the all the engines included in the engine family comply with the requirements of § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer must also provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

* * * * *

16. Section 94.204 is amended by adding paragraph (f) to read as follows:

§ 94.204 Designation of engine families.

* * * * *

(f) Category 3 engines shall be grouped into engine families as specified in Section 4.3 of the MARPOL Technical Code (incorporated by reference at § 94.5), except as allowed in paragraphs (d) and (e) of this section.

17. Section 94.205 is amended by revising paragraph (b) and adding paragraphs (e) and (f) to read as follows:

§ 94.205 Prohibited controls, adjustable parameters.

* * * * *

(b)(1) Category 1 and Category 2 marine engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the physically adjustable range.

(2) Category 3 marine engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment specified in paragraph (e) of this section

* * * * *

(e) The following provisions apply for Category 3 marine engines:

(1) For certification testing, engines shall be adjusted according to the manufacturer's specifications.

(2) Manufacturers shall determine NO_X concentration targets for in-use testing, consistent with the provisions of paragraph (f) of this section, that enable the operator to ensure that the engine is properly adjusted in use.

(3) For production line testing and in-use testing, the engine shall be adjusted so that measured NO_X concentration in the exhaust is no higher than engine manufacturer's target described in paragraph (e)(2) of this section.

(f) For Category 3 marine engines, manufacturers must specify in the maintenance instructions how to adjust the engines to achieve emission performance equivalent to the performance demonstrated under the certification test conditions. This must

address all necessary adjustments, including those required to address differences in fuel quality or ambient temperatures. (**Note:** The engine must comply with the applicable emission standards of § 94.8 for all conditions allowed by the test procedures described in § 94.109.)

(1) Equivalent emissions performance is measured relative to optimal engine performance that could be achieved in the absence of emission standards (i.e., the calibration that result in the lowest fuel consumption and/or maximum firing pressure). Except as allowed by paragraph (f)(2) or (f)(3) of this section, equivalent performance requires the same percent reduction in NO_X emissions from the optimal calibration as is achieved under the test conditions.

(2) The adjustments may achieve a smaller reduction in NO_X emissions under some conditions if the engine is calibrated the same at the different conditions. For example, if the engine uses injection timing retard and EGR to reduce emissions, then the manufacturer would need to retard timing the same number of degrees and use the same rate of EGR at the different conditions in order to qualify for the allowance in this paragraph (f)(2).

(3) Under extraordinary circumstances, the manufacturer may petition EPA during certification to allow calibrations not meeting requirements of paragraph (f)(1) or (f)(2) of this section if the manufacturer demonstrates that compliance with those requirements is not feasible. If the manufacturer can comply with those requirements by derating the engine, then compliance is considered to be feasible.

(4) Adjustments must achieve equivalent performance for all engine speeds other than the speeds associated with the certification test points. For engine speeds between test point speeds, this means that NO_X emissions should generally follow a linear interpolation between test points.

(5) Example: If, for the test calibration, you retard the start of injection timing by 2.0 degrees for the maximum test speed to reduce NO_X emissions by 18 percent, and you retard the start of injection timing by 3.0 degrees for all other speeds to reduce NO_X emissions by 25 percent, then for all other operational conditions:

(i) For maximum engine speed, you must either retard timing by 2.0 degrees or reduce NO_X emissions by 18 percent or more relative to the calibration that would be used in the absence of emissions standards; and

(ii) For other speeds, you must either retard timing by 3.0 degrees or reduce NO_X emissions by 25 percent or more relative to the calibration that would be used in the absence of emissions standards.

18. Section 94.209 is amended by adding introductory text to the section to read as follows:

§ 94.209 Special provisions for post-manufacture marinizers.

The provisions of this section apply for Category 1 and Category 2 engines, but not for Category 3 engines.

* * * * *

19. Section 94.211 is amended by adding paragraphs (a)(3) and (e)(2)(iii), and revising paragraphs (h) introductory text and (j)(2) introductory text to read as follows:

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) * * *

(3) For Category 3 engines, the manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that § 94.1004 requires that the emissions-related maintenance be performed as specified in the instructions (or equivalent).

* * * * *

(e) * * *

(2) * * *

(iii) The maintenance intervals listed in paragraphs (e)(3) and (e)(4) of this section do not apply for Category 3.

* * * * *

(h) For Category 1 and Category 2 engines, equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

* * * * *

(j) * * *

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. For Category 1 and Category 2 engines, the manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

* * * * *

20. Section 94.214 is revised to read as follows:

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require. This requirement does not apply for Category 3 engines. Manufacturers of Category 3 engines, however, must allow EPA access to test engines and development engines to the extent necessary to determine that the engine family is in full compliance with the applicable requirements of this part.

21. Section 94.217 is amended by adding paragraph (f) to read as follows:

§ 94.217 Emission data engine selection.

* * * * *

(f) A single cylinder test engine may be used for certification of Category 3 engine families.

22. Section 94.218 is amended by revising paragraph (d)(1) to read as follows:

§ 94.218 Deterioration factor determination.

* * * * *

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors for Category 1 and Category 2 engines based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

* * * * *

23. Section 94.219 is amended by revising paragraph (a) to read as follows:

§ 94.219 Durability data engine selection.

(a) For Category 1 and Category 2 engines, the manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

* * * * *

Subpart E—[Amended]

24. Section 94.403 is amended by revising paragraph (a) to read as follows:

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects (or based on other information), that a specific emission-related defect exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines, or 2 or more Category 3 engines or cylinders. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser. (**Note:** These limits apply to the occurrence of the same defect, and are not constrained by engine family or model year.)

* * * * *

Subpart F—[Amended]

25. Section 94.503 is amended by revising paragraphs (a) and (b), and adding paragraph (d) to read as follows:

§ 94.503 General requirements.

(a) For Category 1 and Category 2 engines, manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506.

(b) Upon request, the Administrator may also allow manufacturers to conduct alternate production line testing programs for Category 1 and Category 2 engines, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

* * * * *

(d) For Category 3 engines, the manufacturer shall test each production engine after it is installed in the vessel. The manufacturer may used the test procedures specified in § 94.109, or alternate test procedures that provide an equivalent demonstration of production quality. For example, a manufacturer may use the short test procedures of § 94.110, as long as the procedures can be demonstrated to provide an equivalent demonstration of compliance to testing conducted in accordance with the test procedures of § 94.109.

26. Section 94.505 is amended by revising paragraph (a) introductory text to read as follows:

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each Category 1 and Category 2 engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible. Note: Each Category 3 production engine must be tested.

* * * * *

27. Section 94.507 is amended by revising paragraph (a) to read as follows:

§ 94.507 Sequence of testing.

(a) If one or more Category 1 or Category 2 engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

* * * * *

28. Section 94.508 is amended by revising paragraphs (d) and (e) introductory text to read as follows:

§ 94.508 Calculation and reporting of test results.

* * * * *

(d)(1) If, subsequent to an initial failure of a Category 1 or Category 2 production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(2) If a Category 3 engine fails a production line test, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter in which production line testing occurs, each manufacturer must submit to the Administrator a report which includes the following information:

* * * * *

29. Section 94.510 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 94.510 Compliance with criteria for production line testing.

* * * * *

(b) A Category 1 or Category 2 engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

(c) For Category 3 engines, the engine family is deemed to be in noncompliance, for purposes of this subpart, whenever the average emission rate of any regulated pollutant is greater than the applicable emission standard for any test engine.

Subpart I—[Amended]

30. Section 94.801 is amended by revising paragraph (b) to read as follows:

§ 94.801 Applicability.

* * * * *

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States are set forth in U.S. Customs Service regulations (19 CFR Chapter I).

Subpart J—[Amended]

§ 94.904 [Amended]

31. Section 94.904 is amended by removing paragraph (b)(7).

32. Section 94.906 is amended by revising the section heading and removing paragraph (d) to read as follows:

§ 94.906 Manufacturer-owned exemption, display exemption, and competition exemption.

* * * * *

33. Section 94.907 is amended by revising paragraph (d) introductory text to read as follows:

§ 94.907 Engine dressing exemption.

* * * * *

(d) New Category 1 and Category 2 marine engines that meet all the following criteria are exempt under this section:

* * * * *

34. Subpart K, consisting of §§ 94.1001, 94.1002, 94.1003, and 94.1004, is added to read as follows:

Subpart K—Requirements Applicable to Vessel Manufacturers, Owners, and Operators

Sec.

Subpart K—Requirements Applicable to Vessel Manufacturers, Owners, and Operators.

§ 94.1001 Applicability.

The requirements of this subpart are applicable to manufacturers, owners, and operators of marine vessels that contain Category 3 engines subject to the provisions of subpart A of this part, except as otherwise specified.

§ 94.1002 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1003 Production and in-use testing.

(a) *Production testing.* Vessel manufacturers must allow engine manufacturers to conduct the production line testing required by subpart F of this part.

(b) *In-use adjustments.* Operators of in-use engines may adjust certified engines as specified by the engine manufacturer, provided that after the adjustment the engine's exhaust emissions are measured to verify that the engine is operating within the specifications certified by the manufacturer. For the purposes of this section, maintenance is considered to be a form of adjustment.

(1) Emissions shall be measured using the short-test procedures specified in § 94.110, or other test procedures that provide an equivalent demonstration of compliance.

(2)(i) This paragraph (b)(2)(i) applies for vessels adjusted within 175 nautical miles of the United States coastline entering or leaving a port of the United States.

Operators of vessels whose next port of call is a port of the United States, and operators of vessels that are leaving a port of the United States, must ensure that the engine is operating according to the certifying manufacturer's specification after any adjustments are made to its engine within 175 nautical miles of the coastline of the United States. Operators shall verify that the engine is operating within the specifications certified by the manufacturer by measuring the engine's exhaust emissions in accordance with paragraph (b)(1) of this section.

(ii) This paragraph (b)(2)(ii) applies for vessels adjusted beyond 175 nautical miles of the United States coastline that will enter a port of the United States. Operators of vessels whose next port of call is a port of the United States must ensure that the engine is operating according to the certifying manufacturer's specification before coming within 175 nautical miles of the coastline of the United States. Operators shall verify that the engine is operating within the specifications certified by the manufacturer by measuring the engine's exhaust emissions in accordance with paragraph (b)(1) of this section.

(3) All adjustments and verification testing must be recorded. These records must be made available to EPA upon request.

(4) The requirements of this paragraph (b) do not apply for adjustments that could not affect emissions.

(5) For the purposes of this section the "coastline of the United States" is the baseline from which the territorial sea of the United States is measured.

(c) Manufacturers, owners and operators must allow emission tests to be conducted by the U.S. government, and must provide reasonable assistance to perform such tests.

§ 94.1004 Maintenance, repair, and adjustment.

(a) Unless otherwise approved by the Administrator, all owners and operators of Category 3 engines subject to the provisions of this part shall ensure that all emission-related maintenance is performed, as specified in the maintenance instructions provided by the certifying manufacturer in compliance with § 94.211 (or maintenance that is equivalent to the maintenance specified by the certifying manufacturer in terms of maintaining emissions performance). Owners or operators performing equivalent maintenance must have a reasonable technical basis for believing that the maintenance is equivalent to that described in the application for certification.

(b) Unless otherwise approved by the Administrator, all maintenance and repair of Category 3 engines subject to the provisions of this part performed by any owner, operator or other maintenance provider, including maintenance that is not covered by paragraph (a) of this section, shall be performed, using good engineering judgement, in such a manner that the engine continues (after the maintenance or repair) to meet the emission standards it was certified as meeting prior to the need for maintenance or repair.

(c) All adjustments of certified engines shall be performed as specified by the engine manufacturer, unless the vessel is operating beyond 175 nautical miles of the United States coastline. As is described in § 94.1003 (b), engines on vessels operating beyond 175 nautical miles of the United States coastline that are adjusted outside of the manufacturer's specifications, and that will enter a port of the United States, must be adjusted according to the engine manufacturer's specification before coming within 175 nautical miles of the United States coastline. For the purposes of this paragraph, the "coastline of the United States" is the baseline from which the territorial sea of the United States is measured.

(d) The owner of the engine shall maintain records of all maintenance and repair that could reasonably affect the emission performance of any Category 3 engine subject to the provision of this part.

Subpart L—[Amended]

35. Section 94.1103 is amended by revising paragraph (a)(3)(i), and adding paragraphs (a)(2)(v) and (a)(7) to read as follows:

§ 94.1103 Prohibited acts.

(a) * * *

(2) * * *

(v) For an owner or operator of a vessel using a Category 3 to refuse to allow the in-use testing described in § 94.1003 to be performed.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator (except as allowed by §§ 94.1003 and 94.1004).

* * * * *

(7)(i) For an owner or operator of a vessel using a Category 3 engine to fail or refuse to ensure that an engine is in compliance and is properly adjusted as set forth in §§ 94.1003 and 94.1004, (including a failure or refusal to conduct the required verification testing or keep the required records).

(ii) For an owner or operator of a vessel using a Category 3 to fail to maintain or repair an engine as set forth in § 94.1004.

* * * * *

36. Section 94.1106 is amended by revising paragraphs (a)(1), (a)(4), and (a)(5) to read as follows:

§ 94.1106 Penalties.

(a) * * *

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), (a)(6), or (a)(7) or a manufacturer or dealer who violates § 94.1103(a)(3)(i) or (iii) is subject to a civil penalty of not more than $25,000 for each violation unless modified by the Debt Collection Improvement Act (31 U.S.C. chapter 37) and/or regulations issued there under.

* * * * *

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) or (a)(7) constitutes a separate offense.

(5) A person who violates § 94.1103(a)(2), (a)(5) or (a)(7) is subject to a civil penalty of not more than $25,000 per day of violation unless modified by the Debt Collection Improvement Act and/or regulations issued there under.

* * * * *

37. Section 94.1108 is amended by adding paragraph (d) to read as follows:

§ 94.1108 In-use compliance provisions.

* * * * *

(d) The U.S. Customs Service or the U.S. Coast Guard may require the operator of any vessel that is subject to the provisions of this part to certify in writing that all of the vessel's engines conform to the applicable provisions of this part.

[FR Doc. 02–11736 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
May 29, 2002

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–094–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are announcing our decision to approve an amendment and to remove required program amendments on the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment we are approving concerns the deletion of a State provision that imposed a regulatory limitation on expenditure of funds for water treatment at bond forfeiture sites. The required program amendments we are removing concern the regulatory limitation on expenditure of funds for water treatment, and the effectiveness of West Virginia's alternative bonding system (ABS) in providing sufficient funds to complete reclamation, including water treatment, at all existing and future bond forfeiture sites.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Background on West Virginia's ABS

On January 21, 1981, the Secretary conditionally approved West Virginia's ABS. The ABS has two basic components: the site-specific or incremental bond posted by the permittee and the Special Reclamation Fund (the Fund), comprised of a special reclamation tax, civil penalty assessments, and interest earned on the revenues, which is intended to cover any reclamation costs in excess of the site-specific or incremental bond.

At the time of approval, the Secretary required that the State provide an actuarial study of the Fund demonstrating that the amount of money going into the Fund would cover the demands to be placed upon it, along with any program changes needed to redress any deficiencies identified by the actuarial study (46 FR 5956).

The State submitted an actuarial study on October 29, 1982 (Administrative Record Number WV–456). The study concluded that the Fund was solvent, in part, because it contained a funding mechanism (the special reclamation tax) to provide for the cost of future reclamation. On March 1, 1983 (41 FR 8447), we subsequently found that the State's alternative bonding provisions were in accordance with section 509(c) of SMCRA and the Federal criteria for approval of alternative bonding systems at 30 CFR 806.11(b), which has since been recodified as 30 CFR 800.11(e). Consequently, we removed the condition (25) relating to our approval of the State's ABS.

By 1988–89, our oversight evaluations indicated that the Fund lacked sufficient revenue to reclaim all outstanding bond forfeiture sites. In addition, the cash balance in the Fund ceased earning interest because of losses suffered by the State's Consolidated Investment Fund. On October 1, 1991, we notified the State, pursuant to 30 CFR 732.17(c) and (e), that a program amendment was necessary, because the Fund no longer met the requirements of 30 CFR 800.11(e).

In a series of amendments beginning in 1993, West Virginia revised portions of its permanent regulatory program in an attempt to resolve some of our concerns. For example, the State increased its special reclamation tax from one cent to three cents per ton of coal mined and adopted site-specific bonding regulations. In addition, Deloitte and Touche, an accounting and consulting company, completed an actuarial study of the Fund in March 1993. The study concluded that the Fund had an accrual deficit position as of June 30, 1992, but that the Fund would realize gradual improvement over the next five years.

On October 4, 1995 (60 FR 51900), we announced our partial approval of the State's amendments. However, as specified in 30 CFR 948.16 (jjj), (kkk), and (lll), we also required the State to amend certain statutory provisions to fully eliminate the deficit in the Fund and to complete reclamation, including treatment of pollutional discharges, at all bond forfeiture sites.

OSM and the State conducted additional studies that were completed in September 1997 and June 1999 to assess the financial condition of the Fund. The studies found that the Fund could eventually be solvent if its responsibilities were limited to land reclamation. However, the studies also determined that treatment of pollutional discharges from forfeited sites required additional revenue.

By letter dated September 29, 2000, we informed the West Virginia Department of Environmental Protection (WVDEP) that Federal corrective action would be taken, unless the West Virginia Legislature (Legislature) adopted the necessary changes to the Fund to resolve the identified deficiencies (Administrative Record Number WV–1181). However, the Legislature adjourned on April 14, 2001, without enacting the proposed changes.

On April 18, 2001, WVDEP requested additional time to develop and obtain approval of statutory and regulatory changes to the State's bonding provisions (Administrative Record Number WV–1206). In addition, WVDEP requested that we conduct an informal review of a report entitled "The Mountain State Clean Water Trust Fund." Under a plan that was based on the report, WVDEP intended to bifurcate the Fund into two distinct accounts, one for land reclamation and one for water treatment.

In a letter dated June 29, 2001, we initiated corrective action under 30 CFR 733.12(b). In that letter, which is known

as a Part 733 notification, we notified the State that it must initiate certain remedial measures by July 27, 2001, to satisfy the outstanding required amendments at 30 CFR 948.16 (kkk), (jjj) and (lll) and that it must submit the necessary, fully-enacted and adopted statutory and regulatory revisions no later than 45 days after the end of the 2002 regular session of the Legislature (Administrative Record Number WV–1218). As stated in the letter, if West Virginia failed to take these measures, we intended to recommend that the Secretary partially withdraw approval of the State program and implement a partial Federal regulatory program.

By e-mail message dated August 8, 2001, WVDEP provided us with additional draft legislative changes for informal review (Administrative Record Number WV–1233A). The proposed revisions are commonly called the 7-Up Plan.

On August 9 and August 28, 2001, we provided WVDEP our informal review of the proposed statutory revisions that were submitted on August 8 (Administrative Record Nos. WV–1233 and WV–1235). Under the draft legislation, the special reclamation tax would be increased from 3 cents to 14 cents per ton of clean coal mined for 39 months and reduced to 7 cents thereafter with biennial review by an advisory council.

By letter dated August 13, 2001, WVDEP provided us with a schedule for submitting statutory and regulatory revisions to the Legislature in response to our Part 733 notification (Administrative Record Number WV–1234). The letter specified that the State would formally submit the program amendment to us by April 30, 2002. The letter also indicated that the statutory changes could be presented to a special session of the Legislature before that date.

We released our analysis of the State's draft legislation on September 7, 2001 (Administrative Record Number WV–1236). In that report, we concluded that the proposal would generate sufficient revenues for about 9 years, but future adjustments would have to be made to meet long-term needs of the Fund.

On September 15, 2001, a special session of the Legislature passed Senate Bill 5003, which is intended to eliminate the deficit in the Fund and provide for reclamation, including water treatment, at bond forfeiture sites. The Governor of West Virginia (Governor) signed Enrolled Senate Bill 5003 on October 4, 2001. The effective date of the bill is October 4, 2001, but none of the provisions could be implemented without OSM approval.

III. Submission of the Amendment

By letter dated September 24, 2001 (Administrative Record Number WV–1238), WVDEP formally submitted a proposed amendment to the West Virginia program consisting of revisions to the West Virginia Code (W. Va. Code), as amended by Enrolled Senate Bill 5003. The amendment added W. Va. Code section 22–1–17, which established the Special Reclamation Fund Advisory Council (Advisory Council). The amendment also revised W. Va. Code 22–3–11 by increasing the special reclamation tax rate and revised W. Va. Code 22–3–12 by deleting certain site-specific bonding provisions.

We announced receipt of the proposed amendment on October 24, 2001 (66 FR 53749). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1243). The public comment period closed on November 23, 2001. We received comments from one environmental organization, a consultant to the environmental organization, one industry group, and two Federal agencies.

By letter dated November 6, 2001, the West Virginia Highlands Conservancy (WVHC) requested that the comment period on the amendment be extended through December 14, 2001 (Administrative Record Number WV–1245). On November 9, 2001, we denied the request (Administrative Record Number WV–1246). We denied the request for an extension because an extension would have delayed our decision, which could have resulted in a loss of revenues that are badly needed by the State for reclamation of bond forfeiture sites. The proposed amendments that we later approved increased the tonnage tax on clean coal mined that provides revenues to the Fund. The tax increase was scheduled to go into effect on January 1, 2002, but only if OSM approved the tax increase by that date. W. Va. Code 22–3–11(h), (n). Nevertheless, we agreed with WVHC's contention that the complexity of the questions raised by the amendment itself, and by comments submitted by WVHC and others, created the need for a longer comment period on the question of whether the amendments were sufficient to remedy the State's bonding program deficiencies on a long-term basis. Therefore, we elected to bifurcate our approval process for these amendments as follows.

First, we published in the **Federal Register**, on December 28, 2001, our approval of the amendment submitted on September 24, 2001, because it afforded immediate improvement in the State's existing, approved ABS. 66 FR 67446. We also required that the State remove the regulatory limitation on expenditure of funds for water treatment at bond forfeiture sites (Administrative Record Number WV–1259).

Next, we announced a 90-day comment period in the **Federal Register** on December 28, 2001, which also provided an opportunity for a hearing or meeting, on the issue of whether the amendments that we approved satisfy the required amendment at 30 CFR 948.16(lll) (Administrative Record Number WV–1262). 66 FR 67455. 30 CFR 948.16(lll) requires that the State "eliminate the deficit in [its] * * * alternative bonding system and * * * ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites." No one requested a hearing or meeting, so we did not hold one. The public comment period closed on March 28, 2001. During the reopening of the comment period, we received comments from one private citizen, one environmental group, one consultant, and one industry group.

We are also including in this **Federal Register** document our decision on the State's response to the required program amendment codified at 30 CFR 948.16(jjj) that was submitted to us as part of a separate program amendment package dated April 9, 2002 (Administrative Record Number WV-1296A). We will address the remainder of the April 9, 2002, amendment in a separate final rule document at a later date. A notice (67 FR 30336) announcing receipt and a 15-day public comment period on the program amendment that addressed the required amendment at 30 CFR 948.16(jjj) was published in the **Federal Register** on May 6, 2002 (Administrative Record Number WV–1303). The public comment period closed on May 21, 2002. We received comments from one industry group and two Federal agencies.

IV. OSM's Findings

For the reasons discussed below, we are removing the required program amendments codified at 30 CFR 948.16(jjj) and (lll).

In our June 29, 2001, 30 CFR part 733 notification, we stated that West Virginia must initiate certain remedial measures to satisfy the outstanding required amendments at 30 CFR 948.16(jjj), (kkk), and (lll), and that the State must submit the necessary, fully

enacted and adopted statutory and regulatory revisions (Administrative Record Number WV–1218). As we announced in the December 28, 2001, **Federal Register**, the required program amendment at 30 CFR 948.16(kkk) was previously satisfied and, therefore, removed (66 FR 67446, 67450).

We will discuss below how the State revised the West Virginia program to address the required program amendments codified at 30 CFR 948.16(jjj) and (lll).

1. Required Program Amendment at 30 CFR 948.16(jjj)

As of June 29, 2001, the date of our Part 733 notification to the State, this required amendment read as follows:

> 30 CFR 948.16(jjj)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise section 22–3–11(g) of the Code of West Virginia and section 38–2–12.5(d) of the West Virginia Code of State Regulations to remove the limitation on the expenditure of funds for water treatment or to otherwise provide for the treatment of polluted water discharged from all bond forfeiture sites.

In response to this required program amendment, WVDEP submitted a program amendment by letter dated September 24, 2001, containing Enrolled Senate Bill 5003 (Administrative Record Number 1238). In that amendment, the State revised W. Va. Code 22–3–11(g) by deleting language that limited expenditures from the Fund for water treatment purposes to 25 percent of the Fund's gross revenues. As amended, W. Va. Code 22–3–11(g) provides, in part, that the Secretary of WVDEP may use the Fund for the purpose of designing, constructing and maintaining water treatment systems where they are required for complete reclamation of the affected lands.

On December 28, 2001, we found that the deletion of the 25-percent limitation at W. Va. Code 22–3–11(g) partially satisfied the requirement codified at 30 CFR 948.16(jjj) (66 FR 67446, 67449). To fully satisfy this required amendment, the State also needed to delete the 25-percent limitation in its Code of State Regulations (CSR) at 38–2–12.5(d). In addition, revised W. Va. Code 22–3–11(g) continued to provide that the Secretary of WVDEP "may" rather than "shall," use the Fund for the purpose of designing, constructing and maintaining water treatment systems. Therefore, we revised 30 CFR 948.16(jjj) to reflect the statutory changes and to require the State to specify that the Fund must be used, where needed, to pay for water treatment on bond forfeiture sites. As revised on December 28, 2001, the required amendment at 30 CFR 948.16(jjj) reads as follows:

> 30 CFR 948.16(jjj)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR 38–2–12.5(d) to remove the 25-percent limitation on the expenditure of funds for water treatment or to otherwise provide for the treatment of polluted water discharged from all bond forfeiture sites. In addition, the State must amend its program to specify that moneys from the Special Reclamation Fund must be used, where needed, to pay for water treatment on bond forfeiture sites.

By letter dated February 26, 2002, WVDEP sent us a status report regarding its efforts to satisfy various required program amendments codified at 30 CFR 948.16 (Administrative Record Number WV–1276). In that letter, WVDEP stated that it had submitted proposed legislation to the Legislature to amend subsection CSR 38–2–12.5(d) to remove the 25-percent limitation on the expenditure of funds for water treatment.

However, WVDEP declined to change "may" to "shall" in W. Va. Code 22–3–11(g). According to WVDEP, making that change could remove the State's discretion to determine the appropriate forms of reclamation it could use by specifically mandating water treatment to the exclusion of land reclamation.

When we revised 30 CFR 948.16(jjj) on December 28, 2001, we did not intend to require that water treatment be the exclusive means of correcting pollutional discharges on bond forfeiture sites. We acknowledge that other methods, such as land reclamation, might also be effective. Nor did we intend to require that monies from the Fund be spent to treat pollutional discharges regardless of whether there are other more beneficial and cost-effective means of abating or eliminating the pollutional discharge. Rather, we intended to require that the State clarify that the use of monies from the Fund for treatment of pollutional discharges on bond forfeiture sites, where needed, is mandatory.

While the word "may" was not removed from the West Virginia program, the West Virginia Supreme Court of Appeals has determined that the WVDEP has a mandatory duty to use bond moneys for acid mine drainage treatment. *State ex rel. Laurel Mountain* v. *Callaghan*, 418 S.E.2d 580 (1990). Moreover, in a subsequent decision, the Court held that W. Va. Code 22A–3–11(g), now codified as 22–3–11(g), imposes upon the WVDEP "a mandatory, nondiscretionary duty to utilize moneys from the SRF [Special Reclamation Fund] * * *, to treat AMD [acid mine drainage] at bond forfeiture sites when the proceeds of the forfeited bonds are less than the actual cost of reclamation." *State ex rel. West Virginia Highlands Conservancy, Inc.* v. *West Virginia DEP*, 447 S.E.2d 920, 925 (1994).

In addition, current West Virginia program regulations at CSR 38–2–12.4.d. state that:

> Where the proceeds of bond forfeiture are less than the actual cost of reclamation, the Secretary shall make expenditures from the special reclamation fund to complete reclamation. The Secretary shall take the most effective actions possible to remediate acid mine drainage, including chemical treatment where appropriate, with the resources available. (Emphasis added)

Moreover, the State defines "completion of reclamation" to mean, among other things, "that all applicable effluent and applicable water quality standards are met * * *" CSR 38–2–2.37. Hence, the State's program contains a mandatory requirement that Fund monies be used, where needed, for acid mine drainage treatment.

In view of the litigation and the regulations discussed above, we conclude that the part of the required amendment at 30 CFR 948.16(jjj) that concerns use of moneys from the Fund for water treatment on bond forfeiture sites is no longer needed and can be removed.

The other portion of the required amendment concerns the 25-percent limitation in the State's regulations. By letter dated April 9, 2002 (Administrative Record Number WV–1296A), West Virginia sent us a proposed amendment that revised CSR 38–2–12.5.d. by deleting the 25-percent limitation on expenditures from the Fund for water quality enhancement projects. The Legislature adopted this revision on March 9, 2002, as part of the Enrolled Committee Substitute for House Bill 4163, which the Governor signed into law on April 3, 2002.

The specific language that the State deleted read as follows:

> Expenditures from the special reclamation fund for water quality enhancement projects shall not exceed twenty-five percent (25%) of the funds gross annual revenue as provided in subsection g, section 11 of the [West Virginia] Act.

As amended, CSR 38–2–12.5.d. reads as follows:

> 12.5.d. In selecting such sites for water quality improvement projects, the Secretary shall determine the appropriate treatment techniques to be applied to the site. The selection process shall take into

consideration the relative benefits and costs of the projects.

We find that the amendment to CSR 38–2–12.5.d. satisfies the part of the required amendment at 30 CFR 948.16(jjj) that concerns the deletion of the 25-percent limitation from the State rules. Therefore, we find that 30 CFR 948.16(jjj) has been fully satisfied and can be removed.

2. Required Program Amendment at 30 CFR 948.16(lll)

This required amendment reads as follows.

30 CFR 948.16(lll)—West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to eliminate the deficit in the State's alternative bonding system and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites.

In essence, it requires that West Virginia modify its ABS to (A) eliminate the deficit and (B) ensure that sufficient money will be available to complete land and water reclamation on all existing and future bond forfeiture sites. This requirement corresponds to 30 CFR 800.11(e)(1), which provides that alternative bonding systems must "assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time."

A. Elimination of the Deficit

Special Reclamation Tax Rate Increase. On December 28, 2001, we approved an amendment to W. Va. Code 22–3–11(h) that increased the special reclamation tax rate from 3 cents per ton of clean coal mined to 7 cents per ton of clean coal mined. This subsection also levies an additional temporary tax of 7 cents per ton of clean coal mined for a period not to exceed 39 months. Collection of both taxes began on January 1, 2002. At the current coal production rate in West Virginia, these tax rate increases will increase cash flow into the Fund by about $1.8 million per month. According to WVDEP, the Fund had a deficit of approximately $47.9 million in December 2001. Therefore, the deficit in the Fund should be eliminated in about three years.

Prohibition to Reduce Reclamation Tax Rate. On December 28, 2001, we approved an amendment to W. Va. Code 22–3–11(h) that provides that the 7-cent permanent tax rate may not be reduced until the Fund has sufficient moneys to meet the State's reclamation responsibilities under W. Va. Code 22–3–11. This provision provides a safeguard to prevent a premature reduction in the 7 cents per ton permanent tax rate.

Special Reclamation Fund Advisory Council. On December 28, 2001, we approved new W. Va. Code 22–1–17, which created the Special Reclamation Fund Advisory Council (Advisory Council) to ensure "the effective, efficient and financially stable operation of the special reclamation fund." One of the main tasks of the Advisory Council is the elimination of the ABS deficit. It must also ensure that the Fund remains solvent once the deficit is eliminated.

The Advisory Council will have eight appointed members representing multiple interests in the State, including the Secretary of WVDEP, the State Treasurer, the Director of the National Mine Land Reclamation Center, the coal industry, an actuary or an economist, the environmental community, coal miners and the general public.

By letters dated March 29, 2002 (Administrative Record Number WV–1298), WVDEP asked for nominations of people to serve on the Advisory Council. The letters were sent to various groups with an actual or potential interest in the solvency of West Virginia's ABS. After the initial appointments, subsequent members will serve a full six-year term. The initial terms of all members will begin on July 1, 2002 (W. Va. Code 22–1–17(c)).

The Advisory Council has the following specific duties:

1. Study the effectiveness, efficiency and financial stability of the Fund, and develop a financial process that ensures the long-term stability of the special reclamation program;
2. Identify and define problems associated with the Fund;
3. Evaluate bond forfeiture collection and reclamation efforts;
4. Provide a forum to discuss issues relating to the Fund;
5. Contract with a qualified actuary to determine the Fund's fiscal soundness; and
6. Study and recommend to the Legislature and the Governor alternative approaches to the current funding scheme.

To accomplish these mandates, we anticipate that the Advisory Council will analyze data provided by WVDEP and others; monitor current income and expenditures from the Fund; review and evaluate WVDEP's estimates of future reclamation costs and water treatment obligations; consider alternative means of financing the Fund's reclamation responsibilities so as not to make it entirely dependent upon a coal production tax; project revenues; and consider the findings of the actuary and other experts regarding the fiscal soundness of the Fund.

Annual Reports to the Legislature and the Governor. As provided by W. Va. Code 22–1–17(g), the Advisory Council must report annually to the Legislature and the Governor on the adequacy of the special reclamation tax and the fiscal condition of the Fund. At a minimum, the report must contain—

a recommendation as to whether or not any adjustments to the special reclamation tax should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation, including treatment.

To prepare this report, the Advisory Council will have to study the effectiveness of the tax rate to eliminate the deficit of the Fund. To do so, the Advisory Council will have to determine current and anticipated bond forfeiture reclamation obligations, including water treatment.

As noted by some commenters, we recognize that there are inaccuracies and gaps in the data currently available. We are continually revising our acid mine drainage (AMD) inventories. For example, we do not know how many bond forfeiture sites with pollutional discharges will require perpetual water treatment. Projected treatment costs at this time are gross estimates based on water treatment models, rather than individual site-specific designs of treatment systems. Until more and better information is obtained on each site, the number of discharges requiring treatment and the kinds of treatment systems required to abate the pollution will be in a state of flux. To the extent that resources allow, we intend to work with WVDEP to assist the Advisory Council in obtaining the data it will need to do its job.

It would be ideal if the State could provide sufficient revenue to immediately eliminate the deficit. It would also be ideal if necessary land reclamation and water treatment projects at bond forfeiture sites could be completed immediately. However, such immediate financial relief may have required the State to obtain monies from the State's general revenue fund. To avoid placing any financial burden on the public for these reclamation obligations, the State chose to make adjustments in the special reclamation tax assessed against the coal industry. In addition, logistical and contractual limitations mean that it would not be possible to immediately reclaim all the land that needs to be reclaimed and treat all the water that needs to be treated. To accomplish the necessary

land reclamation and water treatment, the State will need time to develop specifications, bid and award contracts, secure necessary easements and permits, and design and construct needed treatment facilities.

With the adoption of special reclamation tax rate increases and the creation of the Advisory Council, West Virginia has created a fiscally sound mechanism to eliminate the deficit in the Fund within a reasonable period of time. Therefore, we find that West Virginia has satisfied the first part of the required program amendment codified at 30 CFR 948.16(lll).

B. Ensure Sufficient Money Will Be Available To Complete Existing and Future Bond Forfeiture Reclamation

At 30 CFR 948.16(lll), we also required that West Virginia improve its ABS to ensure that sufficient money will be available to complete land and water reclamation at existing and future bond forfeiture sites, a requirement that parallels the criterion for approval of an ABS under 30 CFR 800.11(e)(1).

As discussed above, the current deficit in the ABS should be eliminated in about three years. If current estimates of the Fund's deficit are in error, the Advisory Council must recommend changes to the Legislature and the Governor to assure that the deficit is eliminated in a timely manner.

With respect to future reclamation obligations, the Advisory Council has an obligation under State law to monitor the Fund, address funding-related issues, and recommend measures to ensure the long-term solvency of the Fund. Specifically, W. Va. Code 22–1–17(f)(1) provides that the Advisory Council must study the effectiveness, efficiency and financial stability of the Fund with an emphasis on "development of a financial process that ensures the long-term stability of the special reclamation program."

In addition, W. Va. Code 22–1–17(f)(6) provides that the Advisory Council must "[s]tudy and recommend to the Legislature alternative approaches to the current funding scheme of the special reclamation fund, considering revisions which will assure future proper reclamation of all mine sites and continued financial viability of the state's coal industry." We interpret this provision as meaning that, instead of relying solely on a coal production tax, the Advisory Council must examine and recommend other funding mechanisms such as a sinking fund, insurance, trust fund, or escrow accounts to meet future bond forfeiture reclamation obligations.

With the establishment of the Advisory Council and the requirement that the Council make recommendations to the Legislature and the Governor on appropriate methods of financing existing and future ABS reclamation obligations, West Virginia has created a mechanism whereby the State has the capability to maintain its ABS in a manner consistent with 30 CFR 800.11(e)(1). Therefore, we find that West Virginia has satisfied the required program amendment codified at 30 CFR 948.16(lll). However, we recognize that the mechanism adopted by the State does not ensure implementation of the Advisory Council's recommendations, which must be approved by the Legislature and the Governor before they can take effect. In the event that the Legislature and the Governor do not approve the Council's recommendations, we will reevaluate the adequacy of the State's ABS and, if appropriate, provide notification to West Virginia under 30 CFR 732.17(c) and (e) that it must amend its program to restore consistency with Federal requirements. With this caveat, we are removing the required amendment at 30 CFR 948.16(lll).

V. Summary and Disposition of Comments

Public Comments

In response to our request for comments from the public on the proposed amendment (see Section III of this preamble), we received comments from the WVHC; Morgan Worldwide Mining Consultants, Inc. (Morgan Consultants), a consultant for the WVHC; the West Virginia Coal Association, Inc. (WV Coal Association) and Working On People's Environmental Concerns (WOPEC), an environmental consultant. Our summary and disposition of those comments appear below.

1. Advisory Council

WVHC expressed doubts as to the constitutionality of the Advisory Council established by the legislation, stating that the council appears to violate provisions of the West Virginia Constitution relating to separation of powers. According to WVHC, in devising the council, the Legislature gave itself the power to appoint members to what is essentially an executive body and limited the Governor to approving council members proposed by outside entities. WVHC also expressed concern regarding possible bias within the council, stating that the makeup and appointment scheme associated with the council will no doubt be skewed in favor of industry.

As a Federal agency, we have no authority to evaluate issues relating to interpretation of the West Virginia Constitution. Unless and until the State courts rule otherwise, we must and will presume that legislation adopted by the Legislature and signed by the Governor meets all State constitutional requirements. However, the Advisory Council, which is a multi-interest board, is not much different from other multi-interest boards in West Virginia. The members are appointed by the Governor with the advice and consent of the Senate. All West Virginia advisory boards that we are aware of are created the same way. The various interest groups identified in the statute merely nominate potential members. Only two of the eight members of the Advisory Council must represent the coal industry.

WVHC stated that OSM may not approve a potentially inadequate proposal by delegating responsibility for any necessary future revenue adjustments to an advisory council. According to WVHC, we may only approve an ABS that is fully sufficient, at the time of approval, to cover all potential defaults.

We disagree with these assertions. We believe that as long as the amendment provides a mechanism for remedying ABS inadequacies in a reasonable fashion, we can approve it as being consistent with 30 CFR 800.11(e), which establishes the criteria for approval of alternative bonding systems. 30 CFR 800.11(e)(1) provides that the ABS "must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time." The commenter asserts that monies must be made available immediately to cover all potential defaults. We believe that it is not reasonable, because there is currently no way to immediately predict with certainty future bond forfeitures and future water treatment obligations. 30 CFR 800.11(e)(1) requires that sufficient money "be available," but it does not specify that the money must be immediately available. As we stated in Finding 2, it would be ideal if the State could provide sufficient revenue to immediately eliminate the deficit in the Fund and cover all potential defaults. However, even if the necessary funds *were* immediately available, it would not be possible to reclaim immediately all the land that needs to be reclaimed and treat all the water that needs to be treated due to manpower, logistics, planning and contractual limitations. To accomplish the necessary land reclamation and water treatment, the

State will need time to bid and award contracts, secure necessary easements and permits, design and construct needed treatment facilities.

The increased special reclamation tax rate will be sufficient to eliminate the Fund deficit in about three years. We believe that is a realistic time frame, given the limitations discussed above. The legislation also requires the Advisory Council to develop recommendations for the Legislature and the Governor on ways to ensure that the Fund remains solvent on a permanent basis. As noted in Finding 2, we found that arrangement to be a satisfactory method of meeting the criteria in 30 CFR 800.11(e)(1). If the Legislature or the Governor fail to adopt or implement the Advisory Council's recommendations, we will take action under 30 CFR 732.17(c) and (e), if appropriate.

2. Future Water Treatment Cost Estimates

WVHC stated that our September 7, 2001, analysis is faulty, and that the legislative changes will not eliminate the ABS deficit. WVHC asserted that our analysis is not a substitute for an objective, professional, and rigorous actuarial analysis. WVHC asserted that because the recently approved amendments to the Fund do not require an actuarial study until December 31, 2004, the WVDEP has no idea what its true liabilities are and that there is no rational basis for concluding that the proposed tax increases are sufficient to satisfy liabilities.

WVHC stated that, even if OSM's analysis is accurate, that report concludes that the proposed amendments would only result in a positive Fund balance for about nine years. After that time, the Fund would be in deficit every subsequent year. Therefore, WVHC argued, the amendments fail to meet the standard in 30 CFR 800.11(e)(1), which requires that the ABS have "sufficient money to complete the reclamation plan for any areas which may be in default at any time."

Our September 7, 2001, analysis represents a best estimate at the time, given the data provided by WVDEP. Since that analysis, WVDEP has continued to improve the quantity and quality of its data on current costs and estimates of future bond forfeiture land and water reclamation costs. Consequently, WVDEP's analysis, as well as our understanding of the Fund and its ability to meet bond forfeiture obligations, is improving. Estimating bond forfeiture rates and long-term water treatment obligations is a very speculative endeavor.

We agree with the commenter that our September 7, 2001, analysis is not a substitute for an objective, professional, and rigorous actuarial analysis of the Fund and its reclamation obligations and costs. The legislation requires that the Advisory Council contract for an actuarial analysis on a regular basis, with the first to be completed by December 31, 2004. That due date coincides with the approximate time that our estimates indicate that the Fund's deficit will be eliminated by the recent increases in the special reclamation tax rate. Therefore, the first determination from the professional actuary will be timely from the perspective of assuring that the Fund's deficit is fully eliminated because that determination will provide the Advisory Council with the information it needs concerning recommending measures to ensure its complete elimination.

With respect to the future, the legislation created the Advisory Council to study the issue, monitor the Fund, and develop recommendations to ensure long-term solvency. As discussed in Finding 2, we believe that the legislation thus establishes a mechanism whereby the Fund can meet the criteria of 30 CFR 800.11(e)(1).

Our responses to specific comments follow.

a. Actuarial Analysis of the Fund

WVHC stated that a proper actuarial analysis of the Fund has never been done, and that a preliminary study done in 1982 was inadequate.

We disagree with this comment. The State submitted an actuarial study on October 29, 1982, and Deloitte and Touche completed an actuarial study of the Fund in March 1993. The 1982 actuarial study found that the Fund was solvent, because it contained a funding mechanism (the special reclamation tax) to provide for the cost of future reclamation. OSM subsequently found the State's ABS provisions to be in accordance with section 509(c) of SMCRA and the Federal regulations. The Deloitte and Touche study concluded that the Fund had an accrual deficit position as of June 30, 1992, but that the Fund would realize gradual improvement over the next five years. Unfortunately, that study proved to be wrong.

b. Estimate of Fund Liabilities.

WV Coal Association stated that our September 7, 2001, analysis grossly overestimated the liabilities associated with the Fund. However, WVHC asserted that WV Coal Association produced no documents in several areas where WV Coal Association claimed that OSM overestimated costs. Thus, WVHC argues, many of WV Coal Association's assertions are unsupported by any documents or written analysis and appear to be nothing more than speculation.

We see no need to determine whether either commenter is correct. The legislation adopted in 2001 provides a means for further study of the issue and adjustments, as appropriate.

c. Estimated Annual Water Treatment Cost Increase.

WVHC stated that our September 7, 2001, analysis is faulty because we projected that costs for water treatment would increase $230,000 per year rather than $2.462 million per year as top WVDEP officials indicated.

Further, WVHC stated that WVDEP's annual costs at just five sites increased from $0.29 million in FY 1985–86 to $3.72 million in FY 1999–2000. This is an increase of $3.43 million in fourteen years, or about $245,000 per year. Thus, the WVHC claims that the increased costs at these five sites by themselves exceed OSM's estimate, without even considering the additional treatment costs at future forfeited sites.

WV Coal Association stated that it believes OSM's $230,000 estimate is the best estimate since it is based on 20 years of mining activity.

We discussed annual treatment costs with WVDEP officials when preparing our analysis of the 7-Up Plan and had an understanding that the $2.462 million was an annual estimated cost repeated every year at the same rate, rather than a cumulative cost to be added each year. To assume the latter would be to assume that almost all permits where acid mine drainage is being treated, would be forfeited. We do not believe that assumption to be a reasonable expectation. Rather than using a one-time $2.462 million cost, we based our estimate of future costs on known historical costs. Over the past 20 years, the State has forfeited bonds where water treatment, if it were to occur, would cost approximately $4.6 million over the 20-year period. This equates to $230,000 per year. We are not certain that the WVHC estimate of a $245,000 increase in cost per year is supported by facts related only to water treatment. However, our calculations were based only on data concerning water treatment. The $230,000 is a 20-year average, but there could have been spikes in costs during some years.

WVHC also stated that, even if we were correct in assuming that water treatment liability would increase by

$230,000 per year, our spreadsheet does not apply that assumption. Instead, the commenter stated, we only increased the water treatment liability figure by $230,000 in three years— 2002, 2003 and 2004.

In response, we agree that we had made this inadvertent programming error. However, even with this correction, our basic conclusion remains the same. The Fund will eliminate the deficit and retain a positive balance for a few years. We agree that a more thorough analysis is necessary to estimate costs and make long-term predictions, which is exactly what the new Advisory Council has been charged to do.

d. Trend in Number of Permits That Produce Acid Mine Drainage (AMD)

WVHC stated that we were mistaken when we stated, on page 3 of our September 7, 2001, analysis, that "there has actually been a downward trend in the number of new permits issued that have generated water pollution over at least the last ten years (Appendix IV)." The trend, the WVHC stated, is one of increasing numbers of active sites with AMD discharges and declining assignment of those sites to the bond-forfeiture column. According to the WVHC, this creates a huge potential liability that is much worse now than it was in 1982. In addition, the WVHC asserted, the older the site, the greater the risk of bond forfeiture, since the mines are less likely to be producing coal and revenue.

In the chart to which this commenter refers, we were merely attempting to show how many of the permits issued for each year between 1982 and 1996 developed an AMD condition. The table indicates that fewer permits issued in 1996 developed AMD than did permits issued in preceding years and that there is a declining trend from 1982 to 1996. However, the commenter is correct that the universe of sites with AMD has grown since 1982 and, therefore, the reliance on historic data may not be the best tool for evaluating long-term needs. We agree that there is a need for more data and a rigorous data analysis. The State program amendment that we approved on December 28, 2001, provides for such actions through the tasks assigned to the Advisory Council.

WVHC stated that our assertion that the water treatment problem is decelerating is directly inconsistent with our statement on September 3, 1999, that "[t]his problem is accelerating with the continued forfeiture of performance bonds that require water treatment."

The commenter has misinterpreted our September 3, 1999, letter. The "problem" we referred to in that letter is the increasing inability of the Fund to meet its obligations. That is, the Fund was falling deeper into debt. We did not state, nor imply, as the comment suggests, that the rate of bond forfeiture sites requiring water treatment is increasing.

e. Comparison of OSM's Analysis With Other Studies

WVHC stated that our analysis is inconsistent with the conclusions of WVDEP's economic consultants in their draft February 2001 report entitled "The Mountain State Clean Water Trust Fund." WVHC asserted that the report calculated that guaranteeing payment of future water treatment costs would require firms currently treating water to pay roughly $35.9 million annually. In contrast, the 7-Up Plan would generate revenues of only $20.79 million for the first three years, declining to $8.82 million thereafter.

This comment inappropriately compares two plans that are fundamentally different and not directly comparable. The goal of the "Mountain State Clean Water Trust Fund" was to create a trust fund to pay for water treatment costs on active mine sites as well as for bond forfeitures. The 7-Up Plan, however, is designed to pay the reclamation and water treatment costs for only revoked permits where the forfeited bond is not sufficient to do so. The 7-Up Plan is not designed to pay the water treatment costs of sites while they are active, i.e. while they are still under a permit. The $35.9 million water treatment cost estimate mentioned in the Trust Fund report has no direct comparison to the costs predicted in our September 7, 2001, analysis.

f. Analysis Reporting Methods

WVHC stated that our reporting is unconventional and makes it impossible to determine the cumulative effect of the increased tax on the Fund balance. According to the commenter, we also confused revenues with liabilities. As a result, the WVHC asserted, the net end-year balance in 2022 should be a negative $61.42 million, rather than the negative $7.75 million in our table.

This comment indicates a lack of understanding of the nature of water treatment. Water treatment is an operating cost that does not accumulate if the water is not treated in any given year. The only figures that should be accumulated as increasing debt are the capital costs. In any event, a cumulative negative figure is important as an indicator of when the Fund needs to be adjusted to assure sufficient revenue for water treatment or capital construction. We concur that the new Advisory Council must gather data and evaluate the adequacy of the Fund's ability to cover water treatment.

WVHC stated that we assumed that WVDEP's water treatment liability would not increase for the first two years, and would be limited to its actual current costs of $1.5 million. WVHC asserted that we based this assumption on the premise that WVDEP could not begin increased water treatment until more money became available from the increased special reclamation tax. However, WVHC stated, it would not take two years to generate more funds for water treatment and WVDEP has an obligation to begin reclamation of AMD within 180 days after bond forfeiture. As a result of this error, the water treatment costs in the first two years are underestimated by $3 million. Consequently, according to the commenter, the cumulative deficit will grow to $141.06 million by 2022, and only one year (2005) shows a surplus. In addition, Morgan Consultants stated that the data indicate that the Fund has negative balances in the first two years and therefore has no ability to complete reclamation of any bond forfeiture sites during that period.

Our assumption to limit water treatment costs to $1.5 million in the first two years is reasonable. The $1.5 million estimate is the State's current, actual annual operating costs. We expect this level of expenditure to continue until the increased tax revenues have had time to accumulate, and the State has had time to bid and award contracts, secure necessary easements and permits, design and construct needed treatment facilities, and begin treatment. It is not reasonable to assume that full treatment will begin immediately on all backlogged sites requiring treatment. We recognize that the current estimate of treatment costs is based on very limited data and a formula for estimating costs. WVDEP needs to collect data showing seasonal variation at sites requiring water treatment, and it must increase staff or hire contractors for site-specific designs of those treatment systems. Although WVDEP has an obligation under CSR 38–2–12.4.c. to begin reclamation within 180 days after bond forfeiture, that has not happened in all instances. However, we believe that the revisions to the State's ABS that we approved on December 28, 2001, will allow the State to eliminate that deficit and to begin treating pollutional discharges at all bond forfeiture sites. If changes in the tax rate are necessary to assure

elimination of the deficit, the revised ABS provides for the Advisory Council to recognize that need and to make appropriate recommendations to the Legislature and the Governor concerning needed adjustments to the special reclamation tax rate.

3. Methods Used to Estimate Water Treatment Costs

a. Cost Estimate of Reclaiming Bond Forfeiture Sites With AMD

WVHC stated that WVDEP has grossly underestimated the costs of reclaiming bond forfeiture sites with AMD. WVHC also stated that WVDEP used a methodology that its own consultant criticized as inaccurate.

WV Coal Association stated that we overestimated the capital operating costs for water treatment at bond forfeiture sites. For example, WV Coal Association stated, sediment ponds and needed roads would likely already be in place at sites where proper inspection and enforcement had mandated adherence to the mining permit. In addition, WV Coal Association stated that we over estimated the costs associated with powering water treatment systems. The majority of water treatment devices in use in West Virginia, the WV Coal Association asserted, are powered by the natural flow of water (similar to a water wheel) and require no electrical power source.

WV Coal Association argues that annual treatment costs will be reduced for two other reasons. The first reason is that "the material that would likely lead to AMD as water leaches through the mining spoil is [typically] encapsulated on the bench area of the mine and isolated from water sources." The second is that "WVDEP will rarely issue a permit where the generation of AMD is anticipated."

In response, we acknowledge the difficulty of obtaining accurate reclamation cost estimates. Program liability cost estimates, derived from current WVDEP inventory data, are at best gross estimates that may either underestimate or overestimate the actual program liability costs. A number of factors, such as costing methodology and water quality data limitations, influence the accuracy of cost projections. Water quality data used with the inventory was obtained from the WVDEP bond forfeiture water quality database that includes analytical data from water samples collected by WVDEP staff and consultants. Water quality data can be negatively affected by insufficient samples to characterize the discharge, lack of seasonal variation data, adequacy of sampling protocol and accuracy of flow measurements, etc. However, we believe that WVDEP's inventory data will improve significantly over time as WVDEP gains new knowledge and experience and as it identifies the costs associated with planning, developing, installing, and treating bond forfeiture sites with AMD.

b. Methodology for Determining Loadings

WVHC stated that WVDEP's method of cumulating AMD loadings is incorrect. Quoting from OSM's December 2000 draft "Appalachian Region AMD Inventory," WVHC stated that "[a]cid loading is a function of the volume of flow from the discharge times the amount of pollutants contained in the discharge." WVHC also stated that WVDEP assumes that treatment cost is a simple function of cumulating the product of flow times concentration across all sites, and calculating cost as a function of the total loading. However, WVHC asserted, WVDEP's own consultant has stated that because many sites use a variety or combination of chemicals depending on flow volume or quality, temperature, availability, or a host of other factors, loads and flow cannot be summed, and the entire matrix must be viewed as non-cumulative.

In response, we acknowledge that each site requires its own analysis. We believe both WVDEP's and our analyses are simply methods to obtain rough cost estimates for overall planning purposes. Further refinement of actual treatment costs will take time and more site-specific data than is currently available. WVDEP must continually update its data and collect this kind of information.

c. Flow Data

WVHC stated that WVDEP's flow data is incorrect. WVHC stated that WVDEP's flow data is based on single sampling events during the driest month of a record drought year. WVHC stated that at a minimum, the data should be adjusted to account for the variability of flow, and the potential for higher flows in wetter years, and therefore, higher treatment costs must be considered.

WVHC stated that WVDEP based its analysis of flow data on the 1998 AMD inventory report. Chart No. 1 in that report, WVHC stated, contains flow data for each of the 112 bond forfeiture sites, but does not total the flow of those sites. The total flow of 6,251 gallons per minute (gpm) can be calculated by simply adding the flows of the individual sites listed in Chart No. 1, WVHC stated.

WVHC stated that in contrast to the 1998 data, two other WVDEP and OSM calculations show much higher flows. WVHC asserted that as a result, WVDEP's total annual cost of water treatment at these sites is greatly underestimated.

WOPEC addressed WVHC's claim that treatment costs were seriously understated by underestimating flow. WOPEC acknowledged that, "As illustrated in the July 2, 2002 update, there were problems with flow and quality, but these problems overstated estimated costs rather than understating these costs." WOPEC emphasized that any program as complex as estimating treatment liabilities will encounter details that have to be added, eliminated, or modified as the program is implemented and associated problems are identified.

The WVHC comment inappropriately compares flow data from active mines on the 1998 AMD inventory with flow data from 112 bond forfeiture sites. However, the commenter has accurately identified an initial difference of 2,501 gallons per minute between WVDEP's and our representation of total flow rates for bond forfeiture sites. We are continuing to work with WVDEP on the inventory of bond forfeiture sites with AMD. Further evaluations identified errors in the inventories resulting in flow rate adjustments by both agencies.

We have always recognized that program liability costs, derived from the inventory data, are at best a gross estimate that may either underestimate or overestimate the actual program liability cost. There are a number of factors influencing the "absolute" accuracy of these cost projections, primarily the costing methodology and water quality data limitations (insufficient samples to characterize the discharge, lack of seasonal variation data, adequacy of sampling protocol and accuracy of flow measurements, etc.). Consequently, we may not know the exact costs until treatment systems have been installed at each site and actual construction and operating cost data are collected and analyzed. WVDEP's revised ABS includes provisions for adjustment in the event reclamation costs are either underestimated or overestimated. The State's ABS now includes an Advisory Council that is charged with ensuring the effective, efficient, and long-term financial stability of the special reclamation program and requires an actuarial review every four years.

d. Current WVDEP Chemical Treatment Costs

WVHC stated that WVDEP underestimated its own chemical treatment costs at five sites where WVDEP is responsible for chemical treatment by about $1 million. WVHC stated that WVDEP listed its total cost for five sites (DLM, F&M, Omega, Royal Scot, and T&T Fuels) as $1,540,000. The individual cost figures for each site differ greatly from WVDEP's other recent cost estimates for the same sites. For example, WVHC noted that the June 2000 WVDEP Fund balance sheet showed a total of $2.47 million, and August 8, 2000, WVDEP Fund Water Quality Efforts and Plans showed a total of $2.65 million for these five sites. Since annual operating costs are the major factor driving long-term costs, WVHC stated, the result is a huge underestimation of liability. WVHC also stated that other WVDEP information indicates that the State seriously underestimated the assumed water treatment costs for the T&T Fuels site.

WV Coal Association responded by stating that WVHC is incorrect in its assertion that the current cost estimates for treating AMD at the sites discussed above is $1 million per year less than other recent estimates. The lower number, WV Coal Association maintains, does not represent an estimate but is WVDEP's actual costs. Further, WV Coal Association notes that the F&M site is funded by a private trust with $3.8 million in assets.

We disagree with the comment that WVDEP has underestimated its water treatment costs at the five sites referred in the comment. WVDEP maintains expense records for all bond forfeiture sites where chemical treatment is conducted. WVDEP's most current annual treatment costs for those sites are $1,540,000. Although WVDEP included water treatment costs for F&M at $200,000, those costs are actually being reimbursed through a trust fund administered by a local watershed group and consequently, upon reimbursement, do not represent a liability to the Fund. The current water treatment costs at the T&T Fuels site are $400,000. We believe that some of the costs identified by the commenter include both operating and capital construction costs for the bond forfeiture sites mentioned above.

e. Water Treatment Costs at Active Permits

WVHC stated that OSM and WVDEP have underestimated actual treatment costs at active mine sites with AMD. WVHC asserted that OSM and WVDEP state that actual treatment costs at active mine sites with AMD are no more than about $25 million. In contrast, WVHC asserted, WVDEP's own consultant has stated:

> Using historic State expenditures as a standard, industry spends at least $30 million per year neutralizing acidity in West Virginia. Capital-intensive, high-volume plants designed to deal with large alkaline flows laden with iron and difficult manganese sites suggest the total bill to industry exceeds $60 million.

WVHC asserted that WVDEP chose to use a simplified model for estimating treatment costs at active sites rather than obtaining all current actual costs from industry. As a result, WVHC asserted, OSM and WVDEP have ignored available or obtainable data and instead used a methodology that likely underestimates actual costs. WVHC further asserted that to the extent that WVDEP's consultant, WOPEC, used actual cost data from some industry sites, WVDEP did not verify that data and does not know where it came from or how it was obtained.

WOPEC responded to these assertions. WOPEC stated that actual cost data was used in estimating annual treatment costs and that, based on its experience, this data was quite reliable. In its December 17, 2001, report, WOPEC stated that in developing a general methodology, WVDEP obtained actual treatment costs from numerous coal companies that covered 95 individual treatment sites. This was then supplemented with actual costs from 22 treatment sites currently operated by the WVDEP. The costs for these sites were then used to determine the annual cost per ton of loading for acidity, iron, and manganese. WOPEC also noted that, as seen in the December 17, 2001, report, actual costs were utilized in projecting annual estimated treatment costs. WOPEC stated that OSM did not utilize loading and actual operator treatment costs to produce its annual estimated costs, but instead utilized a modified version of the Tetra Tech methodology, which produced nearly the same estimated annual treatment costs as the WVDEP estimate.

WVDEP and OSM independently conducted treatment cost calculations for active mines and arrived at cost estimates of $25,600,000 and $24,990,761, respectively. Although we relied on a computer program to run estimated costs, WVDEP hired a consultant, WOPEC, to assist in developing its estimated annual treatment costs. The consultant used actual treatment costs supplied by the coal industry, as well other State treatment costs to develop a method to calculate costs. These costing methodologies are explained in Appendix I of the Report. Both models are conservative. That is, both models probably provide higher projected cost estimates than necessary, because sites are included in the inventory that will not actually require long-term water treatment after land reclamation is completed. Also, the estimates include a significant cost component for pumped discharges that are associated with active mines that are likely to have smaller discharges after mining. Both WVDEP's and our costs were limited to annual treatment and did not include capital construction costs. It is not clear, however, whether the $30—$60 million cost range that WVHC referred to is adequately supported by data, and it is not clear whether these costs are for treatment only or are intended to include both capital construction and operating costs. Therefore, we find that there is insufficient justification for use of WVHC's $30—$60 million estimate in place of the cost estimates that both we and WVDEP developed.

f. Costs of Treating to Effluent Standards

WVHC asserted that WVDEP understated water treatment costs by including costs at sites that are violating required effluent standards. WVHC stated that WVDEP's analysis is based on the assumption that existing sites that are treating AMD are complying with required effluent standards under the Clean Water Act. WVHC stated that, in an October 2001, slide presentation produced by OSM in response to the WVHC's document requests in the pending citizen suit, OSM stated that it downloaded records of effluent violations at bond forfeiture sites from WVDEP's Environmental Resources Information System (ERIS) database. From these records, WVHC stated, OSM determined that 46 sites were producing AMD that was causing violations of effluent limits under the Clean Water Act. WVHC stated that those permits with violations include T&T Fuels and Royal Scot Minerals, which are two of the sites where WVDEP is responsible for chemical treatment. Yet, WVHC asserted, WVDEP has based its treatment costs at those sites on existing treatment levels, not on the costs needed to comply with required effluent limits. WVHC stated that WVDEP's proposal is therefore inadequate because it fails to take account of the cost of treating acid mine drainage to Clean Water Act effluent standards.

In response, we acknowledge that treatment costs may go up for any sites not meeting Clean Water Act standards. We have not completed detailed analyses of the sites to determine if

these exceptions are caused by site or technological limitations that would have a significant bearing on costs. Again, we were only doing a model analysis to obtain gross cost estimates for the entire universe of pollutional discharges at bond forfeiture sites. The State will continue to refine these data, to fully account for the costs of treating AMD to Clean Water Act effluent standards.

g. Passive Water Treatment Costs

WVHC stated that WVDEP improperly limited treatment costs to the costs of passive treatment. WVHC stated that to be effective on a long-term and permanent basis, treatment costs must consider the cost of constructing treatment facilities and using chemical treatment for such discharges.

WOPEC responded to WVHC's assertion that treatment costs were limited to the costs of passive treatment systems by stating that the assertion was absolutely false and that:

> absolutely no passive treatment methods or costs [were] used whatsoever in my projection of estimated annual treatment costs for the Active Permits or the Bond Forfeiture permits. All cost data was derived from active type treatment systems utilizing some form of chemical treatment.

We have no evidence that would lead us to conclude that WVDEP limited its treatment costs to the costs of passive treatment systems. However, passive systems may be used if sufficient funds are provided for their continued maintenance and replacement as long as treatment is necessary on bond forfeiture sites.

h. Removal of Sites From AMD Inventory

WVHC stated that OSM and WVDEP improperly deleted active sites from its AMD inventory.

We disagree. The commenter provides no basis for this allegation. We only deleted a site from the active inventory if it was found to have no pollutional discharges, or it was moved to the bond forfeiture inventory if the permit was revoked. The OSM/WVDEP inventory effort began by including all permanent program bond forfeiture permits listed in the WVDEP Bond Forfeiture Permits Database that were shown to have "yes" in the AMD field of that database. That review identified 219 permits with AMD from a total of 1,695 bond forfeited permanent program, interim program and pre-law coal mining permits. After several months of discussions and permit file and field reviews, WVDEP and OSM agreed to a revised listing of permits to be included on the AMD inventory. Questionable sites were retained on the inventory. This was to ensure that such sites would not be eliminated from the inventory if they could eventually become a future AMD liability to the Fund. The water quality consideration used to determine retention on the inventory was based on the required effluent limitation standards for the site when it was active. This inventory effort actually increased the total number of permits from the listing that WVDEP had previously identified as bond forfeiture sites requiring treatment.

WVDEP has since prioritized the inventory and designated many of the questionable permits as insignificant discharges not requiring treatment. We entered into a work plan agreement with WVDEP to evaluate, during 2002, all those permits (26) to determine if WVDEP's designation is correct and whether or not the permits should be retained on the inventory. The 2002 work plan also includes an analysis of the remaining permanent program permits included in the bond forfeiture permits database (1,695 permits) that show a "No" or were left blank in the AMD field of the database. We believe that our overall approach in developing the inventory is very reasonable and complete, and we did not eliminate permits from the inventory with disregard for future liability as portrayed by the commenter.

WVHC stated that in October 2001, OSM and WVDEP signed a "Detailed Oversight Evaluation Work Plan" for Evaluation Year 2001, which states:

> While developing OSM's Regional AMD Inventory with WVDEP, 112 sites were removed from WVDEP's 1998 Active Mine Drainage Inventory due to insufficient water quantity or quality information.

Thus, WVHC stated, OSM and WVDEP failed to analyze these 112 sites and assumed that they pose no risk of future AMD liability. A more realistic assumption, WVHC stated, is that these sites will produce AMD and become a Fund liability at the same historical rate as other sites.

In response, we note that the 112 sites or records (80 permits) that were removed from the 1998 Active Mine Drainage Inventory were removed only after appropriate consideration. Nine of the 80 permits had been revoked and are now the responsibility of the Special Reclamation Program. Forty-nine permits had received a Federal inspection with no indication of water quality problems. The violation history for each of the remaining 22 permits was checked to determine whether effluent limitation violations had ever been issued. Seven permits were identified as having past effluent limitation violations. Those seven permits are part of our oversight for 2002 and will be evaluated in the field this year.

WVHC stated that the "Detailed Oversight Evaluation Work Plan" for Evaluation Year 2001 also states:

> Of the 918 permanent program permits that had been forfeited when this effort started, OSM and WVDEP focused on 219 permits where the WVDEP had recorded in its "permits" database that at one time produced AMD. OSM and WVDEP reached consensus that 148 of the 219 permits should continue to appear on an AMD inventory. For the remaining 699 permanent program permits, OSM proposes to conduct a spot check to achieve a level of confidence that none of the 699 permits generate AMD.

Thus, WVHC stated, OSM and WVDEP excluded these permits from its analysis and assumed that these permits would not become a future liability to the Fund. WVHC stated that according to a draft OSM memorandum, WVDEP also refused to assist OSM in validating or refining the AMD bond forfeiture inventory for any permit where the Special Reclamation Program database showed that land reclamation had been completed.

We disagree with the commenter's assertion that we improperly assumed that none of these permits would produce AMD and become a Fund liability and, therefore, should have included them in the analysis. We found in our analysis of the WVDEP Bond Forfeiture Permit and Water Quality databases that WVDEP has been conducting an aggressive water sampling program at bond forfeiture sites since 1990. Despite statements in the draft OSM memorandum, the State has recently been working with OSM on gathering data for any bond forfeiture site with a pollutional discharge. The WVDEP has devoted an exceptional amount of time and effort to sampling water at permits with bond forfeiture (including interim permits). The extensive water quality work that WVDEP has performed at these sites provided us confidence that the WVDEP had accurately identified the majority, if not all, permanent program bond forfeiture permits with AMD. However, due to our oversight responsibilities, we propose to spot check the remaining 699 permits. Given our experience to date, we do not anticipate finding any discrepancies during this review that would alter WVDEP's original analysis.

WVHC also stated that the Oversight Plan also states:

> During the cooperative development of the Bond Forfeiture AMD Inventory in 2000/2001, WVDEP identified 54 permits where

the reclamation liability analysis, including water quality, had not been completed, but AMD was a concern. The WVDEP agreed that all 54 sites should be included on the Bond Forfeiture AMD Inventory and site-specific information be collected by WVDEP and provided for the Inventory. That information was not available for 11 of the 54 permits at the end of the Inventory effort.

WVHC stated that OSM and WVDEP excluded those 11 permits from the analysis because of the optimistic assumption that they would not become a liability to the Fund. According to the commenter, a more realistic assumption is that these sites will become liabilities to the Fund at the same historical rate as other sites.

The 11 permits were not excluded from the cost calculations. A default cost was initially used pending updated water quality information from WVDEP, which will allow for the estimation of site-specific water treatment costs.

i. OSM's Consultant's (Tetra Tech) Analysis

WVHC stated that, in its August 24, 2000 "Final Report on the Contingency Costs of Long-Term Treatment of Mine Drainage," OSM's consultant, Tetra Tech, calculated that the long-term costs of treatment of AMD at forfeited mine sites in West Virginia would be $2,643,099,976 after fifty years. In contrast, WVHC stated, WVDEP calculates that its annual liability for AMD treatment will be less than $10 million per year after twenty years. After fifty years, the cumulative liability based on this annual rate would be less than $500,000,000. WVHC stated that this is less than one-fifth of the Tetra Tech figure. WVHC asserted that WVDEP and OSM have failed to reconcile WVDEP's analysis with Tetra Tech's analysis.

WOPEC responded to the comment that WVDEP and OSM have failed to reconcile WVDEP's analysis with Tetra Tech's analysis by pointing out that Tetra Tech relied upon the methodology used to estimate treatment costs for Superfund sites. According to the commenter, that methodology does not translate well to treatment of pollutional discharges from coal mines.

We disagree with the commenter's assertion that we failed to reconcile WVDEP's analysis with Tetra Tech's analysis. There is nothing to reconcile, because the Tetra Tech analysis was not intended to produce a valid cost for water treatment. In its August 4, 2000, "Final Report on the Contingency Cost of Long-Term Treatment of Mine Drainage," Tetra Tech states that its calculations were "illustrative of the use of a methodology," but cautioned that "they did not reflect final determinations of unfunded costs." In other words, Tetra Tech was demonstrating how to use its methodology, but it was using hypothetical data to do so. The Tetra Tech report advises OSM not to use the examples contained within the report as cost projections for AMD treatment. The Tetra Tech report in question was done prior to the completion of the OSM inventory that shows that costs for all active sites do not exceed $25 million per year, and only a portion of those sites are likely to be forfeited in the future. The report used examples of treatment costs that do not reflect current estimates.

4. Future Land Reclamation Costs

a. Actual Land Reclamation Cost Estimate

WVHC stated that OSM and WVDEP grossly underestimated West Virginia's unfunded liabilities for land reclamation at bond forfeiture sites. WVHC stated that WVDEP's estimated $27.9 million liability for land reclamation works out to only $2,558 per acre, based on 304 permits that contain 10,902 disturbed acres. WVHC stated that WVDEP's current land reclamation costs are $5,400 per acre for poor reclamation. The commenter stated that WVDEP's reclamation costs on forfeiture sites were $2,820 per acre in 1994—the lowest per acre cost in the history of the program, and in the twelve months ending June 30, 1995 were $4,214 per acre statewide.

In contrast, the WV Coal Association stated that several of the land reclamation estimates appear excessive. On some sites, the WV Coal Association asserted, land reclamation has been completed with final regrading and revegetation work in place. WV Coal Association also stated that we failed to account for the sites where remining operations will eliminate environmental liabilities altogether, and at no cost to the Fund. WV Coal Association pointed out that a recent rulemaking by the U.S. Environmental Protection Agency extends incentives to remine sites to operations extracting coal from sites forfeited since 1977. WV Coal Association stated that many of the permits listed on the Fund inventory were revoked and bond forfeited for minor infractions such as failure to renew or failure to maintain proper insurance. The commenter also stated that most recent WVDEP reclamation costs are from large sites and, therefore, are not representative of all sites.

We believe that, at the time of our analysis, the estimated land reclamation liabilities listed in the analysis represented the best estimate available of the expenditure necessary to complete reclamation of those sites. We recognize that the source of that information is not without deficiencies. However, because it is the best information available, we have used it in evaluating the entire system. Individual discrepancies would not alter the findings that we made concerning the State's amendment. The Advisory Council will consider the reliability of that data in developing its recommendations.

The existing land reclamation liabilities of the Fund are estimated to be $27.9 million. At the time of our analysis, Fund data indicate that $13.5 million dollars had already been spent at 83 of the 304 sites. Although we cannot state exactly what has been expended, we know that the total amount that the Fund has or expects to expend on these sites is approximately $41.4 million. If that were applied to the disturbed acres, the per acre figure becomes approximately $3,800 ($27.9 million + $13.5 million divided by 10,901 acres) rather than $2,558.

Not all of the 10,901 acres listed as disturbed acres require backfilling and grading, which is the most expensive component of land reclamation. In fact, we are aware that in some cases the disturbed acreage figure is a carryover from the inspection and enforcement estimate of the portion of the permit that had been disturbed without reduction for any reclamation completed by the operator. The WVDEP does not necessarily revise the disturbed acreage data until it is ready to contract the site for reclamation and have an accurate measurement. Therefore, dividing the total liability amount by the disturbed acreage figure does not provide an accurate cost per acre cost estimate.

All of these projections are estimates. The revised ABS includes periodic review by the multi-interest Advisory Council, which will have the benefit of determinations provided by a professional actuary, to evaluate the need for future adjustments to the Fund. The WVDEP has spent considerable effort to redesign the data management system that it is using for the Fund and that effort should result in a system that will provide accurate, conclusive information that can be used for analysis and management decisions.

WV Coal Association stated that recently implemented changes to West Virginia's mining program will reduce the liability associated with a bond forfeiture site. For example, new regulations associated with excess spoil minimization, approximate original

contour (AOC) restoration, and contemporaneous reclamation will reduce the amount of disturbance. In addition, WV Coal Association stated, a properly maintained inspection and enforcement program should not only reduce the liability of a given site, but should prevent bond forfeiture totally. WV Coal Association asserted that, at any given time during the life of the mining operation, only one-third of the permit should be disturbed, thus effectively increasing the amount of bond available in the event of forfeiture by three times the original amount.

In response, we agree with WV Coal Association's comment that a properly implemented inspection and enforcement program and close adherence with the State's excess spoil, AOC, and contemporaneous reclamation rules should reduce the amount of unreclaimed disturbed area and, therefore, the potential reclamation costs in the event of bond forfeiture (although it will not prevent bond forfeiture, contrary to the commenter's allegations). However, the WV Coal Association failed to mention that only mountaintop removal mining operations are subject to the requirement that only one-third of the permit area be disturbed at any given time. Furthermore, there are other provisions within the State's rules that, under certain circumstances, would allow for the approval of larger disturbances involving mountaintop removal and multiple seam mining operations. Therefore, while relevant, we do not believe that these observations warrant special consideration in the analysis of the West Virginia ABS.

If reclamation costs are lower, the Advisory Council has the authority to recommend appropriate Fund adjustments to the Legislature and the Governor. We agree that the ideal program that all States should strive to achieve would be one that prevents the occurrence of bond forfeitures. Unfortunately, we do not believe that the total elimination of future bond forfeitures is a realistic expectation, and we must plan accordingly.

WV Coal Association stated that several of the permits listed in the forfeiture inventory also appear to qualify for AML funds and should be removed from the Fund inventory.

We do not believe that there are any AML eligible sites requiring reclamation under the Fund. However, if there are any, WVDEP should identify those sites and, based on its approved program, determine if they should be removed from the inventory.

b. Cost of Reclamation at Four Sites

WVHC stated that WVDEP's reclamation costs at three sites ($2.3 million at the Omega site, an additional $2.9 million at the T&T site, and $25 million at the Royal Scot site) exceed the WVDEP's $27.9 million estimate for all land reclamation. These three sites combined, therefore, exceed $27.9 million by themselves, without considering any of the other 110 bond forfeiture sites on the list.

WVHC further stated that a State official testified that this has not fixed the problems at the Royal Scot site. Fixing the problems at Royal Scot would cost either (1) $25 million in one-time capital costs for a complete fix; or (2) $6.5 million in capital costs for land reclamation and $30,000 to $40,000 per month in perpetual operating costs for water treatment. This translates to $360,000 to $480,000 per year, much higher than the $250,000 WVDEP assumed. Furthermore, the $25 million in capital costs for this one site alone approaches the total estimated costs for all existing bond forfeiture sites in the state, which WVDEP estimated at $27.89 million. In the WVDEP's spreadsheet, the total land reclamation liability for all Royal Scot sites amounts to only $6,222,631.

Additionally, WVHC stated, WVDEP has estimated that the cost of land reclamation for a small mountaintop removal mine that recently forfeited its bond (Quintain) will be more than $15,000.00 per acre. Because the Quintain mine was permitted before the requirements of the *Bragg* consent decree went into effect, the $15,000 per acre reclamation costs are significantly lower for that mine than such costs will be post-*Bragg*. WVHC stated that WVDEP's land reclamation estimate is therefore far too low, even before the more expensive reclamation requirements resulting from *Bragg* are included in the cost calculations.

The liability figures discussed in this comment point out the difficulties encountered when parties try to quantify the liabilities of the Fund. The $2.3 million reclamation liability for the Omega site and the $2.9 million for the T&T site noted in the comment are not the remaining land reclamation liabilities. All land reclamation at the Omega site has been completed. The land reclamation liability for the T&T site is $105,000 and $6.2 million for the Royal Scot sites.

WV Coal Association noted what it believes are discrepancies between WVHC statements on cost estimates and those of a State official's testimony.

We believe that these differences of opinion serve to emphasize the importance of WVDEP's current efforts to improve the quantity and quality of its Fund inventory data. The Quintain forfeiture site was included in the inventory. However, our cost projections did not include a special analysis of mountaintop removal mining permit failures. Nor have we conducted a study of the effects of the permitting requirements related to the consent decree resulting from the Bragg litigation on the expected costs to complete reclamation in the event of bond forfeiture. While it is logical that the reclamation costs to an operator of a mine operating under those criteria would be increased, the cost to the Fund to complete reclamation of such a site in the event of bond forfeiture might not be as significantly impacted due to constraints such as limits on extent of disturbed area and spoil placement. Furthermore, the post-Bragg standards would only apply to those mine sites that were permitted under the new requirements or modified and forfeited after they went into effect. As we stated above, we believe that West Virginia has put in place an ABS, including increased special reclamation tax rates, the Advisory Council, and the recurring actuarial determinations, that will provide the State with the means to fully evaluate and manage the Fund, its current reclamation obligations, and estimates of future bond forfeiture rates and reclamation cost obligations, so that the State can fully meet those demands.

c. $3.9 Million Land Reclamation Cost Estimate

WVHC stated that the "Last 3 Yr. Average net land liability" figure of $3.9 million was based on the difference between the bond amounts for forfeited sites during the last three years (1998–2000), and the estimated land reclamation liability for those sites. This figure represents the liability for future land reclamation at active sites that forfeit their bonds in the future. In calculating this figure, WVHC stated, the State official "didn't project any cost for active permits for land reclamation," and "didn't consider [the possible] bankruptcy of any company." Morgan Consultants also provides a detailed review of specific companies as further indications of the risk of failure.

Morgan Consultants stated that WVDEP has provided no analysis or justification for the use of the $3.9 million value. Morgan Consultants stated that nowhere in the supporting data or in the OSM review is there any calculation of the liability associated with the existing permits in West

Virginia. Therefore, WVDEP can make no informed representation of the current reclamation liability.

Morgan Consultants stated that the use of the $3.9 million value for annual reclamation costs is totally inadequate and not supported by WVDEP's own data "as the current reclamation liability for land reclamation consists of about $27.9 million." According to the commenter, "the accrual of such a significant historic liability is clear evidence that WVDEP does not initiate reclamation efforts to reclaim the site in accordance with the reclamation plan within the required 180 day period." The commenter also claimed that the inadequacy of the $3.9 million estimate is further evidenced by comparison to WVDEP's own estimate of the liability associated with the reclamation of the 46 permits revoked in 2000. WVDEP estimated reclamation costs for those sites at $6.21 million.

We agree that WVDEP did not provide a detailed analysis in support of the estimated $3.9 million shortfall for land reclamation. WVDEP advised that it arrived at this amount by using the estimated liability for bond forfeiture sites during calendar years 1998, 1999, and 2000, that were on the listing of land liability sites and adding 10 percent for inflation. We found this estimate to be reasonable based on an earlier OSM/WVDEP study. The June 1999 joint OSM/WVDEP Phase II Report of the West Virginia ABS had a similar table for a five-year period coinciding with State fiscal years beginning in July 1992. The shortfalls for those years were $4.7 million, $6.6 million, $6.1 million, $2.3 million and $1.7 million with an average shortfall of $4.3 million. Therefore, we believe the State's estimated $3.9 million shortfall is reasonable because it doesn't vary significantly from our estimate of $4.3 million.

The "Last 3 Yr. Average net land liability" is the difference between the amount of the bond and the accrued liability for the permits revoked during a one-year period based on an average of the last three years. Such a projection uses historical data for both the forfeiture rate that would add bond forfeiture revenues to the Fund and for the liability or amount of money that must be expended from the Fund to complete the reclamation of the sites. The difference between these is the revenue shortfall that must come from a source other than the forfeited bonds. The cost of reclaiming active mines and bankruptcies are all considered based on the historical record of bond forfeiture rates and reclamation costs. We believe that the historical bond forfeiture rate on an annual basis is a good reference for projecting future forfeiture rates and, consequently, liabilities.

d. Historical Costs Used for Estimates

Morgan Consultants stated that the information provided by the WVDEP does not provide any data of permit defaults and bond forfeiture data by year for the last ten years, even though this information is critical for the definition of the historic trends.

We agree that WVDEP did not provide the data suggested by the commenter. However, State data show that the following number of bonds were forfeited from 1996 through 2001: 1996—52, 1997—35, 1998—31, 1999—26, 2000–61, and 2001—38. The Phase II Report mentioned above also has a summary showing the number of bond forfeitures that covered the five-year period from July 1992 through June 1997. The number of bonds forfeited during those State fiscal years were: 1992 to 1993 = 94; 1993 to 1994 = 94; 1994 to 1995 = 122; 1995–1996 = 60; and 1996 to 1997 = 53. Although the exact data mentioned is not available, there is historical data available with regard to the number of sites and revenues needed.

Morgan Consultants stated that review of data supporting the WVDEP ABS does not indicate any analysis of the average disturbed area per permit for those permits placed in bond forfeiture per year for each of the last 10 years. WVHC stated that WVDEP does not provide any analysis of size of the current permits. Without these data, WVHC asserts, there is no means to evaluate the applicability of the historic reclamation costs to define the future liability. WVHC stated that WVDEP did not include any analysis of the permit area when developing its proposal.

We have found that the WVDEP did not have the data checks in place to ensure consistency of data entry and therefore we have not attempted to make projections using certain data fields such as the disturbed area. In some cases, the disturbed area is from inspection and enforcement data showing the portion of the permit area that has been disturbed without any reductions for reclaimed areas. Generally, after a contract has been let for reclamation work, the disturbed area is revised to reflect the actual disturbed area to be reclaimed under the contract. We determined that from 1993 through 2000 the average acreage for revoked permits ranged from 22 acres in evaluation year 1998 to 103 acres in evaluation year 1999. Currently, the average number of acres per permit is 119 acres, as reported in Table 2 of the 2001 West Virginia Annual Evaluation Report.

e. Reclamation Costs at Large Mountaintop Removal Mines

Morgan Consultants stated that the bond forfeiture data, relied upon by WVDEP to calculate their $3.9 million per annum land reclamation liability, does not include many large sites, as the average disturbed acreage of current permits in bond forfeiture is 35.8 acres. However, one recently forfeited (January 2000) permit the Quintain operation (Permit # S–5033-96), has a disturbed acreage of 255 acres and a reclamation cost of $15,439 per acre, as estimated by WVDEP. The total estimated reclamation cost of $3.94 million for that permit alone exceeds the proposed annual land reclamation of $3.9 million.

We previously explained the origin of the $3.9 million per year revenue shortfall estimate. Also, the year 2000 was significantly higher both in the number of sites and the amount of reclamation liability that the Fund was obliged to assume. Previous time periods have also had spikes, but when averaged over multiple tear periods, the forfeiture rate has been relatively constant. The Advisory Council is charged with reviewing the financial soundness of the Fund on a routine basis and this process can provide for adjustments as needed to ensure the continued fiscal soundness of the Fund.

WVHC stated that WVDEP failed to calculate the cost of reclaiming a large mountaintop removal mine if the operator forfeited at the time when reclamation costs are at their greatest. WVHC stated that WVDEP has failed to consider the amount of disturbed acreage for past forfeited permits, or the increasing size of disturbed areas for current permits. WVHC asserted that, therefore, WVDEP has no basis for extrapolating from historic to future costs of land reclamation, and has likely understated the costs. Morgan Consultants stated that an indication of the inapplicability of the reclamation costs from historic sites in predicting future costs is the difference in size of the current forfeited permits when compared to the historic sites. Morgan Consultants stated that the average disturbed acreage for all current forfeited permits is only 35.8 acres. This is dramatically less than the potential disturbed area on a large surface mine such as Spruce or Alex Energy.

WV Coal Association stated that, because Spruce and Alex Energy are exceptionally large, Morgan is incorrect in his assumption that Spruce and Alex Energy are indicative of the majority of

permits sought by mining companies and approved by WVDEP. Also, WV Coal Association stated, because of a 250-acre threshold on proposed mining sites, implemented by the U.S. Army Corps of Engineers as a result of a settlement agreement, most proposed permits are designed to fall within the 250-acre threshold, thereby limiting the size of the mining project.

We believe that historic data for forfeitures and reclamation costs is the best and most reliable information available for projecting future forfeitures and reclamation costs. Because the ABS statutory provisions require the Advisory Council to continue monitoring forfeiture and reclamation cost data, changes can be made in the ABS as necessary to respond to changing conditions. We believe that this feature will allow the ABS to adapt to changes in a more timely manner and consequently is a better method for managing a dynamic program, such as the Special Reclamation Program.

Morgan Consultants stated that any review of reclamation liability associated with the permit size should separate the surface mine operations from the analysis of underground mines or mine support facilities as the liabilities have totally different characteristics. WVHC stated that WVDEP's analysis did not evaluate the different mining types separately.

We have not categorized permits by size or type. Instead, we looked at the ABS as one system and based our evaluation on the whole unit not the component parts. If the State's site-specific bonding rates were being changed, then we would agree that the different types and sizes of operations should be segregated and considered separately. However, we do not believe that this separation is necessary at this time.

WVHC stated that if Arch, Massey, or AEI were to fail, the cost of reclaiming its sites would be tens or hundreds of millions of dollars. WVHC stated that Morgan Consultants estimates that the failure of a moderately large surface mine (4 million tons per year) at an inopportune time would cost 30 million dollars to reclaim just to achieve rough regrade. A huge mine like the proposed Spruce Mine with a large contemporaneous reclamation variance would cost much more.

We agree that the land reclamation cost associated with the reclamation of a large mountaintop mine is not reflected by previous forfeitures. We believe that to manage these costs WVDEP must continue to vigorously enforce its contemporaneous reclamation requirements and continue to require site-specific bonds up to the $5,000 per acre limit to ensure reclamation. The increased bond amounts will help lessen the exposure of the Fund in the event of such a bond forfeiture. We agree that a risk analysis should be done to consider the potential impact that the failure of large mining operations would have on the State's ABS. These are some of the risk factors that the Advisory Council will have to consider when making recommendations to the Legislature and the Governor concerning the fiscal soundness of the Fund.

f. Potential Failure of Large Mining Companies

WVHC stated that WVDEP did not consider the potential failure of a large mining company like Arch Coal, Massey Energy, or AEI Resources. Such a failure is possible if bonding companies go bankrupt, coal prices decline, coal mined outside of Appalachia becomes less expensive in the market served by coal from Appalachia, or coal use declines as a result of environmental regulations. In its February 2001 draft report to WVDEP, "The Mountain State Clean Water Trust Fund," WVDEP's economic consultants at Marshall University stated that "it is possible over the next 25 years some firms in the Fund may fail." Fund Report, p. 7, Ex. 24. "This occurrence directly transfers the cost of water treatment from the private to the public sector." This report recognized that "the coal industry faces enormous risks," and therefore an insurance fund "is needed as a protection for the State's taxpayers."

Morgan Consultants stated that the consolidation of the mining industry would result in the default of a significant number of permits and a significantly higher liability than the failure of one company with one permit. Morgan Consultants stated that neither WVDEP or OSM has provided any data to define the consolidation of the industry, nor have they reflected such consolidation in the determination of potential default rates.

WVHC stated that by looking only at reclamation costs from past bond forfeitures, WVDEP has not calculated its potential liability from the failure of one of these large companies, since none of the companies that have failed in the past twenty years approaches the size of these companies. Consolidation in the mining industry makes such catastrophic failures far more likely than in the past.

We agree that these comments identify a potential problem, but they do not offer any suggestions for how it should be addressed. The ABS did see a spike of forfeited bonds during 2000 when the Royal Scot permits were revoked. Likewise, the annual revenue shortfall also reflects that spike for the year. The number of bond forfeiture sites has been on a downward trend, but deviations should be expected. As the coal industry has consolidated and only the larger, better capitalized companies have survived, fewer permits are being revoked. However, as the number of mining companies has decreased, we recognize that the failure of a larger company could have a significant impact on the Fund.

At the current time, past cost is the best information available for the evaluation and projection of bond forfeitures and the cost to complete reclamation. Although the failure of a large mining company could be a very significant event, we do not believe that the failure of such a company would necessarily result in the forfeiture of all permits held by that company. Many could be assumed by another operator, especially if the permitting enhancements currently underway have improved the accuracy of the hydrologic assessments and reclamation plans so that the likelihood of a long-term liability due to AMD is greatly reduced or eliminated. We also believe that the probability of such a failure is significantly less for the larger operations that plan to remain in the coal business for years to come than it is for smaller undercapitalized companies that have typically appeared on the bond forfeiture list. Further, as mentioned above, these are the potential risks that the Advisory Council will need to study. We believe that the Advisory Council, together with the actuary, will be able to respond as the need arises and recommend the adjustments necessary to keep the ABS on a sound financial basis. The Advisory Council is also tasked to study the development of alternative financial processes that ensure the long-term stability of the Fund. This study would include an analysis of the risks mentioned above, and may require adjustments in the funding mechanisms to ensure that such risks do not jeopardize the stability of the Fund.

g. Reclamation Costs at Mines With New Commercial Forestry PMLU

WVHC stated that WVDEP considered neither the cost of reclaiming sites to the standards required by the State's new Commercial Forestry and Forestry regulations nor the cost of deleting grasslands and fish and wildlife habitat from the list of uses approved for AOC variance mines. WVHC asserted that the new Commercial Forestry and Forestry

regulations will significantly increase the cost of reclamation after 2000. Therefore, WVHC asserted, WVDEP's plan fails to contain sufficient funds to accomplish post-2000 postmining land uses and reclamation costs.

Morgan Consultants stated that there are additional costs associated with the selective excavation, transport, and placement of soil replacement material. This could cause the cost per acre to significantly exceed WVDEP's estimate of $2558 per acre for land reclamation.

WV Coal Association stated that not every operating or proposed permit that could default has a postmining land use of commercial forestry. Therefore, these costs won't apply to all permits.

In response, we note that the impact of the commercial forestry rules has not been quantified for reclamation purposes in the event of bond forfeiture. Many factors impact reclamation costs including how much area has been allowed to be disturbed and unreclaimed, how much overburden must actually be moved and how far, and regrading and establishing an acceptable vegetative cover compatible with achieving the approved postmining land use. We believe that with the increased bond amounts and the mechanism for future adjustments in revenues, a positive balance in the Fund can be attained and maintained. The site-specific bonds for these sites, while not adequate to fully cover the cost of reclamation, will be significantly greater than previously required. Any increased costs will be partially offset by those increases. Furthermore, as WV Coal Association alludes, the commercial forestry postmining land use is only an option, and then only for mountaintop removal mining operations that obtain a variance from AOC. Not all mining operations will have to comply with these requirements. In addition, the legislation charges the Advisory Council with making recommendations to the Legislature and the Governor for any adjustments needed to keep the system functioning on a sound financial basis.

h. Reclamation Costs at Mines Required To Meet New AOC+ Policy

WVHC stated that WVDEP did not consider the costs of complying with WVDEP's June 5, 2000, final AOC guidance policy document, the so-called "AOC+ Policy." For the first time, WVHC asserted, the AOC+ Policy requires compliance with SMCRA's AOC requirements and with the Section 404(b)(1) guidelines promulgated by the U.S. Army Corps of Engineers under the Federal Clean Water Act. WVHC stated that compliance with these provisions will significantly increase the cost of land reclamation for both mountaintop removal and contour mines because of the significantly increased spoil handling costs associated with minimizing the size of fills. WVHC asserted that WVDEP's plan does not even mention these costs, and OSM did not consider these increased costs. Morgan Consultants stated that older permits have significantly less stringent reclamation requirements than are included in current permits.

In response, we note that the impact of the AOC+ guidelines on bond forfeiture reclamation costs has not been quantified. Many factors impact reclamation costs, including how much area has been disturbed and left unreclaimed and how much overburden must actually be moved. We believe that with the increased bond amounts and the mechanism for future adjustments in revenues, a positive balance in the Fund can be attained and maintained. In addition, the site-specific bonds for these sites, while not adequate to fully cover the cost of reclamation, will be significantly greater than previously required. Any increased reclamation costs will be partially offset by those increases. Furthermore, given the reduction in the number and size of excess spoil fills due to implementation of the State's AOC+ Policy and better contemporaneous reclamation, the cost of reclaiming larger mines may actually go down when compared to past mining practices. These are some of the factors that the Advisory Council will have to consider when making future recommendations regarding the Fund.

i. Costs of Reclaiming to Approved PMLU

WVHC stated that WVDEP failed to calculate the cost of completing the reclamation plan at forfeited sites, as Federal law requires. WVHC stated that historically, WVDEP has not required strict adherence to the reclamation plan for permits for which bond has been forfeited. As a result, WVHC asserted, WVDEP's calculations do not include all expenditures "sufficient to assure completion of the reclamation plan" as section 509(a) of SMCRA requires. Therefore, WVHC asserted, WVDEP's cost projections are incorrect because they are based on calculations that do not consider the full cost of reclaiming to the approved postmining land use. WV Coal Association stated that this comment is not consistent with a State official's testimony.

We agree that the approved State program provides that reclamation of bond forfeiture sites must be done in accordance with the approved reclamation plan and must provide for any necessary water treatment. In our evaluation of some bond forfeiture sites, we found that trees have not been planted when woodland was the designated postmining land use. In some cases, this may increase the costs of reclamation. However, in some other cases, we consider it an administrative process breakdown rather than a reclamation deficiency, because permit revision changes were made to the reclamation plan in consultation with the landowner, but without other public participation. A permittee may revise a permit if certain administrative processes are followed and the regulatory authority makes the requisite findings. Similarly, the regulatory authority may revise the reclamation plan of a revoked permit in accordance with proper administrative procedures, including opportunity for public involvement when required.

j. Costs of Reclaiming Active Sites Where All Coal Has Been Removed and AMD Discharges Remain

WVHC stated that WVDEP further failed to calculate the cost of reclaiming "active" mine sites that have not mined coal for many years and should be considered to be at a much higher risk of forfeiture than those mines where coal extraction (and an income stream) is continuing. WVHC stated that WVDEP has underestimated the future default rate by ignoring the impact of inactive operations.

WV Coal Association stated that "[E]xisting West Virginia regulations establish several criteria under which a permit can be granted inactive status. While market conditions is one such instance, for the commenter to claim that because the price of coal is high and three permits have not been reactivated that they are bound for forfeiture is assumption of the greatest proportions and one offered by Morgan to mislead OSM."

WVHC did not suggest how to consider the cost to reclaim "active" mine sites that have been idle for several years. If these sites are in compliance with the backfilling and regrading requirements they should not pose large liabilities for completion of land reclamation. In regard to the potential liability for AMD treatment, we believe, as discussed above, that the Fund will eliminate the deficit and retain a positive cash balance for several years based on historic data. A more thorough analysis will be necessary if the State is to make accurate cost estimates and long-term predictions regarding water treatment. This is one of the responsibilities that the Advisory Council is charged with under law.

5. Federal Counterpart to State Plan

WV Coal Association asserted that since the Plan [7-Up Plan] establishes a mechanism that has no equal in Federal law, and exceeds any program currently in place in any other primacy state, OSM has a duty to finalize the approval of the Plan that the agency first addressed in December 2001.

We disagree with this comment. The State's efforts to improve its ABS, including the development of the 7-Up Plan, specifically relate to the requirements at 30 CFR 800.11(e) concerning alternative bonding systems.

6. Submittal of Comments on the Amendment

WV Coal Association stated that WVHC's motion before a U.S. District Court seeking to have the second comment period declared illegal, make it improper for WVHC to submit comments during the second comment period.

We disagree that the WVHC has waived its right to comment by arguing that the comment period that we opened on December 28, 2001, was invalid. When we opened that comment period, we opened it to all interested persons to provide them additional time to consider all comments submitted to date and so they could submit additional comments on this very complex and important topic.

7. Alternative Methods To Assure Long-Term Reclamation

A commenter stated that history has shown that a per-ton tax on coal will not get abandoned mines reclaimed. The commenter provided the following recommendations to ensure total reclamation of all mined lands and long-term water treatment and to place the financial burden on the coal companies:

1. A cash bond in the amount of the estimated actual reclamation cost should be in place before any mine permit is issued.

2. A per-ton tax on that permit to create a trust to fund any water treatment that might be needed. This trust must be sufficient to fund the water treatment from the interest generated from the trust. If no water treatment or additional reclamation is needed after a 10-year period, the trust can be turned over to the permittee.

3. A per-ton tax on all coal mined to pay for the reclamation of abandoned mine lands that have been previously left unreclaimed.

In response, we note that we have no authority to dictate the specific form of the State's ABS. The State's ABS currently requires a site-specific bond with a $5,000 per acre limit. We believe that the State's site-specific bond plus the State's increased special reclamation tax rates will provide sufficient revenue to ensure complete reclamation of bond forfeiture sites. The State has confronted the issue of long-term water treatment by establishing the Advisory Council and assigning it the task of identifying long-term solutions.

8. Deletion of 25-Percent Limitation at CSR 38–2–12.5.d

The WV Coal Association urged OSM to approve the proposed amendment to CSR 38–2–12.5.d. As noted above in Finding 1, we are approving the amendment.

The WV Coal Association also stated that despite its support of the State's revisions to the ABS, the WV Coal Association maintains that OSM lacks the statutory authority to request changes related to water treatment at bond forfeiture sites, and to characterize the amendment as "consistent" with SMCRA and its implementing regulations is incorrect.

We have previously responded to similar WV Coal Association assertions in our final rule decision published on December 28, 2001. See 66 FR 67446, 67451.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on September 28, 2001, and April 26, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV–1239 and WV–1299). We responded to a comment from the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) on December 28, 2001 (66 FR 67446, 67452). By letter dated May 13, 2002, MSHA stated that it found no issues or impact on coal miner's health and safety.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia made and we approved on December 28, 2001, or that we are approving today, pertain to air or water quality standards. Therefore, we did not ask EPA for its concurrence on any of the proposed amendments.

Under 30 CFR 732.17(h)(11)(i), on September 28, 2001, and April 26, 2002, we requested comments from EPA on these amendments (Administrative Record Numbers WV–1239 and WV–1299) . The EPA responded by letter dated November 13, 2001 (Administrative Record Number WV–1247). We responded to EPA's comments on December 28, 2001 (66 FR 67446, 67452). By letter dated May 16, 2002, EPA stated it supports the deletion of the 25-percent limit on expenditure of bond funds for treating water at bond forfeiture sites.

VI. OSM's Decision

Based on the above findings, we are approving the amendment to CSR 38–2-12.5.d submitted to us on April 9, 2002. We are also removing the required program amendments codified at 30 CFR 948.16(jjj) and (lll).

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. Our regulations at 30 CFR 732.17(h)(12) specify that all decisions approving or disapproving amendments will be published in the **Federal Register** and that they will be effective upon publication, unless the notice specifies a different date. We are making this final rule effective immediately to expedite the State program amendment process and to assist the State in making its program conform with the Federal standards as required by the Act.

VII. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR

730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by adding a new entry in chronological order by "Date of publication of final rule" to read as follows:

948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description
* * * * * * *		
September 24, 2001 April 9, 2002	May 29, 2002	CSR 38–2–12.5.d.

§ 948.16 [Amended]

3. Section 948.16 is amended by removing and reserving paragraphs (jjj) and (lll).

[FR Doc. 02–13368 Filed 5–28–02; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Wednesday,
May 29, 2002

Part VI

Department of Education

Office of Elementary and Secondary Education; Improving Literacy Through School Libraries Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.364]

Office of Elementary and Secondary Education; Improving Literacy Through School Libraries Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of Program: The purpose of this program is to improve student literacy skills and academic achievement by providing students with increased access to up-to-date school library materials; a well-equipped, technologically advanced school library media center; and well-trained, professionally certified school library media specialists.

This competition focuses on projects designed to meet the priority described in the PRIORITY section of this notice.

Eligible Applicants: Local educational agencies (LEAs) in which at least 20 percent of the students served by the LEA are from families with incomes below the poverty line. (20 U.S.C. 6383)

Deadline for Notification of Intent to Apply for Funding: June 28, 2002.

We will be able to develop a more efficient process for reviewing grant applications if we have an estimate of the number of entities that intend to apply for funding under this competition. Therefore, we strongly encourage each potential applicant to notify us by e-mail of your intent to submit an application for funding via this Internet address: *literacyandschoollibraries@ed.gov*

Please put "Notice of Intent" in the subject line. Applicants that fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: July 24, 2002.

Deadline for Intergovernmental Review: September 23, 2002.

Estimated Available Funds: $12,125,000.

Estimated Range of Awards: $20,000 to $250,000.

Estimated Average Size of Awards: The size of the awards will be commensurate with the nature and scope of the work proposed and the number of schools to be served. The Department estimates the average amount of each award based on a maximum of $25,000 per school to be served.

Estimated Number of Awards: 75.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Page Limit: The application must include the following sections: title page form (ED 424), one-page abstract, program narrative, individual resumes (up to 3 pages) for project directors and other key personnel, budget summary form (ED 524) with budget narrative, and statement of equitable access (GEPA 427). The program narrative must address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the program narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of 15 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Include all critical information in the program narrative, eliminating the need for appendices.
- The page limit does not apply to the title page form (ED 424), the one-page abstract, the budget summary form and narrative budget justification, the resumes, or the assurances and certifications.

We have found that reviewers are able to conduct the highest quality review when applications are concise and easy to read, with pages consecutively numbered.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98 and 99.

Description of Program: The Improving Literacy through School Libraries (LSL) program, subpart 4 of part B of Title I of the Elementary and Secondary Education Act, as amended, promotes comprehensive local strategies to improve student reading achievement by improving school library services and resources. The LSL program is one component of the Department's commitment to dramatically improving student reading achievement by focusing available resources, including those of school library media centers, on ensuring that no child is left behind. School library media centers have an important role to play in contributing to the success of local improvement plans, especially in the literacy area, by increasing collaboration among instructional and school library media center staff, providing additional instructional materials and resources, and extending hours of operation during non-school hours.

Recent studies on the impact of school library media centers on student achievement show that a well-designed and effective school library media program includes the following attributes:

- Book collections and other media resources that are well-stocked and varied.
- Increased hours of access, such as during times outside the regular school day (such as in the morning, afternoon or weekends).
- Professional development to train school library media specialists to work closely with teachers in curriculum planning and with students in using the library.
- Improved student access via technology within the school.
- Collaboration to provide computer access to resources from other libraries, including university and public libraries.

Studies that examined the relation between school library media centers and student achievement indicated that reading test scores were higher when—

- Library media specialists were full time;
- Library hours of operation were extended; and
- Library staff spent time planning instructional units with teachers, teaching students how to access information, and serving on school-based curriculum and standards committees.

While ongoing research on libraries is expected to provide further information, studies already demonstrate a positive relationship between effective school library media centers and student achievement in reading.

Priorities

Absolute Priority

This competition focuses on projects designed to meet the following absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

To improve the services of a school library media center and the achievement of the students it serves, applicants must propose programs in their districts that incorporate the critical elements of a school library media center.

Applicants must propose programs that address two or more of the following critical elements:

1. Library media specialists will actively collaborate with teachers and work with students.

2. The applicant's plan for the acquisition of books and other resources will reflect and support this collaboration.

3. A school library media center will possess the technology necessary to expand its reach to classrooms or other libraries, or to both.

4. A school library media center will provide expanded hours to give students more access.

Invitational Priority

Within the absolute priority, we are particularly interested in applications that meet the following invitational priority.

The Secretary strongly encourages applicants to focus their efforts on elementary schools to maximize the impact of the project on improving reading achievement. Coordination and collaboration among school library and media staff, teachers, and parents are important to ensure high-quality projects as well as the sustainability of the activities.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed requirements. However, in order to make timely grant awards in FY 2002, the Secretary has decided to issue this application notice without first publishing these proposed requirements for public comment. These requirements will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

Selection Criteria

We use the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

We evaluate an application by determining how well the proposed project meets the following provisions:

(a) *Needs Assessment* (15 points). Demonstrated need for school library media improvement, based on the age and condition of book collections and other school library media resources, access of school library media centers to advanced technology, the availability of well-trained, professionally certified school library media specialists in schools served by the eligible local educational agency, and the educational achievement of the students to be served.

(b) *Use of Funds* (25 points). How well the applicant will use the funds made available through the grant to carry out those of the following activities that meet its needs and satisfy the Absolute Priority section of this notice, by proposing programs that address two or more of the critical elements of a school library media center identified in that priority.

(1) Acquiring up-to-date books and other school library media resources.

(2) Acquiring and using advanced technology incorporated into the curricula of the school to develop and enhance the research and critical thinking skills of students.

(3) Facilitating Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries, where possible.

(4) Providing professional development for school library media specialists that is based on scientifically based reading research, and includes, to the extent relevant to the project, knowledge of early language and reading development, and activities that foster increased collaboration between school library media specialists, teachers, and administrators.

(5) Providing students with access to school libraries during nonschool hours, which may include the hours before and after school, during weekends, and during summer vacation periods.

(c) *Use of Scientifically Based Research* (10 points). The manner in which the applicant will carry out the activities described in paragraph (b) of this section using programs and materials that are grounded in scientifically based research, as defined by the statute, including using scientifically based programs and activities that support the essential components of reading research.

(d) *Broad-based Involvement* (10 points). How the applicant will extensively involve school library media specialists, teachers, administrators, and parents in the proposed project activities.

(e) *Coordination* (15 points). How the applicant will effectively coordinate the funds and activities provided under this program with other literacy, library, technology, and professional development funds and activities.

(f) *Adequacy of Resources* (5 points). The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(g) *Evaluation of Quality and Impact* (20 points). How the applicant will collect and analyze data on the quality and impact of the project activities, including their impact on student achievement, in a manner that is rigorous, systematic, objective, and will yield data on program effectiveness and best practices.

Geographic Distribution

In making funding decisions we will also consider the equitable distribution of grants across geographic regions and among local educational agencies serving urban and rural areas.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html*. In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice

to the following address: The Secretary, E.O. 12372–CFDA No. 84.364, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH AN APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE* ADDRESS.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Application for Federal Education Assistance (ED 424 (Exp. 11/30/2004)) and instructions and definitions.
- Protection of Human Subjects in Research (Attachment to ED 424).
- Budget Information—Non-Construction Programs (ED Form No. 524) and instructions. An applicant must provide a budget narrative that provides budget information for the 12-month budget period of the proposed project.
- Application Narrative (including an abstract that identifies the selected program elements from the Absolute Priority section of this notice).
- Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.
- Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

- Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) and instructions.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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*

FOR FURTHER INFORMATION CONTACT: Margaret McNeely or Beth Fine, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C130, FOB–6, Washington, DC 20202–6200. Telephone: (202) 260–1335 (Margaret McNeely) or (202) 260–1091 (Beth Fine) or via Internet: *literacyandschoollibraries@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional three copies of your application. We request that you staple or otherwise secure one of these copies. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.364), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional three copies of your application. We request that you staple or otherwise secure one of these copies. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.364), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Special Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition to the Department. If you use an alternative delivery method, please obtain the appropriate proof of mailing under (a) "If You Send Your Application by Mail", then follow the instructions for "(b) If You Deliver Your Application by Hand."

Program Authority: 20 U.S.C. 6383.

Dated: May 22, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is [1810–0652]. Expiration date: May 31, 2005. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your submission of this form, write directly to: Literacy Through School Libraries Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C130, FOB–6, Washington, DC 20202–6200.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program, the information regarding the priority, and the selection criteria we use to evaluate applications.

The narrative should—

1. Begin with an abstract; that is, a summary of your proposed project (please remember to identify your selection of program elements as required by the absolute priority section of this notice);

2. Describe your proposed project in light of each of the selection criteria in the order in which we list the criteria in this notice;

3. List each function or activity for which you are requesting funds; and

4. Include any other pertinent information that might assist us in reviewing your application.

Note: The section on PAGE LIMIT elsewhere in this application notice applies to your application.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address — Organizational Unit

Legal Name: _____

Address: _____

City _____ State _____ County _____ ZIP Code + 4 _____ - _____

2. Applicant's D-U-N-S Number _____

3. Applicant's T-I-N _____ - _____

4. Catalog of Federal Domestic Assistance #: 84364

Title: Improving Literacy Through School Libraries Program

5. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____ - _____

Tel. #: _____ Fax #: _____

E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ____

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:

—PreApplication
☐ Construction
☐ Non-Construction

—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes (Date made available to the Executive Order 12372 process for review): _____

☐ No (If "No," check appropriate box below.)

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?

☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?

☐ Yes (Provide Exemption(s) #): _____

☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 02–13313 Filed 5–28–02; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday,
May 29, 2002

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for Developing Models To Promote the Use of NIDRR Research under the Disability and Rehabilitation Research (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 28, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help (1) to maximize the full inclusion and integration of individuals with disabilities into society, and (2) to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. If we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute Priority

Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive Preference Priority

Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational Priority

Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Background

NIDRR proposes to develop models to ensure that the findings of NIDRR-sponsored research and products have practical applications in activities related to serving individuals with disabilities. This proposed priority invites an examination of the ways in which NIDRR-supported research findings can be of use to individuals with disabilities, researchers, and professionals, such as vocational rehabilitation counselors. The models to be developed under this proposed priority are to be based on NIDRR research topics related to the NFI and the Plan.

The models would be used to help researchers plan for the widespread use of NIDRR research results and measure success. The models must be well documented so that they can be replicated by other grantees. The models will vary depending on the kind and level of information, the intended users of the information, and the circumstances available to disseminate the information.

NIDRR emphasizes the participation of individuals with disabilities in the formulation and conduct of research studies. It also stresses that the ultimate purpose of NIDRR research is to further the NIDRR mission and increase the participation of individuals with disabilities in all aspects of education, employment, and community participation.

You may obtain additional information about the background of this priority by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Priority—Developing Models To Promote the Use of NIDRR Research

This proposed priority is intended to develop models for the increased and

more effective use of NIDRR research results.

To be funded under this priority a project would be required to—

(1) Analyze research information produced by NIDRR grantees to determine the extent to which any of the information has not been disseminated or has been disseminated but not effectively used.

(2) Develop models for particular kinds of information, such as engineering, health, employment, education, and independent living, and for particular intended groups such as professionals, individuals with disabilities, families, and researchers.

(3) Describe the models and prepare training materials to assist others to use the models.

(4) Test each model.

(5) Evaluate the success of each model.

In carrying out these activities, the project must:

- Provide training for NIDRR research projects and centers;
- Ensure the relevance of all activities to individuals with disabilities;
- Include techniques to reach individuals from diverse racial, ethnic, and cultural backgrounds; and
- Collaborate with NIDRR-funded projects and centers.

Applicable Program Regulations

34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: May 15, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–13400 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
May 29, 2002

Part VIII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority on Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals from Diverse Racial, Ethnic, and Linguistic Backgrounds under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation service and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 28, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help (1) to maximize the full inclusion and integration of individuals with disabilities into society, and (2) to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute Priority

Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive Preference Priority

Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational Priority

Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Background

In the field of mental health, help is based largely on the relationship between the provider and recipient of services. This relationship, in turn, is based primarily on communication. For individuals who are deaf, hard-of-hearing, or deaf-blind, spoken English often is an ineffective means of communication. The question is how methods used to augment communication, such as the use of sign language interpreters and assistive listening devices, affect results in the delivery of mental health services for these individuals.

The Surgeon General noted in a report that individuals from racial, cultural, and linguistic minorities in the United States face serious barriers to competent mental health care, suffer a greater loss of overall health and productivity, and bear a greater burden from unmet mental health needs. Further, the Surgeon General recommended that future studies identify effective services for minority subpopulations, including persons with both mental and physical health conditions (*Mental Health: Culture, Race, and Ethnicity, a Supplement to Mental Health: A Report of the Surgeon General,* U.S. Public Health Service, 2001). Deaf, hard of hearing, and deaf-blind members from diverse racial and ethnic populations are an important example of this type of subpopulation.

Even assuming that these individuals seek and receive treatment from providers familiar with their cultural,

communicative, and linguistic backgrounds, psychological test measures often are inadequate (Vernon M., *An Historical Perspective on Psychology and Deafness,* Journal of the American Deafness and Rehabilitation Association, Vol. 29(2), pg. 11, 1995). Few psychological tests and assessment instruments have been developed for the deaf population in general, and none have been developed for the Asian-American deaf population (Wu C.L. and Grant N.C., Asian-American and Deaf, in Irene Leigh (Ed.), *Psychotherapy with Deaf Clients from Diverse Backgrounds,* Washington, D.C.: Gallaudet University Press; pg. 212, 1999).

You may obtain additional information about the background of this priority by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Priority—Mental Health Service Delivery to Deaf, Hard of Hearing, and Deaf-Blind Individuals From Diverse Racial, Ethnic, and Linguistic Backgrounds

This proposed priority is intended to enhance the quality of the delivery of mental health services for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds. For purposes of this proposed priority, "individuals from diverse linguistic backgrounds" includes not only individuals who are fluent in languages other than English, but also individuals with minimal language skills who are not fluent in any language.

To be funded under this priority, a project would be required to choose at least one, but, no more than four of the following research activities:

(1) Investigate, compare, and evaluate the effectiveness of mental health services provided by mental health providers using qualified sign language interpreters as opposed to services provided by mental health providers fluent in sign language. The research project must consider the educational, clinical, and professional credentials of each provider.

(2) Investigate, evaluate, and develop, as needed, model psychological testing instruments and mental health outcome measures for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

(3) Identify, evaluate, and develop, as needed for use in mental health settings, model communication strategies for individuals with minimal language skills who are deaf, hard-of-hearing, or deaf-blind.

(4) Identify and evaluate factors that assist or hinder entrance into the delivery system of mental health services for deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

(5) Identify and evaluate factors that have an impact on the effectiveness of the delivery of mental health services to deaf, hard-of-hearing, or deaf-blind individuals from diverse racial, ethnic, and linguistic backgrounds.

In addition, each project would have to:

- Involve in all phases of research individuals with disabilities, including deaf, hard-of-hearing, and deaf-blind individuals and individuals from diverse racial, ethnic, and linguistic backgrounds; and
- As directed by the NIDRR Project Officer for these programs, collaborate with other NIDRR projects and the National Center for the Dissemination of Disability Research.

Applicable Program Regulations

34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: May 15, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. 02–13401 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
May 29, 2002

Part IX

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for Health Services Research projects under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 28, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help (1) to maximize the full inclusion and integration of individuals with disabilities into society, and (2) to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. If we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute Priority

Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive Preference Priority

Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational Priority

Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Background

Access to high quality health care, including preventive, acute, and long-term care, is critical to the quality of life and independent living of individuals with disabilities. Research on the organization, delivery, and financing of health services has not traditionally focused on the needs of individuals with disabilities. With this proposed priority, NIDRR intends to examine emerging issues that have an impact on access to health services by individuals with disabilities. We have identified the following issues as the focus of needed research: access to community-based health services; the impact of prospective payment on access to medical rehabilitation services; and ways in which using quality indicators in assessments of services may affect delivery of health services to individuals with disabilities.

You may obtain additional information about the background of this priority by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Priority—Health Services Research Projects

This proposed priority is intended to improve delivery of health services to individuals with disabilities. We encourage applicants to propose research projects under one of the following specific topic areas:

(1) *Availability and Access to Community-Based Health Services.* To be funded under the priority, a project would be required to:

(a) Investigate the availability and accessibility of community-based health services for individuals with disabilities who move from institutional care to

community living or who are at risk for institutional care;

(b) Document the extent to which access to appropriate health services, including home-health, is a component of State task force recommendations regarding transitioning of individuals from institutional to community settings; and

(c) Evaluate the role of accessible community-based mental health services in the successful integration of individuals with long-term mental illness into community settings.

(2) *Impact of the Prospective Payment System for Medical Rehabilitation.* To be funded under the priority, a project would be required to:

(a) Evaluate the impact of the prospective payment system for medical rehabilitation on access to medical rehabilitation services by individuals with disabilities, examining the impact on settings, services, and length of stay; and

(b) Identify the impact of multiple, health-related conditions, commonly called co-morbidities, on classification and reimbursement in the medical rehabilitation prospective payment system.

(3) *Analysis of Quality Indicators for Assessing Health Services Provided to Individuals with Disabilities.* To be funded under the priority, a project would be required to:

(a) Conduct an assessment of the use of quality indicators in both the private and public sectors to determine the extent to which the needs of individuals with disabilities are reflected in these indicators;

(b) Examine the relationship of function and disability in defining the population of individuals with disabilities to whom the indicators are applied; and

(c) Determine how individuals with disabilities, payers, and providers use information from quality assessment of medical rehabilitation services.

In addition, each project would be required to:

- Consult with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR) to develop and implement, in the first year of the grant, a plan to disseminate the DRRP's research results to: disability organizations, individuals with disabilities or their family members or both, researchers, providers, and policymakers; and
- Ensure the participation of individuals with disabilities in all phases of the research and dissemination activities.

Applicable Program Regulations

34 CFR part 350.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: May 15, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–13402 Filed 5–28–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
May 29, 2002

Part X

The President

Notice of May 27, 2002—Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

Federal Register
Vol. 67, No. 103
Wednesday, May 29, 2002

Presidential Documents

Title 3—

The President

Notice of May 27, 2002

Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared on May 30, 1992, with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) (the "FRY (S&M)"), as expanded on October 25, 1994, in response to the actions and policies of the Bosnian Serbs. In addition, I am continuing for 1 year the national emergency declared on June 9, 1998, with respect to the FRY (S&M)'s policies and actions in Kosovo. This notice shall be published in the **Federal Register** and transmitted to the Congress.

On May 30, 1992, by Executive Order 12808, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Governments of Serbia and Montenegro. Under this emergency, President Bush first blocked all property and interests in property of the Governments of the FRY (S&M), Serbia, and Montenegro and subsequently prohibited trade and other transactions with the FRY (S&M).

On October 25, 1994, President Clinton expanded the scope of the national emergency by issuing Executive Order 12934 to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Bosnian Serb forces and the authorities in the territory that they controlled within Bosnia and Herzegovina.

On December 27, 1995, President Clinton issued Presidential Determination 96–7, directing the Secretary of the Treasury, *inter alia*, to suspend the application of sanctions imposed on the FRY (S&M) pursuant to the above-referenced Executive Orders and to continue to block property previously blocked until provision is made to address claims or encumbrances, including the claims of the other successor states of the former Yugoslavia. This sanctions relief, in conformity with United Nations Security Council Resolution 1022 of November 22, 1995, was an essential factor motivating the FRY (S&M)'s acceptance of a peace agreement initialed by the parties in Dayton on November 21, 1995, and signed in Paris on December 14, 1995 (hereinafter the "Peace Agreement"). Sanctions against both the FRY (S&M) and the Bosnian Serb forces were terminated in conjunction with United Nations Security Council Resolution 1074 of October 1, 1996. This termination, however, did not end a requirement that those blocked funds and assets that are subject to claims or encumbrances remain blocked, until unblocked in accordance with applicable law.

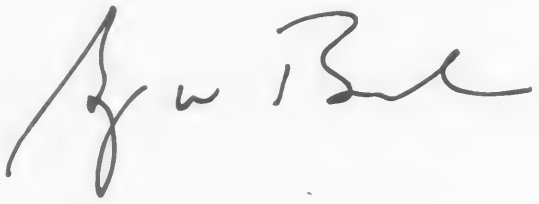
Until the status of all remaining blocked property is resolved, the Peace Agreement implemented, and the terms of the United Nations Security Council Resolution 1022 met, the national emergency declared on May 30, 1992, and the measures adopted pursuant thereto to deal with that emergency, must continue beyond May 30, 2002.

On June 9, 1998, by Executive Order 13088, President Clinton found that the actions and policies of the FRY (S&M) and the Republic of Serbia with respect to Kosovo, constituted an unusual and extraordinary threat

to the national security and foreign policy of the United States. President Clinton therefore declared a national emergency to deal with that threat.

On January 17, 2001, President Clinton issued Executive Order 13192 amending Executive Order 13088 to lift and modify, with respect to future transactions, most of the economic sanctions imposed against the FRY (S&M). At the same time, Executive Order 13192 imposes restrictions on transactions with certain persons described in section 1(a) of the order, namely persons under open indictment for war crimes by the International Criminal Tribunal for the Former Yugoslavia (ICTY). It also provides for the continued blocking of property or interests in property blocked prior to the order's effective date due to the need to address claims or encumbrances involving such property.

Because the crisis with respect to the situation in Kosovo and with respect to Slobodan Milosevic, his close associates and supporters and persons under open indictment for war crimes by the ICTY has not been resolved, and because the status of all previously blocked property has yet to be resolved, I have determined that the national emergency declared on June 9, 1998, and the measures adopted pursuant thereto to deal with that emergency, must continue beyond June 9, 2002.



THE WHITE HOUSE,
May 27, 2002.

[FR Doc. 02–13681
Filed 5–28–02; 11:44 am]
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Reader Aids

Federal Register

Vol. 67, No. 103

Wednesday, May 29, 2002

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Federal Register/Code of Federal Regulations	
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Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

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FEDERAL REGISTER PAGES AND DATE, MAY

21559–21974 1
21975–22336 2
22337–30306 3
30307–30532 6
30533–30768 7
30769–31104 8
31105–31710 9
31711–31934 10
31935–32816 13
34383–34584 14
34585–34816 15
34817–34990 16
34991–35424 17
35425–35704 20
35705–35890 21
35891–36078 22
36079–36494 23
36495–36778 24
36779–37318 28
37319–37662 29

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5437 (See Proc. 7553) 30535
Proc. 6693 (Superseded by Proc. 7562) 35707
6962 (See Proc. 7554) 30537
7350 (See Proc. 7561) 35705
7400 (See Proc. 7561) 35705
7547 21559
7548 30307
7549 30309
7550 30311
7551 30313
7552 30533
7553 30535
7554 30537
7555 31105
7556 31107
7557 34583
7558 34585
7559 34587
7560 34815
7561 35705
7562 35707
7563 35890
7564 35893
7565 36495
7566 36497
7567 36499

Executive orders:
12958 (See Order of May 6, 2002) 31109
13263 22337
12808 (See Notice of May 27, 2002) 27661
12934 (See Notice of May 27, 2002) 27661
13088 (See Notice of May 27, 2002) 27661
13192 (See Notice of May 27, 2002) 27661

Administrative orders:
Notices:
Notice of May 16, 2002 35423
Notice of May 27, 2002 27661
Presidential Determinations:
No. 2002–17 of April 24, 2002 31711
No. 2002–18 of April 27, 2002 31713
May 6, 2002 31109
No. 96–7 (See Notice of May 27, 2002) 27661

5 CFR

591 22339
Ch. VII 30769
2608 35709
2634 22348

Proposed Rules
1605 35051
1620 35051
1651 35051
1655 35051

7 CFR

28 36501
29 36079
210 36779
220 36779
226 36779
301 ..... 21561, 30769, 31935, 34589, 34817
915 31715
917 37319
945 36788
989 ..... 34383, 36789
993 31717
1205 36793
Ch. XIII 30769

Proposed Rules:
318 ..... 34626, 35932
929 21854
930 31896
1427 31151
1710 36542
1717 36542

8 CFR

3 36799

Proposed Rules:
3 31157
103 ..... 34862, 36676
214 ..... 34862, 36676
236 31157
240 31157
241 31157
286 34414

9 CFR

94 ..... 31935, 34590

Proposed Rules:
53 21934
71 31987
93 31987
94 ..... 31987, 35936
98 31987
112 34630
113 34630
130 31987

10 CFR

15 30315
72 31938
430 ..... 21566, 36368

Proposed Rules:
71 36118

11 CFR

Proposed Rules:
100.....35654
102.....35654
104.....35654
106.....35654
108.....35654
110.....31164, 35654
114.....35654
300.....35654
9034.....35654

12 CFR

3.....35991
7.....35992
203.....30771
208.....35991
225.....35991
325.....35991
360.....34385
366.....34591
516.....31722
567.....31722, 35991
609.....30772
611.....31938, 35895
614.....31938, 35895
620.....30772
790.....30772
792.....30772
908.....34990
966.....35713

Proposed Rules:
201.....36544

13 CFR

Proposed Rules:
107.....35055
108.....35449
121.....30820

14 CFR

13.....31402
23.....21975, 36502, 36505
25.....35715, 35895, 36507
39.....21567, 21569, 21572, 21803, 21975, 21976, 21979, 21981, 21983, 21985, 21987, 21988, 22349, 30541, 30774, 31111, 31113, 31115, 31117, 31939, 31943, 31945, 34598, 34818, 34820, 34823, 34826, 35425, 35847, 35897, 36081, 36085, 36087, 36390, 36092, 36509, 36803, 36804, 37319
61.....30524
63.....30524
65.....30524
71.....21575, 21990, 30775, 30776, 30777, 30778, 30779, 30780, 30781, 30782, 30783, 31728, 31946, 31947, 34990, 35426, 35899, 35901, 36807, 37321, 37474
91.....31932
95.....30784
97.....21990, 21992, 34828, 36511
121.....31932
139.....31932
300.....30324
1240.....31119
1260.....30544

Proposed Rules:
25.....22363, 30820, 34414
33.....22019
39.....31737, 31992, 34633, 34635, 34637, 34639, 34641, 34880, 35057, 35059, 35456, 35459, 35461, 35464, 35763, 36119, 37356, 37357
71.....22020, 22366, 31994, 36848
91.....31920
121.....22020, 22363, 37361
125.....22020
135.....22020
187.....30334

15 CFR

774.....35428

16 CFR

305.....35006
314.....36484

Proposed Rules:
303.....36551
310.....37362
1500.....31165

17 CFR

11.....37322
30.....30785
41.....36740
200.....30326
230.....36678
232.....36678
239.....36678
240.....36678, 36740
249.....36679
269.....36679
270.....31076
274.....31076

Proposed Rules:
228.....35620
229.....35620
230.....36712
239.....36712
240.....30628
249.....35620
270.....31081, 36712
274.....36712

18 CFR

2.....31044
35.....31044, 36093
141.....36093
284.....30788
385.....36093
388.....21994

Proposed Rules:
35.....22250
37.....35062
161.....35062
250.....35062
284.....35062
358.....35062

19 CFR

24.....31948
122.....35722
141.....36096

20 CFR

404.....35723

Proposed Rules:
416.....22021
655.....30466
656.....30466

21 CFR

1.....34387
20.....35724
58.....35724
73.....35429
101.....30795
170.....35724
171.....35724
174.....35724
179.....35724
310.....31123, 31125
520.....21996
522.....34387
558.....21996, 30326, 30545, 34829, 36097, 36512

Proposed Rules:
170.....35764
314.....22367
358.....31739
601.....22367
872.....34415

22 CFR

22.....34831
41.....30546
51.....34831

Proposed Rules:
203.....30631

23 CFR

Proposed Rules:
655.....35850

24 CFR

Proposed Rules:
888.....36306

25 CFR

900.....34602

Proposed Rules:
542.....37369

26 CFR

1.....30547, 31955, 34388, 34603, 35009, 35731, 36676
5c.....35009
5f.....35009
18.....35009
54.....35731
602.....34388, 34603, 35009, 35731

Proposed Rules:
1.....30634, 30826, 31995, 35064, 35765, 37369
31.....30634
48.....34882
54.....35765

27 CFR

4.....30796
5.....30796
7.....30796
19.....30796
20.....30796
22.....30796
24.....30796
25.....30796
26.....30796
27.....30796
44.....30799
70.....30796
251.....30796

28 CFR

Proposed Rules:
16.....31166

29 CFR

1614.....35732
4022.....34610
4044.....34610

30 CFR

250.....35398
256.....35398
Ch. VI.....30803
904.....35025
913.....35029
917.....30549
936.....36514
948.....21904, 37610

Proposed Rules:
250.....35072
773.....35070
780.....35070
784.....35070
800.....35070
913.....35073
935.....35076
944.....35077
948.....30336

31 CFR

1.....34401, 34402
205.....31880
240.....36517

32 CFR

286.....31127
701.....30553
706.....30803, 30804

33 CFR

100.....36518, 36519
110.....34838
117.....21997, 31727, 35901, 35903, 35905, 36808
165.....21576, 22350, 30554, 30556, 30557, 30805, 30807, 30809, 31128, 31730, 31955, 31958, 34612, 34838, 34840, 34842, 35035, 35905, 35907, 36098, 36519, 36521, 36522, 36523
175.....34756
177.....34756
179.....34756
181.....34756
183.....34756
334.....36524

Proposed Rules:
100.....22023
117.....31745
155.....31868
165.....30846, 31747, 31750, 34420, 34645, 35079, 35939, 36122, 36554
323.....31129

34 CFR

Proposed Rules:
106.....31098
200.....30452, 30461

36 CFR

242.....30559, 36809
219.....35431
1220.....31961
1222.....31961
1228.....31961
1230.....31692, 34574

Proposed Rules:
Ch. I.....30338
7.....30339

37 CFR

1 36099

Proposed Rules:

1 30634
2 ..... 30634, 35081

38 CFR

17 ..... 21998, 35037
20 36102
21 34404

Proposed Rules:

1 34884

39 CFR

111 30571

Proposed Rules:

265 31167
501 ..... 22025, 31168
3001 35766

40 CFR

9 22353
51 21868
52 ..... 21868, 22168, 30574, 30589, 30591, 30594, 31143, 31733, 31963, 34405, 34614, 35434, 35437, 35439, 35442, 36105, 36108, 36810, 37323, 37325, 37328
62 ..... 22354, 35442
63 21579
70 ..... 31966, 34884, 37325
80 ..... 36676, 36766
81 ..... 31143, 37328
96 21868
97 21868
124 30811
140 35735
157 ..... 35909, 35910
180 ..... 34616, 35045, 35912, 35915, 36525, 36534, 37332
228 30597
232 31129
261 ..... 30811, 36110
268 ..... 35924, 36813
271 30599
1603 35445

Proposed Rules:

51 30418
52 ..... 21607, 22242, 30637, 30638, 30640, 31168, 31752, 31998, 34422, 34647, 35467, 35468, 35470, 36124, 36136, 36137, 36849, 37369, 37370
60 36476
62 ..... 22376, 35470
63 ..... 21612, 30848, 34548, 36460
70 ..... 34886, 37370
81 ..... 31168, 36135, 37370
89 21613
90 21613
91 21613
94 21613
194 ..... 35471, 37548
271 30640
268 36849
300 34886
438 35774
1048 21613
1051 21613
1065 21613
1068 21613

41 CFR

Proposed Rules:

102 34890
173 34890

42 CFR

Ch. I 36539
Ch. IV 36539
Ch. V 36539
36 35334
36a 35334
81 22296
82 22314
136 35334
136a 35334
137 35334
1001 21579

Proposed Rules:

405 31404
412 31404
413 31404
414 21617
482 31404
485 31404
489 31404

43 CFR

1820 30328

44 CFR

64 30329
65 ..... 35743, 35745, 35749, 35752
67 ..... 35758, 35756, 35758

Proposed Rules:

67 ..... 30345, 35775, 35781, 35784

46 CFR

2 34756
10 34756
15 34756
24 34756
25 34756
26 34756
30 34756
70 34756
90 34756
114 34756
169 34756
175 34756
188 34756
199 34756

47 CFR

1 ..... 34848, 36818
15 34852
20 36112
22 21999
24 21999
25 37335
63 21803
64 21999
73 ..... 21580, 21581, 21582, 30818, 34620, 34621, 34622
90 34848

Proposed Rules:

1 34651
5 22376
21 ..... 35083, 36676
25 22376
54 34653
61 34665
69 34665
73 ..... 21618, 22027, 30863, 31169, 31170, 31171, 31753, 34669, 34670, 36137
74 ..... 35083, 36676
76 30863
80 35086
97 22376

48 CFR

Ch. 18 30602

Proposed Rules:

31 34810
208 32002
210 32002

49 CFR

Ch. I 31975
214 30819
385 31978
571.121 36819
1109 36821
1111 36822
1511 21582

Proposed Rules:

107 ..... 22028, 36138
171 ..... 22028, 36138
172 ..... 22028, 36138
175 32002
177 ..... 22028, 36138
571 21806
572 22381

50 CFR

17 ..... 36822, 37336, 37498
100 ..... 30559, 36809
222 ..... 21585, 34622
223 ..... 21585, 34622
224 21586
300 30604
600 30604
622 ..... 21598, 22359
635 37354
648 ..... 30331, 30614, 35928
660 ..... 30604, 30616, 34408
679 ..... 21600, 22008, 34860, 35448, 36541, 36845

Proposed Rules:

17 ..... 30641, 30642, 30643, 30644, 30645, 32003, 34422, 34520, 34893, 35942, 36851, 36968, 37108
20 31754
222 31172
223 31172
228 30646
600 21618
622 31173
635 22165
648 ..... 22035, 36139, 36556
660 30346
679 ..... 34424, 34624

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 29, 2002

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in—
California; published 5-28-02
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Individual Fishing Quota Program; published 4-29-02
COMMODITY FUTURES TRADING COMMISSION
Organization, functions, and authority delegations:
Enforcement Division Director; published 5-29-02
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fludioxonil; published 5-29-02
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Satellite communications—
27.5-29.5 frequency band redesignation; 29.5-30.0 frequency band reallocation; local multipoint distribution service and fixed satellite services; published 5-29-02
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Ear, nose, and throat devices—
Endolymphatic shunt tube with valve; reclassification; published 4-29-02
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia; published 5-29-02
NUCLEAR REGULATORY COMMISSION
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; published 3-15-02
TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Boston Harbor, Weymouth Fore River, and Salem Harbor, MA; safety and security zones; published 4-29-02
Cumberland Bay, NY; safety zone; published 5-22-02

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Voluntary foreign aid programs; U.S. private voluntary organizations; registration; comments due by 6-6-02; published 5-7-02 [FR 02-11243]
AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Nectarines and peaches grown in—
California; comments due by 6-4-02; published 4-5-02 [FR 02-08140]
AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Raisins produced from grapes grown in—
California; comments due by 6-3-02; published 4-3-02 [FR 02-08141]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; comments due by 6-5-02; published 5-6-02 [FR 02-11272]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass; comments due by 6-7-02; published 5-23-02 [FR 02-12779]
COMMERCE DEPARTMENT
Patent and Trademark Office
Patent and trademark cases:
Fee revisions (2003 FY); comments due by 6-6-02; published 5-7-02 [FR 02-11270]
EDUCATION DEPARTMENT
Elementary and secondary education:
Disadvantaged children; academic achievement improvement; comments due by 6-5-02; published 5-6-02 [FR 02-11128]
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Meetings:
Residential furnaces and boilers venting installations; energy conservation standards; public workshop; comments due by 6-7-02; published 4-10-02 [FR 02-08619]
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Upstream interstate pipelines; firm capacity assignment; comments due by 6-3-02; published 4-18-02 [FR 02-09251]
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Miscellaneous organic chemical and coating manufacturing; comments due by 6-3-02; published 4-4-02 [FR 02-05077]
Organic liquids distribution (non-gasoline); comments due by 6-3-02; published 4-2-02 [FR 02-07095]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania; comments due by 6-3-02; published 5-3-02 [FR 02-10873]
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania; comments due by 6-3-02; published 5-3-02 [FR 02-10874]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-6-02; published 5-7-02 [FR 02-11175]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-6-02; published 5-7-02 [FR 02-11174]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-6-02; published 5-7-02 [FR 02-11173]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 6-6-02; published 5-7-02 [FR 02-11297]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
South Carolina; comments due by 6-6-02; published 5-7-02 [FR 02-11288]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
South Carolina; comments due by 6-6-02; published 5-7-02 [FR 02-11289]
ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Utah; comments due by 6-6-02; published 5-7-02 [FR 02-11291]
ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
Utah; comments due by 6-6-02; published 5-7-02 [FR 02-11292]
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Tires; performance requirements; comments due by 6-5-02; published 4-29-02 [FR 02-10406]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Offerors and transporters; security requirements; comments due by 6-3-02; published 5-2-02 [FR 02-10405]
Pipeline safety:
Producer-operated Outer Continental Shelf natural gas and hazardous liquid pipelines crossing directly into State waters; comments due by 6-4-02; published 4-5-02 [FR 02-06825]

TREASURY DEPARTMENT
Customs Service
Merchandise entry:
Single entry for unassembled or disassembled entities imported on multiple conveyances; comments due by 6-7-02; published 4-8-02 [FR 02-08218]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Golden parachute payments; comments due by 6-5-02; published 2-20-02 [FR 02-03819]
Procedure and administration:
Damages caused by unlawful tax collection actions; civil cause of action; comments due by 6-3-02; published 3-5-02 [FR 02-05113]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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S. 378/P.L. 107–182

To redesignate the Federal building located at 3348 South Kedzie Avenue, in Chicago, Illinois, as the "Paul Simon Chicago Job Corps Center". (May 21, 2002; 116 Stat. 584)

Last List May 22, 2002

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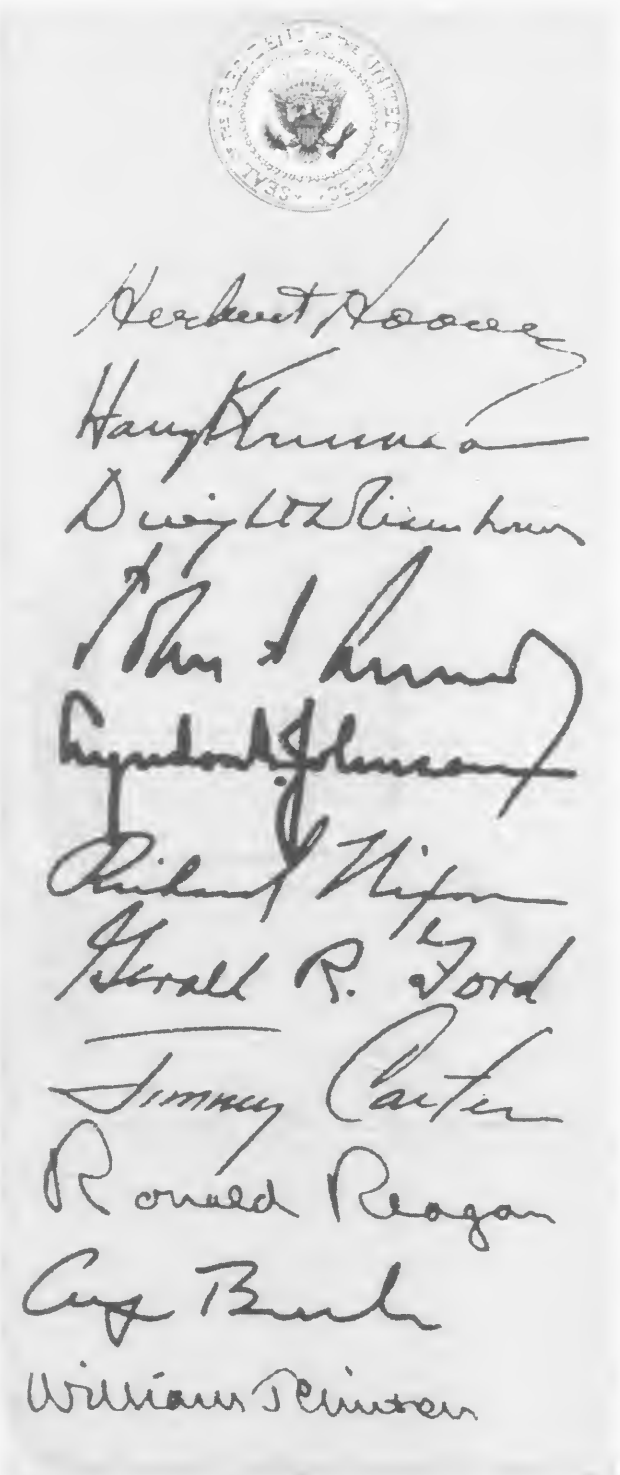

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